Addis Ababa University
College of Law and Governance Studies
Center for Human Rights

Responses to the Formalization of Rural Women's Land Rights in the Ethiopian Plural Justice System: The Case Study of Sidaama Regional State

A Thesis Submitted to the Center for Human Rights, Addis Ababa University for the Doctor of Philosophy Degree (PhD) in Human Rights

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Declaration

I, the undersigned, declare that the dissertation entitled "Responses to the Formalization of Rural Women's Land Rights in the Ethiopian Plural Justice System: The Case Study of Sidaama Regional State" is my original work. In compliance with the accepted rules, I have duly acknowledged and referenced all materials used in this dissertation.

In accordance with the University's rules, the following two articles that emanate from this dissertation have been published and accepted for publication in reputable journals respectively.

- Anchinesh Shiferaw Mulu, 'Effect of Formalization of Rural Women's Land Rights in a Plural Justice System: The Case of the Sidaama Regional State', *Mizan Law Review*, Vol. 17, No. 1, 2023, p. 117-150.
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Acronyms

AAU-CHR	Center for Human Rights of Addis Ababa University
ACHPR	African Charter on Human and Peoples' Rights
APC	Agriculture Producers Cooperative
AU	African Union
CAT	Convention against Torture and Other Cruel Inhuman, Degrading Treatment or Punishment
CCI	Council of Constitution Inquiry
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of racial Discrimination
CFS	Committee on World Food Security
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CSA	Central Statistical Agency of Ethiopia
CSO	Civil Society Organizations
DFID	Department of International Development
EC	Ethiopian Calander
EDHS	Ethiopia Demography and Health Survey
EHRC	Ethiopian Human Rights Commission
EIO	Ethiopian Institute of Ombudsman
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
ESCR	Economic, Social and Cultural Rights
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
FLLC	First Level Land Certification
FRFL	Federal Revised Family Law
FSC	Federal Supreme Court
GPS	Global Positioning Systems
HoF	House of Federation
HoPR	House of peoples' Representatives
ICCPR	International Covenant on Civil and Political Rights
ICED	Convention for the Protection of All Persons from Enforced Disappearance
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRPWD	International Convention on the Rights of Persons with Disability
LAC	Land Administration and Use Committee
LIFT	Land Investment for Transformation
MoA	Ministry of Agriculture
MoFED	Ministry of Finance and Economic Development
MoWCY	Ministry of Women, Children and Youth Affairs
MoWSA	Ministry of Women and Social Affairs
NEWA	Network of Ethiopian Women's Association
NGOs	Non-Governmental Organisations
OAS	Organisation of American States
OLF	Oromo Liberation Front
PA	Peasant Association
S/R/S	Sidaama Regional State
SLLC	Second Level Land Certification
SLM	Sidaama Liberation Movement

SNNP	South Nations, Nationalities and Peoples Region of Ethiopia
TPLF	Tigray People Liberation Front
UN	United Nations
USA	United States of America
USAID	United States Agency for International Development
USSR	Union of Soviet Socialist Republics
VAW	Violence against Women
VGGT	Voluntary Guidelines on Governance of Tenure

Glossary

Afinii	hear me
aydde	division that consist of all descendants of one ancestor for about the three or five generations
Balabats	local chiefs
bisallo	clans
carte blanche	complete freedom to act as one wish
chimeesa	male elders who leads elders' council and administer its function.
Enset	false banana
Gadaana	a person who leads a *luwa*
Gebar	tribute paying (in the form of crop or labor) peasant
Gosa	sub-tribes
Gult	landlord based tenure
halale	social rule and truth
Idir	a social association to provide financial and material support or/and psycho-social support upon death of a family members
Kebele	sub-district, the lowest administration unit
khat	green shrub leaves chewed as stimulant
kontract	official sanctioned informal land deal
luwa	the customary political institutions of Sidaama based on a generational class system
Mine	house of the nuclear monogamous or polygamous family.
Moote orgeelo	it is the highest clan council that has very respected clan elders.
olla/ola	village
Pro bono	free legal service for an indigent
Qaricho	a woman elder
Raison d'etre	the most important reason
Shemena	spinning cotton
songo	elders' council
Tella/Areke	local alcohol drink
Timad	a traditional land measurement where 1 timad equals to 0.25 hectares
Utuwa	private land
Woma	a leader who administers religious and cultural issues in the clan
Woreda	an administrative district
Yakka	women's only informal institutions

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List of Federal and Regional State Laws

A Proclamation to Amend Ethiopian Institution of Ombudsman Establishment Proclamation No. 1142/2019
Afar National Regional State Rural Land Administration and Use Proclamation No. 49/2009 and Regulations No 4/2011
Amhara Regional Rural Land Administration and Use Proclamation No. 133/06
Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017
Amhara Regional State Rural Land Proclamation No. 16/1996 amended as 17/1996
Benishangul Gumuz Regional State's Rural Land Administration and Utilization Proclamation No. 152/2018,
Consolidation of the House of Federation and the Definition of Its Powers and Responsibilities-Proclamation No. 251/2001
Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta, 1st year No. 1
Definition of Power and Duties of the Executive Organs Proclamation No. 1263/2021
Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010
Ethiopia Civil Societies Proclamation No. 1113-2019
Federal Advocacy Service Licensing and Administration Proclamation No. 1249/2021
Federal Courts Proclamation No. 1234/2021
Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005

Federal Rural Land Use and Administration Proclamation No. 89/1997
Formation of nation-wide Peasant Associations Proclamation No. 130/1977
Oromia Region Customary Courts, (Regulation No. 10/2021)
Oromia Regional State Proclamation to Establish and Recognize the Oromia Regional Customary Courts (Proclamation No. 240/2021)
Oromia Regional States Proclamation No. 130/2007
Oromia Regional States Proclamation No. 248/2023
Peasant Association Consolidation Proclamation No. 223/1982
Peasant Associations Organisation and Consolidation Proclamation No. 71/1975
Proclamation No. 210/2000 on Establishment of EHRC
Proclamation No. 211/2000 on Establishment of EIO
Proclamation No. 471/2005, Definition of Powers and Duties of the Executive Organs of the Federal Democratic republic of Ethiopia
Proclamation No. 621/2009 to Provide for the Registration of Charities and Societies
Proclamation to Define the Powers and Functions of the House of Federation of the Federal Democratic Republic of Ethiopia, Proclamation No. 1261/2021
Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE, Proclamation No. 798/2013
Public Ownership of Rural Land Proclamation No. 31/1975
Sidaama Regional State's Affini Gazeta, Proclamation on the continued enforcement of the Proclamations adopted by the previous Regional State for the execution of government responsibilities- Proclamation No. 8/2019
Sidaama Regional State's Affini Gazeta, A Proclamation to Pronounce the Coming into Effect of the Constitution of the Sidaama National Regional State No. 1/2020.
Sidaama Regional State's Affini Gazeta, Rural Land Administration and Use Proclamation No. 27/2023
SNNP Regional State's Rural Land Use and Administration Proclamation No. 110/2007
SNNP Rural Land Administration and Use regulation No. 66/2007
Somali Region Rural Land Administration and Use Proclamation No 128/2013
The Federal Courts of Shari'a Consolidation Proclamation No. 188/1999
Tigray Regional State Rural Land Administration and Use Proclamation No. 239/2014

List of Cases

Federal and Regional Court Cases

Federal Supreme Court Cassation Division, File No 49200, November, 2010
Federal Supreme Court Cassation Division, File No 79394, September, 2012
Federal Supreme Court Cassation Division, File No. 110569, February 2016
Federal Supreme Court Cassation Division, File no. 210885.
Federal Supreme Court Cassation Division, File No. 24625

Federal Supreme Court Cassation Division, File no. 45548

Federal Supreme Court Cassation Division, File no. 50489

Genet Egiso vs. Ato Tego and Hafto Birru (File No. 01197), Hawella Tulla F/I/Court, Dato &Chefe Area Chilot (bench)

SNNPRS Supreme Court Cassation Division, File No. 64745, May 16, 2015

W/o Agare Wariko, and others Vs. Ato Yose Shalamo, and others (File No. 01361), Hawella Tulla F/I/Court, Dato &Chefe Area Chilot (bench)

W/o Genet Egiso vs. Sha/l Tadesse Taye (File No. 01452), Hawella Tulla F/I/Court, Dato &Chefe Area Chilot (bench)

W/r Abebech Hatiya vs. Ato Tamene Tessema and Yohannis, File No. 08425, a case decided by Hawella Tulla First Instance Court.

W/ro Haregwoine Tirunehe vs. W/ro Zufane Terefe, File No. 219887, Tahisas 25, 2015 (Dec. 25, 2023).

W/ro Manur Tukuru vs. Amalo Sakuma, File No. 06436, decided by Hawella Tulla First Instance Court.

Wonji Sugar Factory vs Ato Bacha Alemu, file No.102406 (18 November 2016) the Federal Supreme Court Cassation Decisions, Vol. 21

CCI/HoF cases

Alemitu Gebre vs. Chane Desalegn, 130 File No. 913/05, 'Sene' 26, 2007 E.C., 1(1) *Journal of Constitutional Cases* 26 (2011 EC)

AtoKitifo Gebreyes and W/roDeneknesh Jimma vs. Besufikade Ayele, 2009 E.C (2017), File No. 1663/08 in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, Journal on Constitutional issues, Vol. 1(1) (ኢ.ፌ.ዴ.ሪ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ ጽ/ቤት የተዘጋጀ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ የውሳኔ ሓሳቦች፣ ሕገመንግሥታዊ ጆርናል፣ቅፅ 1፣ቁጥር 1፣መስከረም 2011 ዓ/ም), p. 14-16.

Banchamlak Dersalign vs. Abebaw Molla in House of Federation, *Journal on Constitutional Decisions,* Vol. 3, p. 10- 11. It is also found in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional issues*, Vol. 1(1), File No. 1110/06, p. 10-13 (ኢ.ፌ.ዴ.ሪ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ ጽ/ቤት የተዘጋጀ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ የውሳኔ ሓሳቦች፣ሕገመንግሥታዊ ጆርናል፣ቅፅ 1፣ቁጥር 1፣መስከረም 2011 ዓ/ም)

Biyadglegn Meles et al. v. the Amhara Regional State, petition, Miazia 30, 1989 E.C. (unpublished)

Coalition for Unity and Democracy (CUD) vs. Prime Minister Meles Zenawi Asres, Fed. First Instance Ct., Lideta Div., File No. 54024 (Decision of 3 June 2005) (26 Ginbot 1997 E.C.).

Enat Belete Vs. Mebrat Beza in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional issues*, Vol. 1(1), File No. 1327/07, p. 17.

Hasay Doye vs. Tinsaye Kutale et.al, File No. 802/05 (unpublished CCI Recommendation) as endorsed by the HoF on 'Megabit' 03, 2008 E.C. (April 2015)

Jemaye Wonde Vs. Workinesh Itich (unpublish CCI Recommendation)

Kedija Beshir et al. vs. Ansha Ahmed et al available in HoF, *Journal of Constitutional Decisions*, Vol. 1, No. 1.

Kelebe Tesfa vs. Ayelegn Derbew, HoF 4th Term, 5th Year, 2st regular session, 'sene' 18, 2007 E.C. (June 2014)

Melaku's case, File no. 1421/07, Council of Constitutional Inquiry.

Muyedin Yunis vs. Nazi Aliye et. Al, File No. 1218/06 (unpublished CCI Recommendation) as endorsed by the HoF on 'Tikimt' 24, 2009 E.C (October, 2017).

Rania Ahemed Ibrahim vs. Ibrahim Ahemed, File No. 1352/07 in Recommendations of Council of Constitutional Inquiry, Journal on Constitutional issues, Vol. 1(1), 'Genbot' 6, 2007 E.C. (May 2014).

The case of the former FDRE President Negasso in House of Federation, *Journal of Constitutional Decisions*, 2009 E.C. (2017), Vol. 2 (2), p. 36-41).

W/ro Fatuma Hamude vs. Ato Hussien Tuffa, House of Federations 5th parliament 4th year 1st council meeting, File no. ፊዴም/አፍ/5/308, 'Nov. 10, 2019.

W/ro Halima Mohamed vs. AtoAdem Abdi; File No. 713/04 in House of Federation, *Journal of Constitutional Decisions*, 2009 E.C., Vol. 2 (2).

W/ro Kassaye Eshete vs. W/ro Askale Zemedkun (guardian of TsehayeTameri), 'Meskerem' 2011 E.C (September 2018), FDRE House of Federation 4th year ordinary Meeting.

W/ro Zemede Wagawe Vs. Ato Habetamu Wagagwe et al, File No. 2562/2010, Feb. 26, 2021, FDRE Council of Constitutional Inquiry.

Wubalem Derib Vs. Shibabaw Temesgen (unpublish CCI Recommendation)

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Abstract

The dissertation investigates the localization of women's rights to land in Ethiopia by analyzing global, regional, national and local norms and standards, institutional and practical responses using the Sidaama Regional State as a case study. In doing so, the study challenges a diffusionist view which claims that a norm made at a global space through transnational entities will always have a linear or trickledown effect at the local space. The study identifies the process of translation and, localization of norms by identifying various actors involved in these processes and analyzing their roles in (re)making, (re)constructing and (re)interpreting rural women's land rights. To this end, the study investigates the roles of private and public actors and court practices regarding rural women land rights before and after the introduction of joint land registration and certification in the name of a husband and wife/wives (formalization of land rights).

The study applies a dogmatic method of legal analysis, case and document analysis and interviews with key informants to grasp the trends and identify the lacuna in the policy and institutional frameworks in protection of rural women's constitutional and legal right to land in the context of a plural justice system.

The findings of the study demonstrate that the state-centeric land formalization process which has taken place since 1997 has been instrumental in empowering women at the household level. This has taken place in the context of gendered social norms that affect rural women's right to access, use and control land in the Sidaama Regional State. The land registration and certification process has raised rural women's consciousness of their land rights which contributed to an increase in the number of claims brought by women before the formal justice system such as cases related with women's land inheritance rights, division of land during divorce that involves polygamous marriages and transactions related to land. Nonetheless, the decisions by courts and constitutional adjudicatory bodies are inconsistent regarding these cases. This is attributed to the lack of uniform gender sensitive approaches in the adjudication of rural women's land rights issues, gender blind laws, gaps in the implementation of land certification program and lack of awareness.

Land certification has also contributed to bringing changes in some of the applicable rules of the customary justice system towards women's inheritance rights in the Sidaama Regional State. Women's land rights through the certification program have been introduced in a social context where women's land ownership is a foreign concept and has influenced changes in some of the entrenched gendered social norms through time. However, the lack of women participation in the customary justice system and the prevalent gendered social norms have resulted in decisions that are not in tandem with women's constitutional rights to land.

The study concludes that norms which are adopted at a global level with an expectation to have universal application are not always accepted as they are at the local level. The local actors respond to such norms in a multiplicity of ways. The legitimacy and enforcement of these global norms depends to a large extent on the existing gendered social norms which could change through time by adopting context-based and bottom-up approach.

Chapter One: Introduction

This doctoral dissertation examines localization of women's rights through land titling in Ethiopia building on normative, jurisprudential, contextual, court case and empirical analyses. The dissertation in particular examines normative, institutional and enforcement procedures for the protection of rural women's right to land at different levels of governance while focusing on the lowest administration unit in Ethiopia and the plural justice system.

Land holds an important place in the life of individuals, communities, the state and private sector actors in many overlapping ways. It is a valuable asset that serves as a source of livelihood and a determining factor of the social status of individuals as it "often provide[s] not only a means of existence, but also status and power".[1] It also constitutes cultural identity of communities, and it is an important capital asset that gives people power within a society.[2] It is a determining factor of individuals' economic, political, social and cultural positions in a society. Someone's access, control and administration of land contribute to determining her/his socio-economic, cultural and political status in a society. For example, evidence shows that the protection of land rights for women creates conducive atmosphere for their overall wellbeing by creating greater bargaining power at household and community levels and resulting in lower levels of gender-based violence[3]. Because of that marginalisation of individuals from accessing, controlling and administrating land has far-reaching consequences in their life. In developing economies where agriculture is the major source of income, marginalisation of people from accessing land means denying the majority a source of livelihood and a dignified life. Agrarian society's life is dependent on access to land as it is the precondition for the protection of other correlated rights such as the right to food, the right to housing, the right to culture, the right to participate in public life etc.[4]

[1] Nadia Steinzor, *Women's Property and Inheritance Rights: Improving Lives in a Changing Time; Development Alternatives*, Inc. 2003, p. 22. See also Brightman Gebremichael Ganta, 'Access to Rural Land Rights in Post-1991 Ethiopia: Unconstitutional Policy Shift', *Journal of Land and Rural Studies*, Vol. 7 (1), 2019, p. 2 & 4. The fact that access to land determine the social status of individuals is reflected in the Ethiopia history. During the imperial period, land ownership reflected pride and self-esteem. See Hussein Jemma, *The Politics of Land Tenure in Ethiopian History*. Paper presented at the XI World Congress on Rural Sociology, Trondheim, Norway, 25–30 July, 2004, p. 3.

[2] Maxim Mancino and Srinjoy Bose, 'Land Rights in Peacebuilding Discourse: Domination and Resistance in Timor-Leste's Ita Nia Rai program', *Australian Journal of International Affairs,* Vol. 75 (5*),* 2021, p. 563.

[3] The Gender Gap in Land Rights, *FAO Information Brief* available at https://www.fao.org/3/I8796EN/i8796en.pdf

[4] Smita Narula, 'The Global Land Rush: Markets, Rights, and the Politics of Food', *Stanford Journal of International Law, Vol. 49*, 2013, p. 132. Access to land gives people the chance to exercise their cultural life freely. Denial of access to land through expropriation prevents agrarian society from exercising their right to land. Land rights are also important to capacitate and empower agrarian society to contribute in public life and local governance. Ganta, *supra* note 1, p. 4-5.

Because of its importance to serve as a basis for other entitlements such as adequate standard of living and economic independence, land is considered "not a mere commodity, but an essential element for the realization of many human rights".[5] Limited access to land leads to economic insecurity. In many countries, access to land is limited because of hierarchical and segregated systems that discriminate against the vulnerable section of the society.[6]

Among the various members of the society, women are significantly affected by the lack of access to land and its productive resources. Women's access to land is limited for various reasons including power relationship in the society, gender norms and unequal access to resources;[7]it is affected by socio-cultural institutions, market economy and the state.[8] The gender dimensions of land ownership indicate that women are significantly disadvantaged relative to men with regard to their land ownership, management, transfer and economic rights[9].

In recent years, women's right to land has garnered attention at an international level. Two of the Sustainable Development Goals (SDGs) under Goal 1 (End poverty in all its forms everywhere) and Goal 5 (achieve gender equality and empower all women and girls) have indicators that require improvements in women's equal rights to land ownership and/or control.[10] One of the measures to guarantee women's land rights protection is through ensuring the security of land tenure rights which can be achieved by formalization of land right.

Formalization of land rights through land registration and titling has resulted in an increase in tenure security, productivity and investment in Thailand and China while it has increased agricultural investment and land values in Nicaragua, Ecuador and Venezuela. However, similar results have not been observed in some countries in Africa following formalization of land rights.[11]The main reason for this could be, at least in some African countries, negotiations based on social, political and kin networks as well as customary tenure are stronger than title deeds in

[5] United Nations Office of the High Commissioner for Human Rights (UNOHCR), *Land and Human Rights: Standards and Applications*, 2015, p. 1.
[6] Jérémie Gilbert, 'Land Rights as Human Rights: The Case for a Specific Right to Land', *International Journal of Human Rights*, Vol. 10, No. 18, 2013, p. 115.
[7]Yigremew Adal, *Rural Women's Access to Land in Ethiopia*, 2005, p. 5; Hussein Ahmed Tura, '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*, Vol. 2, No. 2, 2014, p. 159.
[8]Lastarria-Cornhiel, S. and Garcia-Frias, Z. (2005), 'Gender and Land Rights: Findings and Lessons from Country Studies' in *Gender and Land Compendium of Country Studies*, Gender and Natural Resources Management, FAO5.
[9] Ibid.
[10] SDGs Indicators 1.4.2; 5.a.1 and 5.a.2.
[11]Janine M Ubink, 'Legalising Land Rights in Africa, Asia and Latin America: An Introduction' in Janine M Ubink, A. Hoekema, and W. Assies (eds), *Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia, and Latin America*, Leiden University Press: Dordrecht, The Netherlands, 2009, p. 7.

ensuring protection of land rights.[12] There are also items of evidence showing that land formalization through land registration and certification has the potential to increase land conflict and uncertainty. Its advantage has been proved to be to those who have contacts, information and resources.[13]

In addition, formalization of land which is a state centric approach to protection of land rights may not always work as the state might itself be the violator of such rights. Some commentators propose rather than a legalistic approach to land rights, an approach that is centered on justice, human rights and empowerment is more successful for the protection of land rights.[14]

In Ethiopia, land is associated with significant political, economic and social value. It has been a subject of political uprisings in Ethiopian political history as it is a means of controlling asset that sustains the lives of millions.[15]In addition, it is one of the determining factors of the economic and social status of individuals as it is the main source of livelihood for the majority of the population directly or indirectly. It is a major economic asset that has been sustaining the lives of millions. Agriculture is the source of livelihood to 60% of the households in Ethiopia.[16] It constitutes the main source of income for the majority of the population. According to the 2016 Central Statistical Agency (CSA)'s survey, 42% of women and 71% of men aged 15-49 participate in agricultural occupations.[17]

Urbanization, climate change, food insecurity and the growing population size have affected access to land and land productivity, also causing land shortages. Rights of individuals have been affected

[12] Dessalegn Rahmato, 'Land Rights and Tenure Security: Rural Land Registration in Ethiopia' in J. Ubink, A. Hoekema, and W. Assies (eds), *Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia, and Latin America*, Leiden University Press: Dordrecht, The Netherlands, 2009,,. M. Ubink, *id.*, p. 64-65.
[13] J. Ubink, *Supra note* 11, p. 8.
[14] D. Rahmato, *Supra note* 12, p. 64-65.
[15] Pre 1975, land was under the feudal system where few landlords were the owners of land and all the fruits from the land produced by tenants' labor. The system of *rist* (private tenure or land-use right), communal tenure and *gult* (landlord based tenure or fief-holding rights) exited during this period. *Rist* was the system in the northern Ethiopia while *gult* was practiced in the southern Ethiopia. Under the *Rist* system, land use right is granted while in the *gult* system, it is the landlord who own the land and its fruits. The tenants serve the landlord for free. This disfranchised the tenants and has brought up the student movement under the motto 'land to the tiller' in 1970s. The revolution that followed in 1975 brought the *Derg* regime. The *Derg* regime has claimed to answer the land questions by guaranteeing tenants with "non-salable land use rights without payment and …a redistributive land legislation that initially brought about land de-concentration". The EPDRF has followed similar policy with the *Derg* and land is made under the ownership of people. Land has continued to have a central place in the Ethiopian politics. In this relation, land alienation by the state derived from the need to provide land to investors and large-scale farmers has been raising concerns which also been one of the reasons for the three years' protests from 2016-2018. See M. Srur, *State Policy and Law in Relation to Land Alienation in Ethiopia*, PhD Thesis (unpublished), University of Warwick, 2014, p. 8-12, http://wrap.warwick.ac.uk/74132/, (accessed on 30 February 2020). A more detailed discussion of the history of land tenure in Ethiopia and its gender implications are made under chapter five.
[16] Food and Agriculture organisation of the United Nations, "Ethiopia Socioeconomic Survey 2018-2019", *RuLIS brief*, p.5.
[17]Central Statistic Agency (CSA) [Ethiopia] and ICF, *Ethiopia Health and Demography Survey 2016*, 2016, p. 37.

by land related disputes such as border encroachment, illegal land rights transfers through sale, donation and rent and, eviction for the purpose of large-scale development.[18] Ethiopia has embarked on land registration and certification process since 2003 with financial support from international development organizations such as the United States Agency for International Development (USAID), Department of International Development (DFID), Finland government and financial institutions such as the World Bank.[19]The land registration and certification program aims to address the insecurity of land tenure, which reduced land productivity, the incentive to invest on the land and land transferability.[20]The certification program involves joint titling of land rights of spouses and individual titling. It started with a pilot program in 2003 modeled after similar program implemented in Tigraye in the 1990s and later expanded to four regions in the country.[21] The certification program has had an impact on changing social relations and women's positions in the society.[22] This study will analyze the localization of women's rights through land titling in Ethiopia using Sidaama Regional State as a source of data for the empirical case study.

1.1. Statement of the Problem

The government of Ethiopia has ratified several international human rights standards and conventions developed under the auspicious of the United Nations (UN) and African Union (AU).[23] It has also enacted domestic laws that ensure the protection of women's rights in accordance with international instruments. In this regard, the government has declared women's equal rights under Article 35 of the Federal Democratic Republic of Ethiopia (FDRE) Constitution and enshrined the

[18] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *Strategy for Preventing and Mitigating Land Certification Related Violence against Women and Vulnerable Groups*, Paper prepared for presentation at the 2020 World Bank Conference on Land and Poverty the World Bank- Washington DC, March 16-20, 2020, p. 13; see also OHCHR, *Supra note* 5, p. 1.

[19] D. Rahmato, *Supra note* 12, p. 59.

[20] USAID, *Ethiopia Land Policy and Administration Assessment*, 2004, p. xi, https://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Etiophia/files/HLP%20AoR/Ethiopia_Land_Policy_Administration_Assessment_2004_EN.pdf (accessed on 10 January 2020).

[21] Logan Cochrane and Sebsib Hadis, 'Functionality of the Land Certification Program in Ethiopia: Exploratory Evaluation of the Processes of Updating Certificates', *Land*, 8, 149, 2019, p. 2; Klaus Deininger et al., 'Rural Land Certification in Ethiopia: Process, Initial Impact, and Implications for Other African Countries', *World Bank Policy Research Working Paper 4218*, 2007, p. 5; Tom Lavers, 'Land Registration and Gender Equality in Ethiopia: How State-Society Relations Influence the Enforcement of Institutional Change', *Journal of Agrarian Change*, Vol. 17, Issue 1, 2015, p. 196.

[22] Renee Giovarelli and Hirut Girma , 'Lesson 2: The Gender Implications of Joint Titling in Ethiopia' in *Focus on Land in Africa Brief,* 2013, https://gatesopenresearch.org/documents/3-1018 (accessed on 28 July 2020); Sosina Bezu and Stein Holden, 'Demand for Second-Stage Land Certification in Ethiopia: Evidence From Household Panel Data', *Land Use Policy*, 2014; Stein Holden, Klaus Deininger and Hosaena Ghebru, 'Tenure Insecurity, Gender, Low-Cost Land Certification and Land Rental Market Particpation in Ethiopia', *Journal of Development Studies* 47, 2011, p. 31-47.

[23] FDRE has ratified seven major treaties: International Convention on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), Convention to Eliminate All Forms of Discrimination against women (CEDAW), Convention to Eliminate Racial Discrimination (CERD), Convention against Torture (CAT), and Convention on the Right of Persons with Disabilities (CRPD). Ethiopia has also ratified the African Charter on Human and Peoples' Rights (ACHPR), The Protocol to ACHPR on the Rights of Women (Maputo Protocol), African Charter on the Right and Welfare of the Child.

embodiment of equality in subsidiary legislations such as family law, criminal law, and rural land administration laws that protect women's rights to land adopted at the federal and regional levels.

The Constitution has declared land as "a common property of Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange" based on the socialist ideas.[24] The FDRE Constitution declared land as state property in consideration of two policy objectives: social equity and tenure security.[25] It has also devolved power of land administration to the regional states. In practice this brought the concentration of power in the hands of the lower structure of the government at the *Woreda* and *kebele* level which tended to enforce the decision of the ruling party under the centralized decisions making process of the EPDRF.[26]

The FDRE Constitution guarantees women's equal rights with men to access, use, transfer, administer and control land.[27] Despite these legal guarantees of rights, women have been in a disadvantageous position in terms of accessing, controlling and using land. Accordingly, even though women constitute a little over half of the population, the number of female landholders and the size of their holdings are very small. According to the Ethiopian Central Statistical Agency (CSA) data of 2007/2008, female landholders in FDRE were 19 %.[28] As presented in the Agricultural Sample Survey of 2013/14 of CSA, the average area held by male holders is 1.24 ha while the average area held by female holders is 0.69 ha.[29]

There are various reasons for the gender-based difference in access, control and use of land. These reasons include, among others, patriarchal customary practices, the gender division of labor, limited participation of women in local institutions and in decision-making, discriminatory practices of inheritance, limited rights awareness, and gender biases of local officials.[30] Furthermore, states failure to recognize the systemic nature of the subordination of women as a human rights violation contributes for the existing gender inequality in access to land.[31]

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[24] Article 40 (3) of the FDRE Constitution
[25] Daniel W. Ambaye, *Land Rights and Expropriation in Ethiopia*, Springer Theses, Springer, Cham, 2015, p. 64.
[26] David Chinigo, The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu, *Review of African Political Economy*, Vol. 42, No. 144, p. 182.
[27] Article 35 (7) of the FDRE Constitution.
[28] UNDAF, *Ethiopia Joint Programme on Gender Equality and Women's Empowerment: Phase 2*, p. 12.
[29] CSA, *Agricultural Sample Survey of 2013/14*, 2014, p. 262.
[30] Yigremew Adal, *Rural Women's Access to Land in Ethiopia*, 2005, Addis Ababa, Ethiopia: Forum for Social Studies, p. 7; Naila Kabeer, *World Survey on the Role of Women in Development: Women's Control over Economic Resources and Access to Financial Resources, including Microfinance*, 2009, p. 42; UN Women and United Nations Office for Human Rights, Realizing Women's Rights to land and Other Productive Resources,2013, p. 2.
[31] Rebecca J. Cook, 'Women's International Human Rights Law: The Way Forward.' In Rebecca J. Cook, *Human rights of women: National and international perspectives.* University of Pennsylvania Press, 1994, p. 1.

Various researches have elaborated that joint land registration in the name of the husband and wife since 1997 has improved women access to land and enhanced equitable division of property during divorce or upon the death of a spouse, and their participation in decision-making during land rental.[32] The land certification and registration proceeded in two stages. The first level land certification (FLLC) involved recording landholding based on the testimony of the landholder. It demarcated and measured land using locally available materials such as rope and natural identifications such as rivers and trees. The demarcation was made in relation to neighbors bordering the land from different directions. The second level land certification (SLLC) involves the use of geospatial technology such as Global Positioning Systems (GPS) and cadaster surveys measuring the size of the land.[33]

The FDRE national report on the implementation of the Beijing Declaration and Platform for Action shows that female landholding increased from 19% in 2008 to 60% in 2011 with the large-scale land certification effort which covered 6.3 million households in Amhara, Oromia, Tigray and Southern Nations, Nationalities, and Peoples (SNNP) regional states over five years.[34] The recent data also shows that 11 million parcel in 143 woreda's demarcated for land certification in the second level land certification program.[35] According to EDHS 2016, 49% of women have joint land title. But this land titling benefited only married rural women. Unmarried rural women still have difficulty to access land while unmarried men have access to land through inheritance and donation. Researches indicated that productivity of lands, which are rented out by female landholders, has improved.[36] In addition, a study that assessed the early impacts of joint first level land certification (FLLC) in southern Ethiopia (5 districts in the Oromia and SNNP regional States) demonstrated that joint land titling has resulted in a reduced intra-household control over the land by the male head of the household.[37] Another study in Southern Ethiopia using gender-disaggregated household panel data showed that land certification has enhanced wives' awareness of their right to land and

[32] Enyew Adgo, et al., 'Impact of Land Certification on Sustainable Land Resource Management in the Amhara Region, Ethiopia', *DCG Report No. 7*, 2014, p. 43-44; R. Giovarelli and H. Girma , *Supra note* 22, p. 6; UN Women, *Women's Land Rights and Tenure Security in the Context of the SDGs Situation Anlaysis Report Ethiopia* (final draft), 2019, p. 4; S. Bezu and S. Holden, *Supra note* 22, p. 195; S. Holden, K. Dininger and H. Ghebru, *Supra note* 22.

[33] Mastewal Yami and Katherine A. Snyder, 'After All Land Belongs to the State: Examining the Benefits of Land Registration for Smallholders in Ethiopia', *Land Degardation and Developmen*, Wiley Online Library, 2015, p. 5.

[34] FDRE, *FDRE National Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the 23th Special Session of the United Nation General Assembly*, 2015, p. 9.

[35] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, 'Protecting Land Tenure Security of Women in Ethiopia: Evidence from the Land Investment for Transformation Program', *Development Alternatives Incorporated DIA Global,* Land Investment for Transformation Programme (LIFT), 2019, p. 12.

[36] S. Bezu and S. Holden, *Supra note* 22, p. 195; Mintewab Bezabih, Stein Holden, and Andrea Mannberg, 'The Role of Land Certification in Reducing Gender Gaps in Productivity in Rural Ethiopia', *CLTS Working Paper No. 1/12*, Centre for Land Tenure Studies, Norwegian University of Life Sciences, 2012.

[37] S. Bezu and S. Holden, *Supra note* 22, p. 196.

contributed in strengthening intra-household bargaining power and wives' participation in an intra-community social process.[38]

On the contrary, studies showed that the land registration process has resulted in non-recognition of customary land rights and reduced customarily recognized rights to land.[39] The entitlements under the customary system are viewed as an important mechanism to maintain social peace and to serve local justice.[40] Mekonnen argued that land registration has eroded the decision making power of farmers with small land holdings towards the State. Accordingly, the state used its power over land registration and certification to shift the power to decide on the land from households, or heads of households, elders and village chiefs to state bureaucrats. The state bureaucrats have used this power to reward supporters and punish opposition as witnessed following the 2005 election in Ethiopia.[41] Similarly, Dessalegn argued that a written document provided through land registration does not result in securing land for an illiterate farmer. In addition, the first level land demarcation, which used locally available materials for its low cost, increased land border disputes. It also shifted the adjudication of land disputes from social courts to land administrative committee.[42] The land registration also did not bring a perception that peasants should be protected from eviction. Gaps are also observed in pursuing cases in the formal justice system and in rights awareness.[43]

With entrenched traditional practices, such as polygamy, the enforcement of women's land rights recognized under the certificate is complex. According to some commentators, though the federal family law and regional family laws do not recognize polygamous marriage with the exception of Harari Family Law, the land certification program has brought the *de facto* recognition of polygamous marriage by introducing a joint land certification to all the wives. Though the administrative procedure differs among regions,[44] this practice has serious implications on women's rights. It is important to explore how the rights of wives in a polygamous marriage to joint land titling are reconciled with the formal laws that prohibit polygamous marriage.

[38] Stein Holden and Sosina Bezu, *Joint Land Certification, Gendered Preferences, and Land-Related Decisions: Are Wives Getting More Involved?*, *Nordic Conference in Development Economics*, Helsinki, Finland, 2014.
[39] S. Bezu and S. Holden, *Supra note* 22, p. 194.
[40] Mekonnen Firew Ayano, 'Rural Land Registration in Ethiopia: Myths and Realities', *Law and Society Review*, vol. 52, No. 4, 2018, p. 1085.
[41] *Id.*, p. 1060
[42] D. Rahmato, *Supra note* 12, p. 17.
[43] *Ibid*, p. 82 and 85.
[44] In Oromia Regional State, the name of all wives are included in certificate during the registration process (UN Women, 2019: p. 9). The photo of the head of the household was included in the certificate unlike in SNNP Regional State where the photo of both spouses is affixed in the certificate (S. Bezu and S. Holden, *Supra note* 22, p. 197).

Most studies demonstrate that land certification has positively contributed for women empowerment through enhancing their decision making power in the household, guarantying their right to get a share from the land during divorce or spouse's death, and ensuring their usufructuary rights.[45] The certificate empowered women to claim their rights with confidence before a court of law and increased their awareness of its importance as one of the credible evidences of their rights on the land and in protecting them from unlawful encroachments.[46] However, these findings should be consciously examined without making generalization. As this study demonstrates in the subsequent chapters the evidentiary roles of the certificate have been compromised by irregularities in the land registration and certification process. This has led courts to request other evidence in addition to the land certificate during court litigation.

On the other hand, the existence of parallel customary system operating based on its own norms has been the subject of different studies.[47] The customary system has been appraised as accessible, less costly, expedient and reconciliatory while it has been criticized for lack of women's participation as mediators.[48] One of the researches conducted in Arsii Oromo of Kokossa District illustrated that land disputes are submitted before the formal justice institutions including the administrative organs and the informal institutions including the customary or local organs.[49] Accordingly, land is considered to be a political issue which is mostly resolved by political office as administrative matters rather than as a legal case that should be resolved by courts.[50] Most land disputes are dealt by district level peasant associations and district administrative organs rather than by a judiciary organ.[51] In terms of the kind of disputes that arise in Kokossa District of Arsii Oromo, most of the disputes involve grazing lands and it is over lands which are not under cultivation.[52]

Another article by Mamo coauthored with Masayoshi illustrated that the decision-making process in relation to two strategic resources i.e. land and livestock is traditionally dominated by men in Arsii Oromo. However, this has been challenged by women in recent years. This challenge emanated

[45] R. Giovarelli and H. Girma, *Supra note* 22; E. Adgo et al., *Supra note* 32; Stein Holden, and Tewodros Teferra, *Land Registration in Ethiopia: Early Impacts on Women: Summary report*. UN-HABITAT, 2008.
[46] W. Mekonen et al., *Supra note* 18, p. 17-18.
[47] Mamo Hebo, 'Land Disputes Settlement in a Plural 'Institutional' Setting: The Case of Arsii Oromo of Kokossa District, Southern Ethiopia', *African Study Monographs*, Suppl. 29, 2005, p. 125-135. See also Mamo Hebo and Masayoshi Shigeta, 'Continuity and Change in the Rights of Arsii Oromo Women to Property in West Arsii, Ethiopia', *Nilo-Ethiopian Studies* 19, 2014.
[48] Meron Zeleke, Tadesse K. Woldetsdik and Birhanu. Mosissa, 'Women's Property Rights and Claims in Customary Justice Systems: A Case Study of Ambo and Hawassa Zones', *Ethiopian Journal of Human Rights*, Vol. III, 2018, p. 19 and Meron Zeleke, 'Beyond the Exclusion Theses: Women and Customary Courts in Ethiopia' in KjetlTronvoll (ed.), *Supplementary Report under the Project Protection of Women's Rights in the Justice Systems of Ethiopia*, 2016, p. 11.
[49] Mamo Hebo, *supra note* 47, p. 125.
[50] ibid, p. 127.
[51] Ibid, p. 130
[52] Ibid, p. 128

from an increase in women's awareness of their rights guaranteed under the evolving laws and policies at national, regional and local level. Though there is such change, the study demonstrates that traditional social structures, norms and values has constrained the full exercise of their rights.[53] This is in particular true in relation to the process of decision-making on the transfer of land and livestock which are made solely by men.[54] Women's participation in transfer of land and livestock at local market remain low. According to the study, when a woman decides to participate at the local market, it is not supported by the community and buyers are hesitant to deal with women.[55]

Nevertheless, these studies do not assess the effect of the land certification program in litigations before the formal justice and the customary dispute settlement systems. There is a lack of research which investigates how the legal rights are enforced by courts and the challenges women face in pursuing their rights in both formal and customary justice systems. Most importantly, there is a general absence of studies on how women's rights to land as human rights have been translated into practice through the land registration and certification program and the role played by state organs and community actors in the process of translating rural women's land rights. In addition, most of the studies conducted on the gender impact of the certification process do not adequately take women's voice as the center of their analysis.

The present study analyses the enforcement of rural women's land rights guaranteed under national laws and international human rights laws using institutional analysis at the national, regional and local levels. It analyzes the effects, patterns and derivers of formalization of rural women's land rights in the plural justice settings and the extent to which vernacularisation/localization of women's rights has taken place through the joint land titling in the adjudication of rural women's land rights.

1.2.Research Questions

The research benefits from the three types of research questions known in legal research. These are: Descriptive research questions, normative research questions, and critical research questions.

Descriptive research questions are questions which are posed to describe the legal arena as it is which normative questions intends to explore what the law ought to be. Critical questions examine the impact of power on laws and legal practices.[56] Descriptive doctrinal research not only analyses

[53] M. Hebo and M. Shigeta, *Supra note* 47, p. 17.
[54] Ibid, p. 22.
[55] Ibid, p. 26.
[56] Eliav Lieblich, 'How to Do Research in International Law? A Basic Guide for Beginners', 2021, *Harvard International law Journal Online*, p. 3.

law as it is, but it can also be socio-legal and investigate the interaction of the law with the society. This is applied based on the legal realism theory. This kind of research questions not only look into what the law is, but looks into how it interacts with the society and how the society responds to the law, how it comes to be effective or how judges interpret or apply the law.[57] Law on paper and law in action may not be the same and it is very interesting to examine how the law affects the everyday life or vice versa.

Informed by the above typologies of research questions, the dissertation formulated the following research questions.

- What are the normative, jurisprudential and institutional frameworks at the international, continental and national levels guarantying rural women's right to land?
- What kind of rural women's land right regimes existed in the study area before the implementation of land titling?
- How do different actors translate the global norms on women's land rights into practice?
- What are the forms and nature of local responses to rural women's land rights in the study area?
    - Why has the government initiated a gendered land titling program despite the preexisting cultural practices on land rights?
    - How do state courts and customary dispute resolution mechanisms respond to rural women's claims in respect to their rights to land?
    - What are the challenges women encounters in pursuing legal remedies before formal and customary legal systems in respect to their rights to land?
    - What are the roles of human rights norms and actors in transforming rural women's claims before the formal and customary adjudicatory organs?

1.3. Objectives of the Research

The general objective of the study is to identify and examine normative, institutional and practical responses to the formalization of women's land rights in Ethiopia.

In light of the general objective, the specific objectives of the study are to:

- explore the normative, jurisprudential and institutional framework at global, continental, national and local levels that protect rural women's right to access, control and use land;

[57] Id, p. 4.

- examine rural women's land right regimes that existed in the study area pre and post implementation of land registration and certification;
- explore the role of governmental and non-governmental actors involved in negotiating, translating and interpreting rural women's right to access, control and use land;
- examine the forms and nature of local response to the joint land formalization process by;
    - considering the rationale behind gendered land titling program and its interaction with pre-existing cultural practices,
    - exploring the responses of state courts and customary dispute resolution mechanisms to rural women's claims in respect to their rights to land,
    - specifying and articulating underlying factors impeding rural women to pursue remedies in respect to their rights to access, control and use land and
    - suggesting the mechanisms that can best be utilized to give local meanings and legitimize international human rights standards on rural women's land right at local level.

1.4. Scope of the Study

Though the study attempts to examine the enforcement of women's land rights at the local level or subnational level, sufficient discussion would be made on the national and global responses to the women's rights to land to provide context to the local level responses. The study focuses on the Sidaama Regional State which is a new regional State established following a referendum on 18 June 2020 (details of the process for its organization as an autonomy regional state is described under chapter three).

The study does not address the effects of large-scale land investment to women's land rights which is an important issue worth considering by itself. This has been explored by other researches to some extent and can potentially be an area of future research. Women's rights in pastoral areas where communal land is common are not also explored in the study. Furthermore, women's land rights in a collectively held land tenure systems which are used by women for grazing, fetching water, fuel woods, fodder etc. are not covered in this research.

The research is not representative of the whole country, but analogous conclusions can be drawn to similarly situated contexts in other parts of the country. Where it is deemed relevant, the study also situates its findings within the broader gendered-land reform literature on Africa and beyond.

1.5. Significance of the Study

This study fills in the knowledge gaps in understanding women's land rights from a gender perspective and human rights framework. It contributes to exploring the barriers in the enforcement of women's rights to rural land in Ethiopia, which is an underexplored issue. It also contributes by providing policy and practical recommendations to ensure effective enforcement of women's constitutional right to access, administer and control land in Ethiopia. By analyzing the translation of women's rights into practice, it elucidates the role of the various actors at local, national and international arena. The center of analysis is the lived experiences of women with regard to land right issues in general and land certification in particular. This approach fills the gap in the general trends of research that has largely marginalized women's voice. While the research complements previous research on land reform in Ethiopia, it provides new insights into women's rights to access, control and administer land in a plural justice system.

1.6. Research Design and Settings: Critical Realist Approach

The study uses exploratory as well as descriptive case study design. Exploratory research design is used to explore uncertain area of study and a research area which is not studied well within the existing literature. This design is preferred as an appropriate research design to examine the subject of this study which is new and complex to understand. This has required a certain degree of flexibility in how it is structured and studied. This study explores a complex terrain by adopting an appropriate method of study which allowed the researcher to understand the study setting, basic facts, concerns and underlying causes.[58] The research design is also descriptive in a sense that it tries describing the reality on the ground based on the lived reality and people's perception and interpretation of it.

The research is informed by critical realistic research philosophy to identify causal relationships and explanations by going beyond descriptions of events and phenomena. Critical realism applies realist ontology in combination with relativist epistemology.[59] Realist ontology uses a method that help to find about the reality while relativist epistemology accepts that diverse knowledge can be generated by different people by using different methods. This reality might exist outside of human consciousness and the critical realist approach tries to understand the causal relation between human reasons and social structures. Critical realism (CR) provides "a way of thinking about the world which draws on social theory to seek explanations for social phenomena, alongside analytical

[58] Kreuger,L.& Neuman,L. *Research Methods, Qualitative and Quantitative Approach*, 2nd ed.,Boston: Parson Education, Inc,2006.

[59] Kristina Stutchbury, 'Critical Realism: An Explanatory Framework for Small-Scale Qualitative Studies or 'Unhelpful Edifice'?', *International Journal of research and Method in Education*, Vol. 45, Iss. 2, 2022, p. 113.

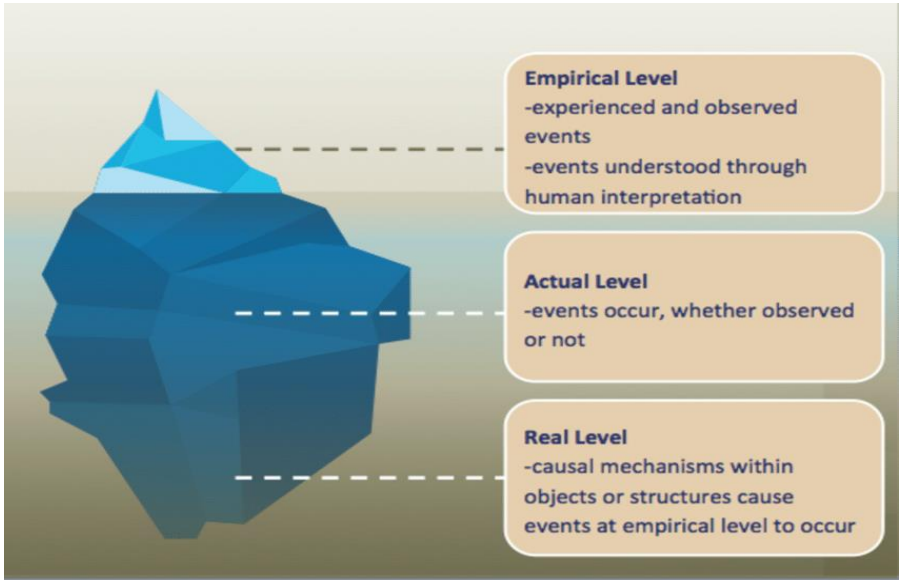
tools to support data collection and data analysis."[60] Accordingly, critical realism is "about looking for explanations (causal mechanisms) through a focus on what people can achieve (agency) in the social context in which they are operating (structures)." The iceberg is used as metaphor as to the way it investigates social reality. As represented in the picture below, there are three levels of reality: Empirical level of reality, actual level of reality and real level of reality. The empirical reality is the reality that can be observed and measured, and it is represented by the visible part of the iceberg. It is discovered through empirical research that identifies experiences and perceptions. The actual level reality refers to the "deeper-laying structures and causal mechanisms".[61] It can be examined through qualitative research method relatively in a straightforward ways (it is just below the surface). The real level reality found in the deep of the iceberg requires a critical analysis. It can be "inferred through a process of abduction (theoretical re-description) and retroduction (a focus on causal mechanisms)".[62] Abduction is "a process of interpreting data by drawing on existing theoretical frameworks and concepts"[63] while retroduction involves "testing proposed explanations for the contradictions against the evidence in order to identify the underlying causal mechanisms and address the underlying social realities which are often presented as 'barriers' (or excuses) to change (Checklandet al.2007)."[64]

Most part of the iceberg as represented in the picture below is immersed in the water and is not visible. Likewise, the causal mechanisms are mostly invisible. They are identified through analysis of the empirical data that describes experiences and events.[65] It focuses in collecting empirical data to identify stratified reality in order to examine causal relations and mechanisms. In this study, as is discussed in the section below, rural women (married, single, women in polygamous marriages, widow, divorced women) who have been going through the justice system are interviewed to understand their experience while accessing the formal and informal justice system (empirical level) and it analyzes the relation between the formalization of land and protection of their land rights before formal and informal justice systems (actual level) and tries to identify the causal mechanisms operating behind formalization of women's land rights and access to justice (real level). The findings show that the land registration through joint registration of wife and husband has increased the number of women with certificates (empirical level data). However, these women

[60] K. Stutchbury, *id*., p. 113.
[61] Scott 2005, Tikly 2015, Fletche 2017 cited in K. Stutchbury, *id*., p. 115.
[62] K. Stutchbury, 2022, *id.* , p. 115.
[63]Amber J. Fletcher, 'The Reality of Gender (Ideology): Using Abduction and Retrodcution in Applied Critical Realist Research' in Michiel van Ingen, Stephanie Grohmann, and Lena Gunnarsson (eds.), *Critical realism, Feminism and Gender: A reader*, 2020, Routledge.
[64] Kristina Stutchbury, 2022, *supra note 59*, p. 115.
[65] Kristina Stutchbury, *id.*, p. 114.

are not able to enforce their rights in contradiction to the expected impact of the joint land registration and certification (actual level). The underlying reasons and the causal mechanism for these are embedded in the social structure which has resulted in gender insensitive legislations, court decisions, customary practices and very slow social change on the rights of women's land rights (real level).

Pic. 1: An iceberg metaphor for critical realism ontology and epistemology



Source: adopted from Amber J. Flecher (2016)[66]

The critical realism`s emphasis on social structure and agency while critical theories emphasize on the underlying ideology to achieve change.[67] However, the social structure is constantly changing. The social structure in Critical Realist approach either enables or constrain actors to achieve a particular action and achieve a certain outcome in a particular setting (agency) (Tao2016).[68] Unlike interpretivist approaches, which suggest that people's contrasting/competing accounts of reality are equally valid, critical realist retroduction employs the principle of judgmental rationality to engage

[66] Amber J. Fletcher, 'Applying Critical Realism in Qualitative Research: Methodology Meets Method', *International Journal of Social Research methodology*, Vol. 20 (2), 2016, p. 187. The figure is also available on https://www.google.com/imgres?imgurl=https://i0.wp.com/jfsdigital.org/wp-content/uploads/2022/07/boon-fig-1.png?resize%3D530%252C299&tbnid=dwSJo9Qp-bTSOM&vet=1&imgrefurl=https://jfsdigital.org/2022-2/vol-26-no-4-june-2022/approaching-foresight-through-critical-realism-lessons-drawn-from-thailand/&docid=NfQIVJtk6qVNYM&w=530&h=299&itg=1&hl=en-US&source=sh/x/im/m1/4 (accessed Dec. 27, 2023)

[67] Kristina Stutchbury, Critical Realism: An Explanatory Framework for Small-Scale Qualitative Studies or 'Unhelpful Edifice'?, *International Journal of research and Method in Education*, Vol. 45, Iss. 2,2022, p. 114.

[68] CR assumes the existence of independent structures (or social forms) that constrain and enable actors to pursue certain actions in a particular setting (agency) (Tao2016) and research in this para-digm involves understanding the relationship between structure and agency (Bhaskar1998, Archer1998b, Scott2010).

critically with existing explanations of a phenomenon, irrespective of whether these explanations have been provided by our participants or other researchers. Judgmental rationality—as opposed to judgmental relativism (Lawson 1999)—is based on the premise that, because there exists a real (and relatively independent) world which has particular powers and properties, some explanations are more effective than others. This research tries to understand these structures (institutional or social), actors involved and the underlying reasons that constrains or facilitate/enable change. There are five social structures identified by Scott which enable or constrain actors in exercising their agency. These are embodied, institutional, discursive, structures of agency and social markers (they are described in the table below as adopted from Scott).[69]

Table 1: Description of Social structures as adapted in this research

Type of social structure	**Scott's description**
Embodied	Structures limit change. Resistance is possible, but only by removing the structure and allowing a different range of activities to take place. This can include gendered social norms on women's land rights, cultural practices such as polygamous marriages and cultural norms which excludes women from land inheritance, all of which can constrain women's land rights.
Discursive	Structures that potentially effect change. These are the ideas, values and attitudes which underpin the activities in the setting. They sustain the individual and may include stories, narratives, arguments and chronologies. In relation to women's land rights and access to justice, these are court arguments or elder ideas, values and attitude towards rural women's land rights. This is a structure in which contradictions can arise, which can empower or constrain agency of rural women when they claim their land rights.
Structure of agency	Structures of agency are linked to personal identity. Individuals' identities are built on past experiences, ideas they relate to, and relationships which have influenced them. All of these have affected their confidence in their role and their desire and ability (or otherwise) to challenge the status quo. Actors will bring to their role a worldview shaped by values, attitudes, interests, expectations and beliefs about women's land rights. The accommodation of differing worldviews will create a 'structure' which may impact on how individuals choose to act and may influence the acquisition of capabilities (conscious or tacit).
Institutional and systemic	This refers to the social norms, values and roles of the institution in which the activity takes place. The relationships, the hierarchy, the norms and expectations of individuals that work in it–which behaviours are highly valued, which attract sanctions. It can also include access to resources that the institution provides.
Social markers	These include gender, class or race, all of which can influence how actors are treated, their sense of identity, and the resources available to them.

Source: Adopted from Scott[70]

[69]David Scott., Education, Epistemology and Critical Realism. 2010, Abingdon: Routledge cited in Kristina Stutchbury, 'Critical Realism: An Explanatory Framework for Small-Scale Qualitative Studies or 'Unhelpful Edifice'?', *International Journal of research and Method in Education*, Vol. 45, Iss. 2, 2022, p. 118.
[70] David Scott., *ibid*.

The reality of social structure exists without our knowledge and when it is discovered, it is subjective, relative and constructed by individuals.

One of the limitations of critical realism research philosophy is that it is influenced by the positionality of the researcher. Thus, the researcher should be aware of her/his positionality and put an effort to reduce its influence in analyzing data.

The critical realist approach challenges other research philosophies such as the positivism, interpretative, feminist, structuralist and post-structuralist. It does not reject these philosophies rather it builds on them. Its focus on causal relations makes it a step ahead from positivist and interpretivist philosophies. The positivism is challenged "by disengaging with closed systems that concentrate wholly on the research for observable empirical regularities derived through statistically significant correlations between variables".[71] In challenging the interpretative approach, the critical realist believes that the meanings given to social realities by people is relevant but should not be the sole source to understand the social phenomenon.[72] Interpretative approach holds that the diverse and sometimes competing perception and accounts of reality by people is equally valid while the critical realist retroduction applies the principle of judgmental rationality in evaluating the diverse perceptions and accounts, and understanding the causal mechanisms with the believe that some accounts are more acceptable and convincing than others.[73] The feminist approach is challenged by critical realist approach by analyzing places and spaces by going beyond gender causalities for a certain social phenomenon.[74] It is emphasis on context in addition to gender causality makes it feminist anti-essentialist which gives due attention to lived experiences (that are emphasized in post structural studies) and relativist of interpretative approaches.[75] Thus, critical realist is "less dogmatic and unrestrictive".[76]

The critical realist approach is critical of theories and explanations that are used in research. It has emancipatory objectives since it aims to improve our reality.[77]

[71] Graham, *Critical Realism as Research Philosophy- Enlightened Common Sense?* Available on https://www.grahamsquires.com/philosophy-of-critical-realism/ (accessed on 27 Dec. 2023).
[72] Ibid.
[73] Amber J. Fletcher, *supra note* 63, p. 13.
[74] Graham, *supra note* 71.
[75] Amber J. Fletcher, *supra note* 63.
[76] Graham, *supra note* 71.
[77] Kristina Stutchbury, *supra note* 59, p.114.

It is applied by the writer of this dissertation to understand the context, patterns, effects and drivers of formalization of women's land rights in plural justice setting in Ethiopia. The study analyzes the macro and micro level causal factors for the realization of women's land rights.

The study uses a case study design to show cases the status and situation of women's land rights in the post land registration and certification setting in the Sidaama Regional State. A cases study is "the study of unique cases or particular instant".[78] It is used to study purposively selected small units of interest from a larger population. The advantage of this approach is to understand causal links while its disadvantage is lack of representativeness.[79] A case study is limited geographically and thematically as it wants to show a particular instant which may not reflect the whole country but might be applicable to similar context in places other than the study site.

As the study site is described in detail under the subsequent section, it has its unique features that situate it in a particular context. First, the study is conducted in a rural setting. Secondly, the study is conducted in a context where there are gendered norms on women's land rights and practices such as polygamous marriages, norms on women's role in farming. The case study is preferred since it gives readers an idea of the reality on the ground rather than only presenting a theoretical abstract situation. Thus, the study is evaluative of the existing situation of women's land rights in the study area.

1.6.1. Research Method

The research applies a multidisciplinary approach. It uses research methodologies and methods used in law, gender study and social sciences.

The research mainly uses the formal dogmatic method to analyze legal documents and its jurisprudence. This method is used to clarify the meaning and significance of laws and its content. The research does not only analyze the letters of the law but also law in action.

A qualitative method, which is useful to uncover subjective realities through interpreting the experiences, views, and feelings of the research subjects, is applied in this research.[80] The research relies on this method because of its exploratory nature. This allows the researcher to understand

[78] Pring (2000:40) cited in Abdelhamid Ahmed, Ontological, Epistemological and Methodological Assumptions: Qualitative Vesus Quantitative, 2008, p. 5 available https://files.eric.ed.gov/fulltext/ED504903.pdf (accessed 3 Dec. 2023)
[79] V. Beckmann and M. Padmanabhan, 'Analyzing Institutions: What Methods to Apply?' in V. Beckmann and M. Padmanabhan (eds.), *Institutions and Sustainability: Political Economy of Agriculture and the Environment- Eassays in Honour of Konrad Hagedorn*, 2009, p. 343.
[80] M. Ellsberg, *Researching Violence Against Women: A Practical Guide For Researchers And Activists*, 2005, p. 54.

cultural values, norms, and practice which determine peoples' beliefs, attitudes, and perceptions about women's land rights.

The qualitative method brings greater interaction between the researcher and the study participants. Its flexibility allows a great deal of contextualization of questions that are posed to research participants based on their level of education, social and economic background. This helps the researcher to be sensitive to the situation of the interviewee. Furthermore, this method creates an environment for the research participant to give a detailed account of facts and their opinion. The interaction between the researcher and research participants opens an opportunity for clarification follow-up questions to be asked by the researcher.[81] It gives the chance for study participants to express their views in an elaborated manner and in detail. The qualitative data will be collected from local actors.

Here, a question may arise as to what is meant by 'local' and 'actors' in this research. According to International Forum on Globalization (IFG), local is used to refer to an idea 'for power [administrative] to devolve to the lowest unit appropriate for a particular goal'.[82] Thus, for the purpose of this study the lowest units, i.e. local communities will be considered as the subject of analysis. Within the local community also there are subcategories whose voices are not heard or who are not represented in the local decision-making process. Thus, these categories which may consist of women, divorced women, disabled women, elderly women, female heads of households etc. is given due emphasis in this study. Phenomenological approach is applied to study the lived experience of rural women. Studying women's land rights requires studying the women's understanding of their rights and their experience in pursuing justice when their rights are violated. The study also tries to understand the resistance and challenges women face in exercising their rights to land and pursuing justice in case of violations of their rights from men's perspective by interviewing rural men (elders, men in government offices etc.) to understand their perception on women's land rights.

Both governmental and non-governmental organizations which play a role in decision making at governmental and community levels were the source of information. The study focuses on governmental actors in the lowest units of administration at Woreda and Kebele levels. Thus, Women and Children Bureaus and offices, Rural Land Administration and Use Bureaus and offices, local authorities, prosecutor office, courts and legal aid providers and community level actors

[81] Kreuger, L.& Neuman, L. *supra note* 58.
[82] Gaby Oré Aguilaw, 'The Local Relevance of Human Rights: A Methodological Approach' in Koen De Feyter, *The local relevance of human right,*. Cambridge University Press, 2011,, p. 113.

including elders (local mediators), women associations, religious leaders, village committees, and local NGOs are targeted for data collection.

The ontology of a study focuses on "the study of being". It is concerned with "what kind of world we are investigating, with the nature of existence, with the structure of reality as such".[83] The ontology of this study focuses on investigating the social world of meaning by investigating human thoughts, interpretations and meanings. For this purpose, the research uses interviews, focus group discussion and court decisions. The epistemology of this research is based on constructionism. Constructionism is defined as "the view of that all knowledge and therefore all meaningful reality as such is contingent upon human practices, being constructed in and out of interaction between human beings and their world and developed and transmitted within an essentially social context."[84] Accordingly, this study did not try to discover an objective truth but attempted to construct the truth from interaction with the study participants by engaging with the realities in their world.[85] A critical realist approach is used to analyze the empirical evidences to identify the causal mechanism and the underlying explanations of the existing reality in relation to women's land rights as discussed in the previous section of this chapter.

1.6.2. Techniques of data collection

Both primary and secondary sources are used. Data is collected from primary sources through in-depth interviews, focus group discussions (FGD) and key informant interviews. Semi-structured interviews with different stakeholders such as elders, religious and community leaders, and relevant key informants based at different governmental and non-governmental institutions conducted. The choice of interview-partners is largely dictated by their degree of relevance to the theme of the discussion.

Semi-structured in-depth interviews with rural women and men is conducted based on guiding questions in a separate setting (see annex 2). Semi-structured in-depth interview is selected for the study to gain detailed information on the lived reality of rural women. The researcher established a good rapport with the interview partner to make them comfortable to narrate their stories and experiences. Participatory interview techniques are used to allow the study participants to freely

[83] Michael Crotty, *The Foundations of Social Research: Meaning and Perspectives in the Research Process*, 3rd edition, 2003, p. 10.
[84] M. Crotty, ibid, p. 42.
[85] According to Crotty, the epistemology of a study investigates how we look at the world and make sense of it. It is all about how knowledge is produced as it focuses on "how we know what we know". It is concerned with "providing a philosophical grounding for deciding what kind of knowledge are possible and how we can ensure that they both adequate and legitimate". There are several epistemologies which include objectivism, constructivism and subjectivism. See M. Crotty, ibid, p. 8.

engage and share their experiences. The semi-structure interview technique allowed the researcher to ask a follow-up question on the spot and generate information on the perception and attitude of the interview partner. The researcher conducted the interview in a place where the interview partner feels comfortable to avoid any destruction during the interview.

FGD is used for the purpose of acquiring valid data on issues that need group consensus as well as drawing on the diversity of opinion by eliciting internal debates. During the selection of the FGD participants, some of the variables taken into consideration include age, gender, marital status, religious background, and employment profile. FGD is conducted with key informants to find out the points where there is consensus.

Court cases in which women are a party either as applicants or respondents are collected at social courts, regional courts and federal courts. Overall, fifteen court cases and more than fifteen CCI/HoF cases are analyzed in this study. The researcher analyzed the discourse in court proceedings both in the applicants' claims and court judgments in relation to women's land rights using critical discourse analysis.

Furthermore, secondary sources of data are used in the study. Relevant literature on the subject under study were consulted at different levels in order to further refine the research problems, supplement the ethnographic descriptions, context analysis and legal analysis, and develop the conceptual framework. Hence, books, journal articles, published and unpublished research, legal documents, reports, internet sources, archival materials, government files and reports related to the research theme and the research area are collected and analysed.

1.6.3. Sampling Technique, Size and Type

1.6.3.1. Study Site Selection Techniques

The selection of study Sites used purposive, random and convenience sampling methods in combination. The purposive sampling method applied to select the study sites by giving due attention to the following considerations. First, the sites that are selected for the study represent places where the either FLLC and SLLC has already been carried out. This helps the researcher to analyze the changes in perception and attitudes with the introduction of land registration certification among various actors. The second criterion for the selection of research sites is the availability of legal aid services. It includes research sites where legal aid service is available and missing. This is important for the researcher to understand whether women's rights have been localized through legal awareness and court practices. The researcher had also prior information

that land related disputes are rampant in the area from the legal aid offices of the Center for Human Rights of Addis Ababa University in Hawassa and its surroundings rural areas.[86]The third criterion is the existence of a parallel customary system that has legitimacy among the society in adjudicating land dispute.[87] The fourth consideration in the selection of the research sites will be practical methodological related issues such as language, accessibility, security etc.

Based on the above considerations, the researcher has selected Sidaama regional state. Specific Woredas and research sites are selected and targeted randomly and based on convenient sampling methods. These areas are rural and peri-urban villages which carried out either the first level land certification or second level land certification. The specific places included in this study are Hawassa, Tula, Sheberdino Woreda, Yergalem, Moricho town, Yerba town, Dila Chaneki Kebele, Leku town, Alawa Ano kebele and Dore Bafano. The fact that the research sites are known for producing cash crops in addition to substance farming, has created a different gender dynamic because of the higher premium land has in the area.

1.6.3.2. Sampling for Interviews

The study uses a case study which requires the undertaking of an in-depth study of the lived experiences of selected rural women. Thus, in-depth interviews are conducted with rural women to find out their views, perceptions and understanding of their rights to land and their experience in claiming their rights. As the researcher's interest is to understand perceptions, views and impacts of land certification in the realization of women's rights, she did not make any generalizations. The stories and experience of the study participants is produced as it is narrated in this research. To get their real experience, the researcher tried to establish a good rapport with women selected for a case study to get their experience in claiming their rights over a span of time. The research applied purposive and sequential sampling to select the informants and interviews are made until no new information is forthcoming.

An empirical data is collected from rural women who passed through the judiciary system to protect their land rights and their relatives and family members (husbands or other family members). Women who have several encounters with the judicial system or have received final decisions recently are selected. A purposive inclusive criterion is used to include women who have a success and failure stories and with diversified socio-economic background. To understand the

[86] A recent survey by the Hague Institute for Innovation of Law (HiiL) shows that land dispute is the most frequent occurring dispute in Ethiopia. Accordingly, there are 8.2 to 8.7 million land related disputes every four years. HiiL, *Justice Needs and Satisfaction in Ethiopia*, 2020, p. 157.

[87] According to HiiL survey, 43% of justice users seek justice from village elders. HiiL, *id.,* p. 7.

intersectional experience of the rural women, diverse women with various socio-economic status are included for the interview by applying maximum variation sampling. The heterogeneity of women interviewed ensured by considering their marital status, age, educational level and social status. Women who have pursued judiciary and administrative remedies for violation of their rights from the formal and customary justice system are interviewed. Both female-headed households and male-headed households are targeted. Furthermore, the study participants litigated various cases which include divorce, inheritance, donation, or transfer of land rights. Among the total of sixty-two (62) study participants, eighteen (18) are rural women who passed through the formal or informal justice system. This helped the researcher to identify the effects of the land certification program in the plural justice system. The table annexed (annex 2) attested the diversity in the background of informants.

Two FGDs were conducted with kebele officials and members of the land administration committees (LAC). All were men. The researcher considered sex and institutional affiliation as an inclusion and exclusion criteria in selecting the participants of these FGDs.

In selecting key informants from governmental and non-governmental organization, purposive sampling is employed. Relevant public officials at federal, regional and Woreda levels are targeted for the interview. Among the total of fifty-eight (58), Forty (40) represented key informants from various stakeholders from governmental and non-governmental institutions. Below is the list of individuals and organizations that are targeted for data collection in this study (see also annex 1 for the institutions and individuals interviewed with their institutional affiliation and position):

i. Judges, lawyers, legal aid providers, prosecutors and judicial authorities such as Sidaama regional, zonal and Woreda courts' judges;
ii. Executive organs (e.g., land administration offices (at regional, Zonal and Woreda level), Women and Children Affairs offices (at regional, Zonal and Woreda level) and legal aid centers at Sidaama Regional State's Bureau of Justice and Hawassa University;
iii. The House of Federation (HoF) and the Council of Constitutional Inquiry (CCI);
iv. National Human Rights Institutions (Hawassa Branch of Ethiopian Human Rights Commission and Hawassa Branch Ethiopian Institute of Ombudsman);
v. Women's and other NGOs (EWLA's Hawassa Branch, Mizan Youth Lawers Center and others)
vi. Customary Court's Judges/Elders;
vii. Development partners that implemented projects in the Sidaama regional state
viii. Researchers and policy makers who are familiar with the region

1.6.4. Note on Reflexivity

Reflexivity refers to "the act of examining one's own assumption, belief, and judgement systems, and thinking carefully and critically about how this influences the research process. The practice of reflexivity confronts and questions who we are as researchers and how this guides our work."[88] It is refers to the researcher's positionality and the research process which might influence the data analysis and the overall perspectives of the research.

The researcher is aware of her own positionality in studying the subject matter. The researcher is an outsider to the research site as she is born, raised and progressed in her professional career in urban setting as middle-class women. She is a 39 year old female academician who is doing her PhD study. The research area, however, is based in a rural setting and the research depends on data that is collected from farmers/rural women/men who lives in a rural setting. In this regard, the researcher's professional background and experience is different from the research subject area and the research participants. It is important to take into account whether the research participants are affected/intimidated by the professional background of the researcher to the extent that they would not feel comfortable to openly share their experience, views and opinions. To overcome such scenario, the research followed objective questions and accepted methodologies to avoid unintended influences of the researcher's positionality.

Recognizing this limitation, the researcher conducted the interviews after creating a rapport and used a snowball technique to select the research participants to address any effect of the difference in the worldview of the researcher and the research participants. The researcher avoided making any biased comments, assumptions, judgments, views while conducting the interviews. The interviews were only conducted after the interview participants felt comfortable to talk about her/his experience. The researcher conducted the interview by herself when the research participants use the same language as of the researcher. When the research participant uses a different language, a translator is used to translate the questions of the researcher and the responses of the research participants. The translators were trained to adequately acquaint himself with the interview questions and the ethical considerations.

Furthermore, the researcher's perspectives on gender, gender equality and women's rights are informed by western literatures and legal education which has its own impact in her interactions with study participants and her analysis. To bring perspectives from other disciplines especially

[88] Michell K. Jamieson, Gisela H. Govaart and Madeleine Pownall, Reflexivity in Quantitative Research: A Rationale and Beginner's Guide, *Social and Personality Psychology Compass*, Vol. 17(4), 2023, p. 1.

anthropology, the researcher has been supported by her supervisor, Dr. Dereje Feyissa whose background comes from such discipline. Furthermore, the researcher solicited comments and inputs from colleagues to compensate for the gaps in the researcher's background. She has also restricted herself from making assumptions and judgments based own her experience and knowledge during the interviews. The researcher has also collected data from diverse group of stakeholders in order to ensure it is inclusive of diverse perspectives. The data was triangulated using diverse method of data collection.

1.6.5. Data Collection Procedure

Face-to-face interviews with a pre-tested semi- structured interview questions were conducted. The data collection tools were prepared in English and then translated to Amharic Language. It was treated as a living document to make changes as needed based on the experiences and backgrounds of research participants.

The study draws on the data collected in two phases. The first phase took place from May 2-16, 2022. During this phase, data was collected from key informants from government offices and non-governmental offices. The researcher has gathered information from the assistant researchers/translators to find the relevant key informants from each organization targeted for the interview. A letter issued by AAU-CHR requesting cooperation from each organization was presented and based on that the research participants were willing to provide relevant information through interview and document provision.

Based on the data obtained from these offices, it was possible to identify the study participants for the second phase of the data collection which focused on collecting data from women who passed through the legal system. These informants were identified using snowball techniques by identifying their contacts from legal aid providers of Hawassa University, center for Human Rights and NGOs such as EWLA and Mizan Youth Lawyers Center, prosecutors and other organizations. After the list of informants are identified from these sources, they were contacted, and interviews were scheduled with them which took place from July 18 to August 1, 2022. The interviews were conducted at the time and place which is convenient to the research participants. Most of the interviews were conducted in the offices of the key informants, in the compounds of courts, at university and in the homes of informants.

During the fieldwork, various stakeholders were contacted and interviewed. The data collection was conducted with a view to navigate through the lived experiences of rural women to access justice in case of land disputes.

The data collection with the government officials and non-governmental organizations was conducted in Amharic while *Sidaamu Afoo* language was used in the interviews with the informants from the rural area with the support of translators who translated from *Sidaamu Afoo* to Amharic language or vice versa. The researcher worked with a translator to create and build a rapport with the informants as an outsider educated and urban woman. The informants were assured the confidentiality of the interview through a consent form which is annexed to this study. All the interviews were coded and transcribed. During the interviews, the researcher took notes and recorded the interviews upon the consent of the research participants.

1.6.6. Data Quality Assurance

The researcher made sure the translators are well acquainted with the research thematic focus by recruiting data collectors/translators who graduated with law degree and have been serving as legal aid providers at Hawassa University. They have the experience of serving as a research assistant in other research projects too. As born and raised in Sidaama, they are well acquainted with the language and cultural life of the Sidaama people. This has helped the researcher to create trust with the research participants through them. Strict confidentiality was assured through anonymous recording, and coding of interviews, data analysis by keeping the data in a secured online and offline place.

1.6.7. Method of Data Anlaysis

A qualitative content analysis in combination with critical discourse analysis and critical realist approach is used to analyze the findings from the data collected. Qualitative content analysis systematically describes meaning by interpreting the data collected. It interprets social realities as it exists. To undertake the qualitative content analysis, the recorded data collected from the research participants through interviews and FGD is transcribed in Amharic, translated to English, organized thematically, and analyzed. In organizing the data, the researcher separated essential and non-essential data. Based on the organized data, themes of the study are identified, and patterns are analyzed to address the research questions. Furthermore, based on the critical realist approach, the data organized was interpreted to understand the causal mechanisms in women's land rights and land formalization process in Ethiopia. This approach informed the analysis of this study by going beyond the empirical data collected. It analyses the context, the drivers and enablers of change and the underlying ideology behind the land formalization process in Ethiopia. Dogmatic analysis is also undertaken to analyze legal documents.

Furthermore, the qualitative content analysis was supported by adapting institutional analysis based on Williamson's four-level scheme of social analysis to understand effects, causes and process of

institutional choice and changes in women's land rights.[89] Below is a table describing the analytical framework adopted.

Table 2: Williamson's four-level scheme of social analysis

Level	**Purpose**	**Theories**	**Actors**
Social embeddedness Informal institutions, customs, traditions, norms, religions	Often non-calculative and spontaneous	Social theory	Citizens, members of social and cultural organisations, family
Institutional environment: Formal rules – esp. property rights (policy, judiciary, bureaucracy)	Get the institutional environment right	Property rights/positive political bureaucracy their	Government, political parties, courts
Governance: Playing the game – esp. contract (aligning governance structures with transactions)	Get the governance environment rights	Transaction cost/economics	Households, firms, networks, market
Resource allocation (prices and quantities, incentive alignment)	Get the marginal condition right	Neoclassical economics/agency	Individuals/theory

Source: adopted from Williamson's four-level scheme of social analysis[90]

This study made an analysis based on the first three levels of social analysis indicated in the chart above. It analyzes how the formal institutional and governance environment influence informal institutions or vice versa. The arrows indicate this vice versa relationship among the different levels of analysis. The study will not use the last level of analysis as its goes beyond the scope of the study.

Discourse analysis which combines texts and contexts to different level in its analysis of data is also employed in this study. In contrast to qualitative research, which tries to understand or interpret social reality as it exists, discourse analysis in a similar fashion as of critical realist approach endeavors to uncover the way in which it is produced.[91] It applies a multidisciplinary perspective to one's study.[92] Accordingly, critical discourse analysis (CDA) is a useful approach to "investigate critically social inequality as it is expressed, signaled, constituted, legitimized and so on by

[89] Oliver E. Williamson, 'The New Institutional Economics: Taking Stock, Looking Ahead', *Journal of Economic Literature*, Vol. 38, No. 3, 2000, p. 597.
[90] O. E. Williamson, *ibid*, p. 597 & V. Beckmann and M. Padmanabhan, *Supra note* 79, p. 348 & 362.
[91] Phillips & Hardy 2002:6 cited in I., Jansen, 'Discourse analysis and Foucault's "Archaeology of knowledge"', *International Journal of Caring Sciences*, 1(3), 2008, p. 108.
[92] *Id*., p. 111.

language use (or in discourse)".[93] It makes it possible to challenge unequal power relationships situated in time and space or produced in historical context.[94]

This approach is critical rather than scientific in the sense that it aims to expose hidden coercion or makes power relationships explicit which are frequently hidden and thereby freeing anyone under that coercion.[95]

In any case, the notion of context is crucial for CDA, since this explicitly includes social, psychological, political and ideological components and thereby postulates an interdisciplinary procedure.[96]

Discourse analysis methods can also be applied to the study of legal texts. In such cases, one does not seek to apply norms/laws to facts rather tries to find out the discourse including legal discourse that constructed the factual and the conceptual. This is because the facts on which the law applies are organized or constructed in a certain predetermined way. In discourse analysis concepts such as sex and gender are concepts that are constructed socially.[97]

In this relation, discourse may be produced at macro and micro levels. Discourses at the macro level may be formulated in abstract social concepts such as inequality, power, rights and dominance. These abstract constructions are embedded at the micro level in the linguistic concepts such as grammar, speech acts, style, and rhetoric.[98] This study by applying discourse analysis to court proceedings or customary dispute settlement system will analyze what macro discourses reflected in these forums.

As is the case in most other countries, it is not usual for courts in Ethiopia and parties to a case to directly and explicitly refer to international human rights treaties. Thus, the cases that will be selected for this study will be cases where parties argued, or courts based their decision using human rights language or principles in human rights instruments not necessarily by directly referring to international human rights instruments.

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[93] R. Wodak, 'What CDA is about? A summary of its History, Important Concepts and its Developments' in R. Wodak and M. Meyer (eds.), *Methods Of Critical Discourse Analysis*, 2009, p. 2.
[94] *Id*., p. 3.
[95] *Id*., p. 13.
[96] M. Meyer, 'Between Theory, Method, and Politics: Positioning of the Approaches to CDA' in R. Wodak and M. Meyer (eds.), *Methods Of Critical Discourse Analysis*, 2009, p. 15.
[97] Niemi-Kiesiläinen, P. Honkatukia & M. Ruuskanen, 'Legal Text as Discourse' in Svensson, Gunnarsson and Davies M. (eds), *Exploiting the Limits of Law,* 2007, p. 3.
[98] Conley & O' Barr, 2005; Jørgensen & Philips, 2002; van Dijk, 2001 cited in G. Kiguru, *ACritical Discourse Analysis of Language Used in Selected Courts of Law in Kenya*, Ph.D. thesis, 2014, p. 55.

The study identifies the primary 'need' or 'transgression' that triggered women to bring claims before a court of law or customary dispute settlement mechanism. The study also looks into the reasons considered by the claimant in formulating the claim using human right framework or otherwise. As Sally pointed out, '[i]n examining how grassroots individuals take on human rights ideas, … the rights framework does not displace other frameworks but adds a new dimension to the ways individuals think about their problem'.[99]

1.6.8. Ethical Considerations

The researcher complies with all the ethical consideration in doing qualitative research. Thus, informed consent was acquired before any data is collected after informing the study participants about the objectives of the research and the interview will be terminated at any time when the interviewee does not wish to continue. The interview will be conducted in a place the study participants will feel safe. The researcher will employ data collectors and translators whenever necessary who would be trained on the ethical considerations. The researcher will protect the confidentiality of the informants' identity by using pseudonyms while using their views in this study. Based on the requirements of the university, ethical clearance will be obtained from the university before proceeding to data collection.

1.7. Limitation of the Study

The researcher anticipated that court cases in the Sidaama Regional State are documented in Amharic which is the language the researcher understands. However, through the process of data collection the researcher learned that all of the court cases at Sidaama regional courts are in Sidaamu Afoo because of Sidaamu Afoo language was used while the regional state was Zonal administration organized under SNNP. This forced the researcher to engage translators.

Although the researcher planned to conduct observation of proceedings of customary adjudication of women's land rights matters by developing a checklist for the observation, there was no active case that was handled by elders at the time of data collection. When there were cases that cases were handled at the private houses of the litigants which made it difficult for the researcher to observe the trials of the customary justice system. Thus, the study attempted to reconstruct cases based on key informants or interviews with the disputants.

[99] Sally Merry, *Human rights and Gender Violence. Translating international law into local justice.* Chicago, London: University of Chicago, 2006, p. 180.

Travelling in the rural areas have demanded financial costs which goes beyond the allocated budget for the research. This has also limited the period of the data collection though the researcher used money from her own pocket.

In terms of application of the study, the study is limited in its generalizability due to its focus on one particular cases study with its own historical, political, economic and social context. The results of the study may not be generalized to other initiatives of land registration and certification process which are implemented in a different historical, political, economic and social context. Thus, it is imperative to produce supportive evidence showing similarity of context for the results of the study to be applicable in another similar context.

1.8.Organisation of the Study

The Dissertation has nine chapters. Overall, the study focuses on the following themes: Introduction of the study, methodology, conceptual and theoretical framework and description of the socio-economic and political condition of the study area (Chapter 1, 2 and 3), the global human rights framework on rural women's land rights (chapter four), the historical, political and context of rural women's land rights (Chapter five) and effects of formalization of women's land rights in Ethiopia (chapter 6). The last two chapters (Chapter 7 and 8) zoom in the effects of formalization of rural women's land rights in formal and informal justice system based on empirical data.

Chapter one considers the subject matter of the study, the statement of problem, research questions, research objectives, scope and significance of the study and the study design, methodology and method of the study. It reveals that the study will analyze the contextual, normative, and institutional barriers and constraints for the enforcement of rural women's land rights in a plural justice system. The study uses a critical realist approach in establishing a causal relation between formalization of land rights and rural women's access to justice in the plural justice setting.

Chapter two provides the conceptual and theoretical framework on women's land rights. It lays the foundation for the subsequent chapters by analyzing the conceptual and theoretical framework of the thesis. It presents the advantage and disadvantages of formalization of land rights after analyzing the various concepts such as the meaning of bundle of rights, social and gendered norms, employed in the dissertation. It also analysed the types of land regimes that have implications on the state authority, legitimacy, state-society relationship and capacity. This chapter also analyzed the two theoretical frameworks employed in the dissertation i.e. vernacularization and norm localization which explains how global norms become meaningful at local levels. Chapter three describes the social, economic and political structure of the study site to provide the contextual

factors that affects rural women's and rights in the study sites. It shows Sidaama Regional State has its own norms and customary institutions that govern the day to day lives of the community. These customary norms and institutions operate in parallel to the state system in the study area. However, some of the gendered social norms have affected rural women's rights to access, control and administer land in the Sidaama regional states. The effects of these norms in relation to women's access to justice to land rights are in particular explored under chapter seven and eight.

Chapter four examines the existing international and continental normative framework for protection of rural women's right to land. Under this chapter, the development of women's rights as human rights and the historical milestones are examined. A descriptive analysis is made on the international and continental instruments and their jurisprudence that protects rural women's right to access, control and use of land. By doing so, it reveals that the right to land is recognized in relation to other rights under international human rights framework. However, the right to land is recognized in its own in relation to rural women and indigenous peoples. This chapter by analyzing the rural women's land rights under the global human rights normative and institutional framework lays the groundwork to understand how these rights are localized at national and sub-national levels.

Chapter five analyzes the historical, political and legal context for rural women's land rights by analyzing those main events that occurred from 1989 to the present day. It also analyzes the national and sub-national normative framework on rural women's land Rights in Ethiopia. It explores the *raison d'etre*of the policy choices that are made by the government. The chapter reveals the gaps in the legal and institutional frameworks promoting of gender justice in administration, control, transfer, and use of land rights of women. Chapter six explores the rationale, process, implementation and impact of the joint land registration and certification. It demonstrates the effects of land formalization process on productivity, investment, land disputes, women's empowerment, rural women's awareness of their rights and participation in decision making processes and the elimination of VAW in Ethiopia by leaving out its effects in plural justice system which is the themes of the next two chapters.

Chapter seven is dedicated to discussing rural women's access to justice by examining the implications of decisions of courts and House of Federation (HoF) on rural land issues by systematically selecting some decisions to show trends, contradictions and complementarity with the laws governing women's land rights. Under this chapter, women's access to justice is analyzed by examining judicial enforcement of rural women's land rights. The enforcement of rural women's right to land in the court practice at local, regional and federal levels are explored by reviewing

court cases and the decisions of the CCI/HoF. It also analyses the barriers to judicial enforcement of women's land rights and execution of judiciary decisions before the regular. The chapter demonstrates that gaps in the laws, in its implementation and lack of awareness have been the main triggering factors for cases to be brought before the formal courts and CCI/HoF. It shows that there are inconsistence decisions though gender responsive decisions have been made in recent times.

Chapter eight examines the effects of formalization of rural women's land rights in plural justice system based on the field research findings from Sidaama Regional State. It reveals that there is normative and judicial pluralism in the study area from which women can choose to take their cases. However, the lack of review mechanism of the decisions of customary justice system for its compliance with the constitutional guaranteed women's rights has affects women. It analyzes the implications of formalization of land rights in changing the normative and judicial practices related to inheritance and polygamy in both formal and informal justice systems. The chapter also reveals the relationship between the formal and informal justice system.

The last chapter, Chapter Nine, provides the major findings, conclusions and recommendations. The chapter presents the key findings in relation to effects of the formalization of rural women's land rights to their access to justice in the plural justice system. It reveals that rural women's land rights are affected by the existing gendered social contexts and the effects of formalization of land rights in relation to access to justice has been minimal in the formal justice system because of irregularities in the land registration and certification program. Though there are some changes in the social norms on rural women's land rights through the vernacularisation of women's rights, these changes are not structural. It concludes that the effects and responses to formalization of land rights are not lineal, and it is rather taking place in a complex gendered social context. It provides the way forward to improve rural women's land rights in Ethiopia which include legal and policy reforms, programmatic interventions such as improving legal literacy, capacity building, engaging the community and various governmental and non-governmental stakeholders working on the issues and facilitate interaction between formal and informal justice system.

Chapter Two: Conceptual and Theortical Framework on Women's Land Rights

Introduction

As indicated in the previous introductory chapter, the dissertation is going to examine the normative, institutional and enforcement mechanisms of women's land rights in Ethiopia. Thus, it is important to clarify concepts and theoretical frameworks that would be employed in the dissertation from the outset. Thus, under this chapter, literature review is conducted to clarify conceptual underpinning of the study, and the theoretical framework by reviewing various published and unpublished academic materials, reports and other types of documents. It elaborates concepts related to land rights and women's land rights, gendered social norms and formalization of land rights. It also explores the advantages and critiques against formalization of land rights.

Land rights are conceptualized as bundle of rights under this dissertation. This bundle of rights comprises the right to access to land, the right of withdrawal, the right to the fruit of the land, the right to administer the land, the right of exclusion, alienation or transfer rights.

These rights can only be exercised by authorized entrants who have only access rights, authorize users who have access and withdrawal rights, claimants who have access, withdrawal and management rights, proprietors who have all the bundle of rights to land except alienation rights and owners who have all the rights (access, withdrawal, management, exclusion, and alienation) and can sell or lease but not bequeath their collective choice rights.

This conceptualization of bundle of rights are employed in the dissertation to understand women's land rights which refers to rural women's rights to access, use/administer and control land. Furthermore, the components of land tenure that makes it more secure are analyzed in this chapter. These components relate completeness, duration, robustness of bundles of rights as well as individual and shared rights. These components determine the extent to which women's land rights is secured. As women's land rights are affected by social and gender norms, these norms determine the extent to which rural women's land rights are culturally legitimate, socially enforceable and legally exercisable.

This chapter also explores the meaning, advantage and critiques of formalization of land rights which is the main focus of this study. Formalization of land rights which involve a formal recognition of land rights has its own advantage and disadvantages. The Peruvian Economist De Solo has argued that that formalization of land rights is means to reduce poverty by changing assets into capital. He argues that it helps states to secure land tenure, reduce land dispute, facility access to credit, stimulate land rental, increase state revenue, ensure women's access to land etc. However,

its critiques argue that these advantages can only be accrued when there is adequate state capacity that oversees its proper implementation. If the state fails to properly implement land formalization, it will rather result in an increase in land dispute, in entrenching gender inequality in access to land, corruption, etc. These arguments are further elucidated under this chapter.

The chapter ends by dedicating a lion share of its discussion to explore the theoretical framework adopted for this study. The theoretical framework informs the analysis in the later chapters of this dissertation that focuses on how global human rights norms become meaningful at the local level. Vernacularization, and norm localization theories which use actor-centered and apply a bottom-up approach to understand how global norms are appropriated or translated at local level are explained under this chapter. These theories have informed the analysis under chapter 7 and 8 which focus on rural women's land rights in the plural justice system.

2.1. **Conceptualization of land rights**

The right on a parcel of land is conceptualized as bundle of rights under social science studies not as ownership rights held by one person or entity. Accordingly, the right to land can be "held by one individual or group or the rights be distributed among different individuals or groups". There are multiple rights an individual or groups hold under the concept of bundle of rights.[100] The bundle of rights are the right to access to land, the right of withdrawal or the right to take something from the land, the right to management, the right of exclusion and transfer rights.[101]

Ownership rights are mostly conceptualized comprising full bundle of rights including the right to manage or make improvements, alienate or transfer, exclude others, and control the proceeds.[102] It is the strongest rights among other rights such as management rights or economic rights. Management rights refer to right to use and administer the land for the purpose of farming or for any other use. It bestowed the rights holder to decide on what to plant, when or how to use agricultural inputs. Economic rights refer to the right to benefit from the products of the land. It also gives the rights holder the right to decide on the products of the land.[103]

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[100] Cheryl Doss & Ruth Meinzen-Dick, *Women's Land Tenure Security: A Conceptual Framework*, Seattle, WA: Research Consortium, 2018, p.12, available on https://consortium.resourceequity.org/conceptual-framework (accessed on 10 April 2020).

[101] EdellaSchlager and Elinor Ostrom, 'Property-Rights Regims and Natural Resources: A Conceptual Analysis', *Land Economics*, Vol. 68, No. 3, University of Wisconsin Press, 1992, p.250-252.

[102] Vanya Slavchevska, Ana Paula De La O Campos, Chiara Brunell I and Cheryl Doss, Beyond Ownership: Women's and Men's Land Rights in Sub-Saharan Africa, *Oxford Development Studies* vol. 49, no. 12021, p. 4.

[103] ibid.

The elements of 'bundle of rights' developed by Schlager and Ostrom (1992)[104] is useful to analyze various forms of land tenure (see chapter four which uses this framework to analyze the type of land ownership during the various regimes in Ethiopia). They identified five types of rights which are access, withdrawal, management, exclusion and alienation. Accordingly,[105]

- Access refers to the "right to enter a defined physical area and enjoy nonsubstractive benefits"
- Withdrawal refers to the "Right to obtain resource units or 'products' of a resource system."
- Management Right refers "to regulate internal use patterns and transform the resource by making improvements"
- Exclusion Right refers "to determine who will have access rights and withdrawal rights, and how those rights may be transferred".
- Alienation Right refers to the right to sell or lease management and exclusion rights.

There can be four types of users that have different bundles of rights. These are:

- Authorized entrants have only access rights.
- Authorized users hold access and withdrawal rights.
- Claimants have access, withdrawal and management rights.
- Proprietors have all the five rights except alienation rights.
- Owners hold all types of rights (access, withdrawal, management, exclusion, and alienation) and can sell or lease but not bequeath their collective choice rights.[106]

Similarly, in legal scholarships, three components of land rights are recognized based on the Roman law system. These components of land rights are *Usus* (the right to use land), *Abuses* (the right to change the land) and *Fructus* (the rights to use the fruit of the land). *Usus* includes access and withdrawal rights while *Abuses* refers to management and transformations rights and *Fructus* refers to the right to make profit and loss. Usus and abuses rights form what is termed as possessory rights. Compared with Schlager and Ostrom's elements of bundle of rights, the legal land framework does not incorporate the right to transfer or exclusion/alienation.[107] In addition to the bundle of rights, future interests which refers to the right to inherit form elements of land rights. Below is summary of these rights:

Usus: rights to use, including the rights of access and withdrawal

[104] Edella Schlager and Elinor Ostrom, 'Property-Rights Regims and Natural Resources: A Conceptual Analysis, *Land Economics*, Vol. 68, No. 3, University of Wisconsin Press, 1992, p.252
[105] Wibke Crewett, Ayalneh Bogale, and Benedikt Korf, 'Land Tenure in Ethiopia: Continuity and Change, Shifting Rulers, and the Quest for State Control', *CAPRi Working Paper No. 91*, 2008, p. 4.
[106] Schlager and Ostrom 1992, 254; Ostrom and Schlager 1996,149 cited in W. Crewett, A. Bogale, and B. Korf, ibid.
[107] C. Doss and R. Meinzen-Dick, *Supra note 100*, p. 2.

Abusus: rights to change, including both management and transformation rights

Fructus: rights to make profit and loss; economic owner

Exclusion: rights to prevent others from using a resource

Transfer: rights to transfer the land, whether temporarily or permanently

Future interests: could include the right to inherit or other rights that can be realized at some future point[108]

Land rights are not only conceptualized in terms of the bundle of rights but it also involves examining how secured these rights are. This refers to tenure security. According,

> Land tenure security is the degree of confidence that land users will not be arbitrarily deprived of the bundle of rights they have over particular lands. Tenure security is the reasonable guarantee of ongoing duration of land rights, supported by the certainty that one's rights will be recognized by others and protected by legal and social remedies when challenged.[109]

Tenure security has multiple dimensions. The conceptualization of land tenure security focuses on four elements of tenure security i.e., completeness, duration, robustness of bundles of rights as well as individual and shared rights. The first component of tenure security is completeness of the bundle of rights. It occurs when more rights among the bundles of rights to land are held by an individual which will strengthen and secure the rights.[110] For instance, owners who hold access, withdrawal, management, exclusion and alienation rights have more secured rights than proprietors who lack alienation rights.

The second component is duration of holding/ownership. The longer the person holds the land, the more secure his/her rights on the land are. The third component is robustness, which refers to the social and legal enforceability of the rights on the land. It relates to access of land disputes resolution mechanism, and enforceability of their decisions. The enforceability of the rights depends on the legal, social or institutional systems. Rights that are "legally and culturally legitimate are more robust than those that are contested by laws or social norms".[111] The fourth component refers to individual and shared rights. Whether the bundle of rights to land is held individually or jointly

[108] C. Doss & R. Meinzen-Dick, *supra note 100*, p. 3.
[109] Knight (2010) cited in C. Doss & R. Meinzen-Dick, *supra note 100*, p. 3.
[110] C. Doss and R. Meinzen-Dick, *Supra note 100*, p. 5.
[111] C. Doss and R. Meinzen-Dick,*ibid.*

with others determines how secured the rights are. Individually held rights are more secured than shared rights since there is no chance that the right will be threatened by joint right holder.

In broader sense, land tenure can be public (held by the state), common (held by community), private (held by individuals) or open access (no one holding any right). This broader classification of land is not as such helpful since there are other factors such as social relations that affects how land is held. Thus, the conceptualization based on 'bundle of rights' is helpful to make analysis.[112]

2.2. Women's Land Rights

When it comes to women's rights to land, most literature on gender and assets recognized women's rights to access, administer (use) and control land, not land ownership right. Women's right to access land refers to 'the *ability* to derive benefits from things'. This implies that access entails 'bundle of power' not only 'bundle of rights'.[113] This is because of access to land results in improvement of social status and access to participate in decision making process at the household and state level. Some argues it gives a rural person a full 'autonomous political agency' since the land rights will facilitate one's participation in democratic processes.[114] Women's right to use land implies women's right to use the land for farming or any other purpose. It implies that women can farm the land they hold, and decide on the type of plant to harvest, what kind of inputs to use or when to plant etc. while control refer to their right to administer the land and make decision on how to benefit from the land including by renting or sharecropping, and benefit from the fruits of the land including engaging in commercial activities of its products.[115] Control rights entitle women with the right to manage the land and collect its fruits/products. Furthermore, it includes transfer rights which can be exercised through bequeathing the land, or inheriting the land to whoever they want. An ownership right which entitles women to all the rights including the right to alienation is not mostly recognized.[116]

The state may guarantee all rights or some bundle of rights to an individual. For instance, in Ethiopia, the state has the ownership rights while individuals can exercise *usus* rights on the land. According to the FDRE Constitution, ownership of land belongs to the nations, nationalities and

[112] W. Crewett, A. Bogale, and B. Korf, *supra note* 105, p. 3.
[113] Jennifer C. Franco, *A Framework for Analyzing the Question of Pro-Poor Policy Reforms and Governance in State/Public Lands: A Critical Civil Society Perspective*, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, 2008, p. 25.
[114] Ibid.
[115] *Ibid*.
[116] C. Doss & R. Meinzen-Dick, supra note 100, p. 2.

peoples of Ethiopia.[117] This assertion, though right, should not undermine the fact that individuals or groups with rights on the land still have the *usus* and *fructus* rights on the land.

Women's land tenure security requires not only recognizing women's rights to land but also securing these rights. Women's land rights can be secured when the following preconditions are fulfilled.[118]

- Cultural and legal legitimacy- this refers to the recognition of women's land rights by law, custom, family, clan and community.
- Resilience and durability- women's land rights is said to be resilient or durable when it is not subjected to change upon change in family structure through death of a father or husband or divorce or in case of large-scale acquisition of land by the state.
- Exercisability- when women are aware of their rights and able to get it registered and certified without any addition approval requirements, they can be said to exercise their rights.
- Enforceability- women's land rights are enforceable when they are able to access and claim their rights without any resource constraints and when the decisions in their favor are implemented.

While durability of women's land rights is similar to duration of land tenure that is explained above in relation to land tenure, the other conditions to secure women's land rights are similar to the elements of robustness. This later element refers to the extent to which women are able to assert, protect, and enforce their land rights before formal or informal justice organs of any given state. Their experience before formal or informal dispute resolution mechanisms is an important element for the protection of women's land rights. This particular component is the focus of the field work of this study and its findings presented under chapter 7 and 8 of this dissertation which looks into the enforcement of women's land rights in a plural legal system.

C. Doss and R. Meinzen-Dick conceptualization of women's land tenure security questions the nuances in the implications of land registration and certifications that are undertaken to ensure completeness of bundle of rights. This process sometimes might leave women behind since all the rights of the land are registered in the name of one person who might be male head of the family.

[117] Article 40 of the FDRE Constitution.
[118] Giovarelli and Richardson (2016) cited in C. Doss & R. Meinzen-Dick, *supra note* 100, p. 4.

This has a negative consequence to women's rights which might only relates to one or more bundle of rights but not to all.[119]

The other component of women's land rights relates to whether a woman has rights on the land as an individual or shared rights. This is particularly important to women's tenure security. The individual or joint ownership of the land and the relationship among shareholders affects how much the tenure is secured for a woman.[120] Mostly women's rights to land depend on their relations to a man that can be a father, husband, brother or son. Their social status or family relations determines their shared rights. The unequal power relations between men and women have also a negative effect during land rights negotiation process in the family.[121]

Land transaction based on formal and informal laws may also bring about different consequences for the enjoyment of women's rights to land. Family, marriage and inheritance laws and customary norms and institutions may affect women's land rights and tenure security.[122]

Thus, women's land rights can be meaningful when they are legally recognized, socially acknowledged and judiciary enforceable.[123]

2.3. Gendered Social Norms and Women's Land Rights

Social norms are one of the determinant factors with regard to property rights of men and women at the community and household levels. It determines the rules that apply to land rights and shape the views of society whether legal claims can be made to legitimately access, control and administer land. In relation to women, the social norms have an influence in determining whether women can acquire land and whether they can claim their rights. It also determines what kind of property can be bequeathed to women. Some traditions may assume that daughters can only be bequeathed movable properties such as jewelry or cattle while sons can receive land.[124]

Gender norms, which determine the roles, relationships and behavior of men and women, have an influence on land rights. These norms and practices are influenced and shaped by patriarchal social system that discriminate women in all aspects of life.[125] A patriarchal social system privileges men to have all sayings and control over property. It creates a patrilocal system whereby women may be

[119] C. Doss & R. Meinzen-Dick, *supra note 100*, p. 4.
[120] C. Doss and R. Meinzen-Dick, *Supra note 100*, p. 4.
[121] I. Ikdahl et al., *Human Rights, Formalisation and Women's Land Rights in Southern and Eastern Africa*, 2005, p. 11.
[122] I. Ikdahl et al, *id*., p. vii.
[123] W. Mekonen et al., *Supra note* 18, p. 12.
[124] C. Doss and R. Meinzen-Dick, *Supra note 100*, p. 9.
[125] UN Women, *Supra note* 32, p. 8.

required to move to their husbands or his family land by leaving their share in their natal village. It also limits inheritance only to the male lineage.

In addition, gender norms may consider it inappropriate for a woman to speak and decide on matters related to land as such matters are considered as a business of men. The traditional views that consider women as homemakers, dependent and helpers may not accept women's role as producers, farmers and decision makers. Social norms and gender norms also may determine whether a woman can use a formal justice system or not. Formal justice system might be discouraging as it is perceived to be inappropriate to handle private matters related with family. Thus, land related issues that may arise during divorce or succession may not be taken to the formal justice system.[126]

In general, women access to land through inheritance, donation, or state distribution. However, these means of access to land are highly affected by socio-cultural institutions, market economy and the state.[127] Furthermore, women's land rights are affected by power relations in the society. For instance, in some traditions, inheritance is patrilineal which exclude women.[128]

Customs and traditions that have an influence on people's perceptions and actions, affects equal rights of men and women to land. Traditional practices that discriminate against women such as discriminatory inheritance practices that exclude women from inheritance and consider men as head of household and thereof the only breadwinners of the family, denying women's rights to land.[129]

Land rights are affected by gender relations. It is impacted by rules of social institutions that regulate social relations such as intra-household relations, marriage, division of labor within household, divorce and inheritance.[130] The enforcement of land rights depends on the extent to which these social relations are governed in a gender sensitive manner. Thus, the state should be able to regulate these institutions to bring gender equality in land administration and enforcement of women's land rights. However, such an attempt might sometimes fail as people might prefer the informal institutions to enforce their rights because of the entrenched social value that endorses the

[126] C. Doss and R. Meinzen-Dick, *Supra note 100*, p. 9.
[127] Lastarria-Cornhiel, S. and Garcia-Frias, Z., 'Gender and Land Rights: Findings and Lessons from Country Studies' in *Gender and Land Compendium of Country Studies*, Gender and Natural Resources Management, FAO, 2005.
[128] Y. Adal, *Supra note* 7, p. 5; Tura, A., '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*, Vol. 2, No. 2, 2014, p. 159.
[129] W. Mekonen et al., *Supra note* 18, p. 13.
[130] T. Lavers, *Supra note* 21, p. 3.

imbalance in power relations between men and women. The success of such attempts to transform power relations depends on the strength of the organizations in state and society.[131]

2.4. Formalisation/Regularisation/Individualisation of Land Rights

Formalization of land rights is the recognition of specific rights through official and written documents. It is associated to "a shift from 'informal' to 'formal' norms, from oral to written, from extra-legal to legal or from unofficial to official."[132]It involves "giving written and legal form to undocumented land rights".[133] It implies state recognition of property rights that would be accorded protection from the legal system.[134] Formalization of land rights is also termed as regularization or individualization of land rights.

The developed nations protect ownership established through proof of possession in the form of documents that join together the owner and object. To the contrary, in developing countries a different situation exists because of the existence of extralegal property rights.[135]

Formalization of land through land titling is believed to increase security of tenure, reduce land disputes, facilitate access to financial services and increase investment on the land.[136] It also stimulates land rental markets, increase state revenue through taxation, and benefits women through joint titling.[137] It is presumed to bring economic benefits to the poor by transforming assets into a living capital and enabling land owners' access to credit and investment in business.[138]

According to the Peruvian economist Hernando de Soto, formalization of property has many benefits which includes asset fungibility, improved communication, accountability and enhance security of property transfers.[139] He considers that formalization of land rights is an instrument for

[131] Migdal 1988; Khan 2010 cited in T. Lavers, *Supra note 21*, p. 3.
[132] However, such dichotomy between formal and informal norms has been criticized since it does not reflect the complex and dynamic intersection and interaction between state laws and local norms and practices. See I. Ikdahl et al., *supra note 121*, p. 4.
[133] 'Land Tenure and Development' Technical Committee, *Formalising Land Rights in Developing Countries: Moving From Past Controversies to Future Strategies*, Paris, Ministère des Affaires étrangères et du Développement international (Maedi), Agence française de développement (AFD), 2015, p. 11.
[134] Howard Stein and Samantha Cunningham, 'Land Grabbing and Formalization in Africa: A Critical Inquiry', *ASC Working Paper 124/2015*, 2015, p. 3.
[135] Espen Sjaastada and Ben Cousin, 'Formalisation of Land Rights in the South: An Overview', *Land Use Policy*, Vol. 26, 2008, p. 1.
[136] De Soto 2002; Domeher and Abdulai 2012; Pedersen 2010 cited in Evelyn Namubiru-Mwaura, 'Land Tenure and Gender: Approaches and Challenges for Strengthening Rural Women's Land Rights' in *Women's Voice, Agency and Particpation*, Research Series No. 6, 2014, p. 15; H. Stein and S. Cunningham, *Supra note* 134, p. 3.
[137] Philip Hirsch and Natalia Scurrah, *Land Rights Recognition/Formalization/Titling/ Collective Tenure*, 2020, p. 3.
[138] D. Rahmato, *Supra note* 12, p. 62.
[139] De Soto 2002 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 1.

poverty reduction and fully secures the rights of disadvantaged groups.[140]According to de Soto, the extra-legal rights cannot be recognized in the formal land transactions.[141]

His views underline that poverty is a result of lack of formalization of ownership of asset, not lack of asset. He asserts this in the following statement:

> The poor inhabitants of these nations – five sixths of humanity– do have things, but they lack the process to represent their property and create capital. They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adapted every other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work. This is the mystery of capital.[142]

De Soto's view is similar with the views that are held by "the Property Rights School" and "the Evolutionary Theory of Land Rights". Both of these theories underline that title deeds to land are "a logical and painless culmination to the relentless process of increasing land scarcity, increasing land conflicts, and increasing individualization that eventually flow from growing populations and agricultural commercialization".[143] A host of benefits are considered to be embodied through title deeds. These are "increased investment demand, increased credit supply, and efficient redistribution of property […] consolidation of scattered holdings, efficient input and output choices, and an increased tax base".[144] De Soto emphasized the formalization of 'already existing rights' rather than introducing new private holdings through titling. He underlined the need to register the formal property representation. The State is assumed to have a greater role in provision of titles. He formulated mechanisms to ensure the contributions of formalization to economic growth.[145] These mechanisms include:

> *fixing the economic potential of assets,* or making people think of property as economic concept rather than as physical capital; *integrating dispersed information*, leading to transaction cost savings; *making people accountable*, since transgressions for example may be punished by seizing property; *making assets fungible*—that is, making assets divisible,

[140] Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books, 2000.
[141] H. Stein and S. Cunningham, *Supra note* 134, p. 3.
[142] H. De Soto, *Supra note* 140, p. 6-7.
[143] E. Sjaastad and B. Cousins, *Supra note* 135, p. 2.
[144]Platteau, 1996 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 2.
[145] E. Sjaastad and B. Cousins, *Supra note* 135, p. 2.

combinable, and transferable, e.g. as collateral; networking people by facilitating exchange of information about property and property owners; and *protecting transactions*, making, e.g. fraud and theft in property transactions more difficult.[146]

Accordingly, property formalization involves three steps. The first is provision of legal representation in the form of title deeds, permits, contracts etc. Second, these legal recognitions should be sanctioned and protected by the state. Third, the information represented in the legal document should be integrated in unified national registry.[147]

However, others such as institutional economists, development theorists and multilateral organisations emphasized on the limitation of property formalization.[148] The limitations raised are the following:

1. According to historical and contemporary evidence, some of the benefits of formalization have existed despite the lack of formalization. For instance, land and housing markets have existed in peri-urban area of Botswana, Zambia and Trinidad despite lack of formalization. Or in some instances, the benefits of formalization were not realized despite the implementation of formalization programs. For instance, one study found that availability of credit and market turnover reduced after formalization in Bogota.[149] In other instance, in Lima, title owners were unwilling to take credit from banks despite its availability because of the fear of losing their title in case of default to repay.[150] In this regard, Platteau noted that land titling programmes in sub-Saharan Africa has not resulted the expected effect in bringing "static and dynamic efficiency".[151] It has a disempowering effect by leading to loss of land in case of distress sales.[152]
2. According to studies, formalization may "compete with or even destroy, well-established and effective local systems, opening the door to opportunism and possible chaos".[153]
3. The involvement of local people and power decenteralisation to local level are the necessary condition for effectiveness of land titling. However, state capacity and willingness to do that has been questioned.[154]

[146] De Soto, 2000: 62-63 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 2.
[147] Tor A. Benjaminsena et al., 'Formalisation of Land Rights: Some Empirical Evidence from Mali, Niger and South Africa', *Land Use Policy*, Vol. 26, 2008, p. 29.
[148] *Id*., p. 29; E. Sjaastad and B. Cousins, *Supra note* 135, p. 2.
[149] Gilbert, 2002: 12 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 3.
[150] Calderon 2004 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 3.
[151] Jean-Philippe Platteau, *Institutions, Social Norms, and Economic Development*, Harwood Academic Publishers, Amsterdam, 2000, p. 179.
[152] P. Hirsch and N. Scurrah, *Supra note*137, p. 3.
[153] Meinzen-Dick and Mwangi, 2008; Ensminger, 1997 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 3.

4. The huge amount of costs that involves in surveying and registration of land has been the other limitation. In addition, compromised accuracy was also one of the problems observed in implementing simplified procedure to register land rights.[155]
5. Lack of accurate registration has resulted in land disputes. The existence of customary rules, norms and practices on succession, alienation etc have created difficulty to integrate all land rights in a unified system.[156]
6. The other limitation is that formalization may lead to cementing of existing inequalities.[157] It may lead to capture of land by outside elites.[158] Formalization has affected those who are landless, especially women and orphans when it is not accompanied by land redistribution.[159] Formalization may result in registering and certifying male household heads with all bundle of rights without giving recognition to existing women's land rights related to some bundle of rights which can be the right to use or access or control recognized customarily.
7. Formalization, in some instances, benefited only those who are wealthy and well informed by causing hoarding of land. Women in this regard are disadvantaged because of the entrenchment of discriminatory norms in the titling and registration procedures.[160]
8. Owners of untaxed land may tend to resist formalization to avoid taxation that will follow formalization.[161]

In nutshell, formalization of land rights has been criticized for its failure to recognize the informal land market that enable farmers to access land, for reinforcing existing social inequalities in access to land and for being short of recognizing other customary rights which might not be legally recognized.[162] In the African context, where customary tenure is prevailing, an individual tenure obtained through formalization may not be enforced.[163] Considering this, a new paradigm has been developed to bridge the formalization of land rights with customary entitlements. Accordingly, some African countries such as Uganda, Mozambique, Tanzania, Niger and Namibia have adopted laws that recognize customary entitlements.[164]

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[154] E. Sjaastad and B. Cousins, *Supra note* 135, p. 3.
[155] *Ibid*.
[156] *Ibid*.
[157] Benjaminsen, 2002; Mackenzie, 1993 cited in E. Sjaastad and B. Cousins, *Supra note* 135, p. 4.
[158] Green & Baird 2016; Ho & Spoor 2006 cited in P. Hirsch and N. Scurrah, *Supra note* 137, p. 4.
[159] E. Sjaastad and B. Cousins, *Supra note* 135, p. 4.
[160] I. Ikdahl et al., 2005, *Supra note* 121; E. Sjaastad and B. Cousins, *Supra note* 135, p. 4.
[161] E. Sjaastad and B. Cousins, *Supra note*135, p. 4.
[162] J. Ubink, *Supra note* 11, p. 10; M. Yami and A. Snyder, Supra note 33.
[163] D. Rahmato, *Supra note* 12, p. 63.
[164] J. Ubink, *Supra note* 11, p. 10.

In sub-Sahara Africa, formalization of land rights does not only have a legal implication of securing land tenure rights, but it has a political implication. Land rights are related with political power and identity as discussed under the subsequent section. Thus, formalization of land rights has implication on how competing politico—legal institutions navigate through land related claims and disputes. This depends on the capacity of the state to exercise its power and enforce laws in rural areas.[165]

Though the above limitations are observed in the formalization programs in some countries, it might be possible to employ various mechanisms for the formalization process to yield benefits. These mechanisms suggested for a better implementation of the formalization process needs to be contextualized based on the existing circumstances in each country. The following are some of the suggestions:[166]

- Extensive local consultations should precede before the implementation of formalization process.
- It should be managed at local level in decentralized manner using local institutions.
- It should establish an accountability mechanism that can detect and punish abuse of power and avoid discretionary power.
- It should be devoid of discrimination based on race, gender, religion or any other status.
- It should enable free access to information, and employ digital record keeping.
- It should recognize communal and individual registration of land.
- It should employ technology that ensures accurate measurement of boundaries and periodical updating with a minimum cost.
- It should be integrated with preexisting registries and recognize the existing rights rather than inventing new ones.

[165] David Chinigo, 'The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu', *Review of African Political Economy*, Vol. 42, No. 144, p. 175.
[166] E. Sjaastad and B. Cousins, *Supra note* 135, p. 5.

Table 3: Summary on the advantage and disadvantage of formalization of land rights

Advantages of formalisation (the Property Rights School and the Evolutionary Theory of Land Rights**)**	**Critique of formalization (**institutional economists, development theorists and multilateral organisations**)**
increase security of tenure	May destroy well-established and effective local systems, opening the door to opportunism and possible chaos.
reduce land disputes	Lack of accurate registration has resulted in land disputes.
facilitate access to financial services and increase investment on the land	Depends on State capacity and willingness to decentralization.
stimulates land rental markets	some of the benefits of formalization have existed despite the lack of formalization.
increase state revenue through taxation	Huge amount of costs that involves in surveying and registration of land.
benefits women through joint titling	Formalization may lead to cementing of existing inequalities
transforms assets into a living capital	The existence of customary rules created difficulty to integrate all land rights in a unified system

Source: author's own construction

2.5. **Implications of Land Tenure to State Authority/Legitimacy, State-Society Relationship, and State Capacity**

Land as a source of State Authority and Legitimacy

The state is the central authority in deciding on rural land tenure. The land tenure system determines the relationship between the state and farmers, elders, ethnic insiders and outsiders, linages and communities. Property institutions determine the political authority and hierarchy over land. It has also an important role in addressing land related conflicts and competition between the state and other communal institutions.[167]

Mamdani (1996), Munro (1998), Lentz (2013) cited in Boone (2015) and others argued that[168]

[167] Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Conflict*. 2014, Cambridge: Cambridge University Press.

[168] Catherine Boone, Land Tenure Regimes and State Structure in Rural Africa: Implications for the Forms of Resistance to Large-Scale Land Acquisitions by Outsiders. *Journal of Contemporary African Studies*, Vol. 33 (2), 2015, p. 171-190.

> African land tenure regimes be viewed as institutional configurations that have been molded and remolded by colonial and postcolonial governments in efforts to extend state power in the rural areas. They show that existing land tenure regimes bear the heavy imprint of the modern state, even if they are often not entirely defined by states, and that rural land regimes go far in structuring the political relationships that link rural communities to the state.

Similarly, Boone (2013, 2015) argues that land issues are not only about land but it has its own implication on social and political relationships. It is central to state formation since authority over land constitutes and defines state power. In this sense, land issues are not only issues of access to resources but it is also about the constituency of authority which defines citizenship and politics of jurisdiction.[169] Similarly, Chinigo argues that land issues in African constitute issues of identity and power and therefore it is important component of state formation in addition to being an issue of livelihood.[170] He argues formalization of land rights is one of the strategies a state deploy in order to exert political control and consolidate power on legitimate claims of land. Similar to the arguments made by Lund and Boone 2013, he argues that land formalization territorizes state power in rural areas.[171]

Land issues have been considered as apolitical. However, land plays an important role in defining state authority and in nation building. State plays an important role in allocating, defining and adjudicating rural land rights which helps it to consolidate power, to bring national integration, enhance agricultural marketing, and mobilize/demobilize rural population.[172] Locus of authority over land is placed to the state in most of African countries when the land is not a freehold of the peasantry. In such situations, the state acts as landlords.[173]

There are two models of rural land regimes which are statist and neocustomary land regimes. The neocustomary land regime refers to "land regimes in which state-backed local leaders who are officially recognized as neocustomary or traditional exercise state-sanctioned authority within communities recognized as autochthonous or indigenous by the state, including authority over land allocations and land-dispute adjudication."[174] It upholds the communal land tenure through the community, kin, clan and village. This involves recognizing the authority of neo-traditional actors

[169] Christian Lund and Catherine Boone, Introduction: Land Politics in Africa–Constituting Authority over Territory, Property and Persons, Africa: *Journal of the International African Institute*, Vol. 83, No. 1, Special Issue: Land Politics in Africa: Constituting Authority over Territory, Property and Persons (February 2013), p. 1.
[170] David Chinigo, *Supra* 165, p. 175.
[171] Divid Chinigo, ibid.
[172] Catherine Boone, Property and Constitutional Order: Land Tenure Reform and the Future of the African State, *African Affairs*, Vol. 106 (425), 2007, p. 561.
[173] Ibid, p. 562.
[174] Boone, Catherine, *supra note* 168, p. 171-190.

such as local chiefs. This devolves power to the neo-customary actors.[175] This requires limiting the power of the local authority within their territory. This created *de facto* local states that administer the land that is considered belonging to its indigenous community.

On the other hand, statist land regime refers to land regime where the state exercise a central role in land allocation and adjudication of land related disputes. [176] In this type of land regime, the state owns the land, and it eliminates other authorities. It allows whoever farms the land the right to use and administer the land. This allows outsiders or non-indigenous people to access land. It can be called user rights regime. The two types of land regime (communal regime and user rights regime) may apply at the same time in some countries. This leads to various forms of relationship between the state and society to exist.[177] The reality shows there is hybridity of land regime where a mix of both regimes operate together. The two land regimes determine rural men and women's access to land by displaying different forms of authority and political identities.[178] In countries where the state play role in distribution of productive resources such as seed, credit and fertilizer etc, there is rural patron-client relationship, and resource is distributed to supporters and political brokers.[179] These land regimes define the locus of authority over land rights and jurisdictions of national/local institutions.[180]

The process of giving recognition to property rights, citizenship and authority during state formation is mutually constitutive. However, this process may be contested by various societal actors and become sites of resistance. Contestation over land emanates from claims that are brought by various members of the society who claims to have a right over the land through their ancestor, cultural entitlement, actual use, market acquisition or government allocation. Such contestation over land goes beyond the question of to whom the land belongs to. It involves the question of who has the legitimate authority to define and settle the land issues when disputes arise on the use and

[175] Boone, Catherine, *supra note* 172, p. 564.
[176] Boone, Catherine, *supra note* 168, p. 171-190.
[177] Boone, Catherine, *supra note* 172, p. 565.
[178] Boone, Catherine, *supra note* 168, p. 171-190.
[179] Boone, Catherine, *supra note* 172, p. 566.
[180] Boone, Catherine, *supra note* 168, p. 171-190. "Jurisdiction over land may be thought of in terms of a tripartite distinction between territorial jurisdiction, functional jurisdiction and jurisdiction over persons. Territorial jurisdictions can vary in terms of how unambiguously they are delimited, how they nest into administrative hierarchies of neotraditional and national government, and the extent to which they are recognized by key actors as setting the boundaries of (enclosing) legitimate and rightful territorial domains and social groupings. Many African governments recognize customary authorities and customary land rights within ethnic homelands that correspond to politico-administrative units like districts, wards or electoral constituencies. Where the boundaries of the territorial jurisdictions in which land authority is exercised are not clear or are contested, rights holders in superordinate, neighboring or nested territorial jurisdictions (different chieftaincies, for example) can hold competing rights to the same piece of land, endorsed by competing public authorities." Christian Lund and Catherine Boone, Introduction: Land Politics in Africa–Constituting Authority over Territory, Property and Persons, Africa: *Journal of the International African Institute*, Vol. 83, No. 1, Special Issue: Land Politics in Africa: Constituting Authority over Territory, Property and Persons (February 2013), p. 4.

control of land. Thus, land issues involve politics as it involves defining authority over persons and resources or state formation. When the state is able to exert authority over land, it will be able to reproduce, extend and solidify its authority over the society and will be able to bring changes in the social and political structure of the society.[181] Land authority will also allow the state to exercise functional jurisdictions to settle land disputes at the appropriate authority. The political power and status of actors, and institutional arrangements determine the jurisdiction. The central government may delegate its power to customary laws and institutions as part of power sharing mechanism to local actors.[182] This division of power (loci of authority) divided between government institutions and customary institutions might end up being partly hierarchical or competitive or complementary. The competition over land between government institutions and customary institutions might relate to claim jurisdiction over land (to exercise power over the land) or to disclaim jurisdiction (to avoid blame or liability). Such competition might also exist among customary institutions themselves. Such jurisdictional competition relates with the power to determine how land can legitimately be acquires, held and transacted.[183]

This is also played out in the division of authority and jurisdiction over land between the local and federal/regional states in the Ethiopian federal structure. The locus of authority over land in Ethiopia is discussed under chapter five based on the constitutional division of power over land between the federal and regional government. But in addition to the division of power created by the federal system, local customary norms and local actors such as elders play an important role in land disputes settlements as discussed under chapter 8. These relationships have created competition and complimentary relationship among these actors as discussed. In addition, according to Chinigo, formalization of land rights creates "new spaces for negotiation and contestation of the rights of access to resources".[184]

'Authority-based controls over land' had a role in shaping institutions and rules that determine the relationships between authority and property. This authority was instrumentalized by states in Africa to exert power and control over political behavior of people for their own political gains.[185] In most African countries, colonial authorities institutionalized and instrumentalized neocustomary land regime in order to impose a social control and consolidate power over the people through the 'African tribal society' which territorised ethnicity within a designated ethnic territory. This

[181] Lund, Christian and Boone, Catherine, *supra note* 169, p. 2.
[182] Ibid, p. 5
[183] Ibid, p. 6.
[184] Chinigo, David, *supra note* 165, Vol. 42, No. 144, p. 176.
[185] Boone, Catherine (2015), *supra note* 168, p. 171-190.

solidified the indirect rules of colonizers over the rural population.[186] The neocustomary land regime was less costly and easy to enforce considering their preexisting legitimacy than the statist land regime which applies sanction for its enforcement and is costly for its administration.[187]

Similarly, in Ethiopia, Land reform or securisation of tenure through formalization of land rights has the effect of changing political landscape and political authority. Land is not only an economic commodity and but it also a political commodity (Hoben, 1973, p. 230) which is a means and instrument to acquire and consolidate political power. As discussed in the subsequent discussion under chapter five, land was a means to consolidate political power since the autocracy was able to assert its power by collecting tax on the land and distributing land for military services. This 'authority-based controls over land' were institutionalized through the land tenure systems that existed in the northern and southern part of Ethiopia as discussed under chapter five. Furthermore, the formalization of land rights shifted land adjudication from the state to elders/social courts.

Land as defining factor of State-Society relationship

Land as a co-constitutive of politics has two approaches known as institutionalist and constructivist approach. The institutionalist approach emphases how land related interests and preferences shape institutional settings and actors. These actors and institutions include both the formal and informal actors or the state and non-state actors. As discussed above, the authority of these actors is constituted through their influence and power over land. The constructivist approach analyses the relation between land and politics by giving emphasis on how land serves as an instrument in constructing social relationships. Thus, its focus is not on the institutions (legal frameworks, distributive mechanism and allocation of power) that shape authority of the state; it is rather on the influence of land in shaping social relations or power relations within and between communities, clans, kins, and households. Thus, land is not only a locus of authority and thereof site of political mobilization, but also it is constitutive element for the formation of local affiliations and social relations. Land is determinant factor of social status, social identity and social rights.[188]

The social relationships that are created through ownership/disownership of land can be endorsed or disapproved by the state. Thus, the state is one of the social forces that create social status through land rights. This creates a state-society relationship. This requires a sociological reading of multiple 'power poles' within the state apparatus or outside of the state apparatus by examining the relationship between the state and society and the actors involved in creating and sustaining the

[186] Ibid.
[187] Ibid.
[188] Kolben Waaranperä, U. Histories of land: Politicization, Property and Belonging in Molo, Kenya. [Doctoral Thesis (monograph), Department of Political Science]. Lund University, 2018, p. 18.

relationship.[189] There might be wide range of actors including state officials, nonstate actors that cooperate or compete with the state.[190]

Land tenure regime is one of the factors that define and redefine the relationship between state and society. Land issues are legal, constitutional and political issues that are articulated during law making process, and electoral debates to determine the nature of political authority and citizenship.[191] It is also part of social relationship. Both neocustomary and statist land regimes discussed above reflects a social contract that embodies the connection between land users and political authorities, defines the relation between the state and society and settle claims or entitlements of land users (Boone 2007).[192]

Land questions are constitutional issues and define the state-society relationships. Land tenure reforms focus on three propositions. The first one advocated by the World Bank and other Briton wood institutions proposes that land reforms should aim at land titling which will lead to transferability, individualization and privatization of land. The second proposition aims for the private ownership of land for structural transformation. Others groups such as Africanist experts from the discipline of economic history, anthropology, geography and agricultural development advocate for the reform that recognize and securitize use rights of land.[193] These three forms of land tenure reforms have different implications for constitutional law, for state authority that is configured at central, regional and local levels and for political structure of the state. Thus, land law issues shapes citizenship rights, women's rights, customary authorities' prerogatives over land and configures social hierarchies. From political science perspective, land law reform determines state and society relations.[194]

There are three land tenure reforms: A reform that reinforces communal rights, promote private property rights and those that institutionalize user rights. Community rights entitle the neo-traditionist the rights to allocate land rights to indigenous community or 'natural community' in a way that enhances collective interests.[195] However, such a system discriminated against outsider on the basis of ethnicity, gender, age and other status. They are also considered as non-democratic as the neo-traditionalist prevail.[196] Under this tenure arrangement, the local elites have the political

[189] Tobias Hagmann and Didier Peclard, Negotiating Statehood: Dynamics of Power and Domination in Africa, Development and Change, Vol. 41 (4), *International Institute of Social Studies*, 2010, p. 542.
[190] Ibid, p. 543.
[191] Boone, Catherine, *supra note* 172, p. 558.
[192] Boone, Catherine (2015) *supra note* 168, p. 171-190.
[193] Boone, Catherine, *supra note* 172, p. 558-559.
[194] Ibid, p. 559.
[195] Ibid, p. 570.
[196] Ibid, p. 572.

authority and operate as microstates. The legitimacy of these local authorities is derived from the 'natural community'. Thus, membership to the 'natural community' is a status that endowed one with political identity, authority and access to land. Those who are not indigenous to the 'natural community' are considered as outsiders and are not entitled to access resources including land.[197] The indigenous members are the only one who has legitimacy to represent the community at the central state level. The non-locals are second level citizens. These kinds of local citizenship always compete with national citizenship. These created diverse laws, and institutions that govern property rights, and citizenship rights within a nation state.[198]

The World Bank advocated for formalization of land rights in order to facilitate the transformation of land to transferable, mortgageable and fungibility by treating land as private property.[199] In African countries, women's movements sought the privatization of land rights through land titling in order to promote women's rights to access land. This challenged the customary land system that discriminate against women though its patriarchal biases.[200] Many African countries favored land formalization in order to transform land as transferable asset. Legal reforms have taken place with this view.[201] When we see its implication to state-society relationship, the privatization of land breaks down the existing relationship between the state and farmers/rural communities. The market would be in control. The locus of political authority changes from the local authorities to individuals who can now decide what to do with their property. This increased economic autonomy of individuals that can be transformed to political autonomy. This helps individuals to create their own association based on their volition rather than having to take up imposed membership to 'natural community'. This brings land to be subject to market-based allocation rather than authority-based allocation.[202] This allows all individuals to have access to land through the market as well as to have a national citizenship right which facilitates democratization process. However, for this to materialize the state need to have the capacity to enforce and adjudicate contracts and efficiently undertake regulatory responsibilities. It also should be able to replace the administrative responsibilities that used to be undertaken by local authorities.[203]

Securing use rights of farmers intend to transfer land to more productive producers.[204] Securing use rights helps the poor farmers from arbitrary dispossession. This is considered as pro-poor, flexible

[197] Ibid, p. 578.
[198] Ibid, p. 579.
[199] Ibid, p. 573.
[200] Ibid, p. 573.
[201] Ibid, p. 574.
[202] Ibid, p. 580.
[203] Ibid, p. 581.
[204] Ibid, p. 574.

and practical. It benefits those farmers who are using the land at the time of land titling. The user may be an outsider or in-migrant.[205] Accordingly, securitization of user land rights is "a politically attractive option because it contains the possibility of progressive and democratic reform at the local level, does not throw African smallholders on the mercy of the market, and seems to embrace the principle of incrementalism as a strategy of land regime modernization."[206] This requires creating decentralized secular local political institutions with some autonomy from the central state, legitimacy and accountability. This requires local governments to be democratic.[207] Furthermore, securitization of users rights to land have redistributive effect as it is a process of determining whose rights should be recognized and secured. This process is state centeric as the locally elected officials undertake the allocation of land, thus, it might sometimes create clientism and increase the vulnerability of minorities and women. Therefore, it is important that local land allocation institutions are democratized and the law should set the principles that guide the allocation of land.[208]

Land and state Capacity

State can be analyzed based on its institutional and functional powers.[209] State has differentiated institutions with a central political power which is exercised in a territorially demarcated area. The functional powers of states relates with the monopoly of power the state has in making binding rules. The state institutions are staffed by 'state elite'. These state elites include civil society which is sub-divided into ideological, economic and military groups.[210] The state possesses despotic power with civil society groups which are unlimited power. The second power is called infrastructural power which refers to "the capacity of the state to actually penetrate civil society, and to implement logistically political decisions throughout the realm."[211] State infrastructure power in manifested in its capacity to levy and collect tax, ability to enforce its will, its influence in the economy, its ability to create employment and basic services to its citizens such as education, allowances for the poor, pension for the retired etc. This allows the state to penetrate in everyday lives of its citizens.[212] Based on its infrastructural power, States can be categorized as weak and strong states based on their ability to monopolize force, enforce contracts, regulate functional institutions, deliver public

[205] Ibid, p. 575.
[206] Ibid, p. 583.
[207] Ibid, p. 585.
[208] Ibid, p. 585.
[209] Michael Mann, The Automomous Power of the State: Its Origins, Mechanisms and Results, *European Journal of Sociology* / Archives Européennes de Sociologie / EuropäischesArchiv für Soziologie, Vol. 25, No. 2, Tending the roots : nationalism and populism,1984, p. 187.
[210] Ibid, p. 188.
[211] Ibid, p. 189.
[212] Ibid.

goods, etc. The strength of the state depends on the functionality of its bureaucrats, its relation with social actors and its spatial and societal reach. In other words, state capacity depends on the autonomy of the state from the societal actors, professionalism of its bureaucracy and the ability to reach or exercise power at the lowest level of governance.[213] The state capacity is very important factor for economic growth and development, democratization, social stability, and to democratize political culture.[214] The penetration of infrastructural power within the society depends on the division of labor within state machineries, literacy, financial guarantees, and transportation and communication system.[215] The extent to which the state is able to penetrate makes it to be strong. However, through democratic states are strong to the extent to which they penetrate everyday life, they are also expected to be weak in the sense that they have less power to change fundamental rules of the game such as constitutional democracy. Thus, their despotic power should be weak.[216]

Based on these two powers (despotic and infrastructural), there can be four kinds of states i.e. feudal, imperial, bureaucratic and authoritarian. Feudal state has low infrastructural and despotic power. Imperial state has high despotic power but low infrastructural coordination. Bureaucratic state has low despotic power but high infrastructural power. Authoritarian state has high despotic and infrastructural powers.[217]

State may have three sources of power which are military, ideological or economic powers. In militaristic society, state power is based on physical force. The other sources of state power are ideological or economic power.[218] The power of the state radiates from the center outwards within the boundary of its territory.[219] The reach of the state authority to establish institutions with resources within the bound of its territory is reflection of its autonomous power. Territorially Centralized power of the state enables it to mobilize power to plan social development. According to Mann,

> The state is not merely a locus of class struggle, an instrument of class rule, the factor of social cohesion, the expression of core values, the centre of social allocation processes, the institutionalization of military force (as in the various reductionist theories)—it is a different socio-spatial organization. As a consequence we can treat states as actors, in the person of

[213] Hillel Soifer and Matthias vom Hau, Unpacking the Strength of the State: The Utility of State Infrastructural Power, *Studies in Comparative International Development*, Vol. 43, 2008, p. 220.
[214] Ibid, p. 220.
[215] Mann, Michael, *supra note* 209, p. 192.
[216] Ibid, p. 190.
[217] Ibid, p. 191.
[218] Ibid, p. 186.
[219] Ibid, p. 198.

> state elites, with a will to power and we can engage in the kind of 'rational action' theory of state interests advocated by Levi (1981).[220]

According to Michael Mann, infrastructural power of the state refers state's ability to establish institutions which are capable of exercising control and implementing policies within its jurisdiction. Weak states are not able to exercise infrastructural power including collection taxes, conducting national census etc. Based on Mann framework of infrastructural power of the state, various scholars developed and strengthen the conceptual framework. Accordingly, state can is said to be strong when it is able to enforce its policies within its territory by reaching the society while a weak state is not able to enforce its police and is often affected by domestic conflicts.[221] Scholars also argued that infrastructural power of the state can consist of symbolic, coercive and distributive powers.[222] Symbolic power of the state reflected in its ability to shape the daily lives of its citizens through influencing ideology and culture of the society that defines the societal identities.[223] Coercive power of the state relates the state's power to legitimately use force to enforce policies. These powers of the state can be exercised at subnational level. State infrastructural power is also entwined with non-state actors which is called organizational entwining. It is important to look into the interaction of the various actors in exercising infrastructural power.[224]

Infrastructural power is a useful for state to shape its legitimacy which can be identity legitimacy or output legitimacy. The identity legitimacy is achieved through state presence which instills belongingness of the state among its citizens while outcome legitimacy relates the state ability to provide social goods and services to enhance the state legitimacy.[225]

The infrastructural power of the state is a basis for securing property rights which is important for economic growth. The capacity of the state to enforce laws on land rights is important for economic growth and is reflective of its infrastructural power.[226]

The Ethiopian state has had a strong capacity to penetrate into the lowest administration. This is facilitated through the Derg's regime establishment of *kebele* at the lowest level of government administration.[227] However, as discussed under chapter eight, the reach of the judiciary to the lowest level is limited as courts reach is up to Woreda level. This has brought plural justice system to

[220] Ibid, p. 201.
[221] Soifer, Hillel and Matthias vom Hau, *supra note* 213, p.221.
[222] Tom lavers, *Ethiopia's 'Developmental State': Political Order and Distributive Crisis*, Cambridge, p. 105.
[223] Soifer, Hillel and Matthias vom Hau, *supra note* 213, p.221.
[224] Ibid, p. 222.
[225] Ibid, p. 227.
[226] Ibid, p. 221-222.
[227] Eyob Balcha Gebremariam, Thandika Mkandawire's Model for an African Developmental State, and the Ethiopian Ecperiment (2001-2018), *Africa Development*, Vol. XLIX, No. 2, 2024, p. 22.

prevail as will be discussed under chapters 7 and 8. The thesis will dwell on the effects of the plural justice system on rural women's land rights.

2.6. Theoretical Framework

The relevant theories that explain how global human rights norms become meaningful and implemented at the local level are illustrated below. These theoretical frameworks study how norms contribute to bring social changes. The theoretical frameworks discussed below are developed in human rights studies from the perspective of anthropology and developmental studies. Both theories have been developed based on empirical studies in different contexts.

2.6.1.Vernacularization

Vernacularization refers to the process by which transnational human rights concepts, values and philosophy circulate and translated into a certain culture in a way that these rights can make sense in that particular cultural space.[228] It involves a process of appropriation and customization in an indirect, fragmented and diffuse ways. It is a means by which new ideas are introduced and communicated to diverse communities. It goes beyond a linguistic process by involving new practices and theories. It envisions new ways of thinking and practices in defining social justice. Vernacular human rights are not introduced into an empty space. It is rather introduced into a space already rich with ideas of justice.[229] Thus, the response to the idea of human rights varies. The idea may be adopted as wholesome or resisted or combined with the existing culture and create a new idea and practice. The way the new ideas interact with the preexisting ideas has been the subject of various studies.

Ideas and practices circulate globally, nationally and regionally or locally. The boundaries among these spheres are delicate or are not clearly discerned especially in a multicultural setting.[230] The circulation or exchange of ideas is not unidirectional. It is rather spiral and mutually constitutive to a varying extent.[231] Various empirical studies show that when global human rights ideas circulate, they encounter local social justice, ideologies, gender norms and values.[232] However, this framework of looking rights and culture assumes the global norm as reference point and as a fountain from which ideas circulate to the local. This reinforces again the assumption that culture and rights are always oppositional rather than being complementary. Thus, rights are "a cultural

[228] Maree Pardy., 'Under Western eyes again? Rights vernacular and the gender culture 'clash'', *Australian Journal of Human Rights*, Vol. 19 (1), 2013, p. 37.
[229] Peggy Levitt, 'Making Women's Human Rights in the Vernacular: Navigating the Culture/Rights Divide', in Dorothy Louise. Hodgson and Dorothy Louise Hodgson (eds.), *Gender and Culture at the Limit of Rights,* University of Pennsylvania Press, 2011, p. 88.
[230] *Id*., p. 90; M. Pardy, *Supra note* 228, p. 31.
[231] Rajaram, 2009 cited in P. Levitt, *Supra note* 229, p. 90.
[232] P. Levitt, *Supra note* 229, p. 90.

category for justice talks but only one of many".[233]This means that various society talks about rights in different languages which is referred as vernacularization.

In order to facilitate the transfer of human rights ideas articulated in various international human rights instruments, it is imperative to redefine and remake them at local level so that they can be comprehensible and appropriate. This involves reinterpretation and reframing of issues to get acceptance and assimilation of the idea.[234]

Some ethnographic research demonstrated that human rights ideas, languages and practices developed at the global level or in transnational sites are adopted at the local level by states or activists.[235] This process takes place with the involvements of norm-entrepreneurs, otherwise known as mediators/negotiators and translators, who "translate the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violence".[236] Translators "refashion global rights agendas for local contexts and reframe local grievances in terms of global human rights principles and activities".[237] This process is mostly carried out by local actors such as community leaders, social activists or elites etc. According to Merry, vernacularisation brings more legitimacy to the human rights norm adopted through engaging local actors and translators.

This Dissertation use this theory to analyze how the land formalization process through joint titling of wife and husband has introduced new understandings and practices in relation to rural women's land rights at local level and the local response to rural women land rights. It also looks into the role of various actors including the judiciary, the executive bodies of the government and customary justice system in translating rural women's land rights into practice.

2.6.2. Norm Localization

Less emphasis has been given to how human rights become relevant to excluded groups and individuals and hence, assessing the contribution of local individuals and groups to human rights development and elaboration is paramount.[238] The main approach that has been used so far to study how norms travel from one place to another emphasized on norm diffusion approaches. Norm diffusion approach focuses on 'analyzing how and why certain international norms were being

[233]P. Levitt, *Supra note* 229, p. 87.
[234]P. Levitt, *Supra note* 229, p. 91.
[235] Sally Merry, *supra note 99*, p. 38.
[236] *Id.*, p. 39.
[237] *Ibid*.
[238] Gaby Oré Aguilaw, *supra note* 82, p.109.

adopted by an increasing number of states'.[239] It focuses on 'how norms emerge on the international level, how they become meaningful in domestic contexts, and which actors are promoting and translating them'.[240]Norm diffusion approach expects human rights to be either resisted or adopted through transnational advocacy or decoupling of rules and practices.[241] Various explanations are given for norm resistance. Scholars (Checkel 1999; Cortell and Davis 2000) argue lack of 'cultural match' may result in resistance to norm adoption. Others (Risse, Ropp, and Sikkink 1999) suggest that 'a social and material vulnerability in democratizing states will lead to norm adoption in the long run'.[242]

However, norm diffusion arguments have been challenged. According to Zimmermann, this is as a result of a 'flawed conceptualization of outcomes of norm diffusion that ignores norm translation processes'.[243] In reality norms are part of a 'constant process of negotiating and re-negotiating".[244] Thus, norm diffusion should not only focus on the gap between commitment and compliance but see beyond compliance or non-compliance.[245] This process is referred as norm localization. In the process of localization, norms undergo change in meaning and scope. In this process, according to Acharya, norms are adopted in order to enhance domestic legitimacy.[246]Norm localization expects the constant 'reinterpretation and modification of norms'.[247]

The concept of localization at the beginning was developed in relation to the human rights-based approach to development. It mainly stresses the goal of development to be empowerment and participation of right holders. It focuses on local struggles rather than international norms, processes rather than outcomes and change in power relationships rather than implementation of norms.[248]

Localization of human rights as a conceptual framework is gaining momentum in recent years by various scholars. Localisation of human rights follows a bottom-up approach to study the everyday realities of human rights users or actors. It mainly relies on actor centered perspectives to echo the voices of right-holders. A number of publications focusing on localization, vernacularisation,

[239] Lisbeth Zimmermann, 'Same Same or Different? Norm Diffusion Between Resistance, Compliance, and Localization' in *Post-conflict States. International Studies Perspectives,* 2016.: p. 99.
[240] Susanne. Zwingel, 'How do norms travel? Theorizing international women's rights in transnational perspective', *International Studies Quarterly,* Vol 56 (1), 2012, p. 118.
[241] L. Zimmermann, *Supra note* 239, p. 90.
[242] L. Zimmermann, *Supra note* 239, p. 90.
[243] L. Zimmermann, *Supra note* 239, p. 99.
[244] S. Zwingel, *Supra note* 240, p. 12.
[245] L. Zimmermann, *Supra note* 239, p. 103.
[246] Amitav Acharya, 'How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism', *International organization,* Vol. 58 (02), 2004, p. 247-248.
[247] L. Zimmermann, *Supra note* 239, p. 58.
[248] Tine Destrooper, 'Uprooting the Curious Grapevine: The Transformative Potential of Actor-Center Perspectives and Localisation in the Field of Human Rights'. *Journal of Human Rights*, Vol. 16 (4), 2017.

contextualization and upstreaming of human rights have been produced.[249] Unlike translation or vernacularisation approach, localization aspires to make transnational norms reflective of the local reality by giving due considerations to local struggles. It adopts a bottom-up approach.[250]

Localisation requires change in international human rights norms based on the changing circumstances of society.[251] It aims at a process of norm setting to take place by giving voice and visibility to local rights-holders. This envisages a process of *reverse standard setting* that leads to reconstruction and reformulation of human rights ideas and practices based on the reality on the ground.[252]

Localisation process requires looking into translation of a norm into discourse, laws and implementation.[253] To evaluate a certain translation, 'we must ask how global standards came about, if specific interpretations are emancipatory or not, how inclusive the translation process was, and how legitimate a specific translation is for those who are affected'.[254]He argues that localisation is a better catchall concept to conceptualize translation.

According to Aguilar, the concept of 'localisation' initially arose as alternative to economic globalization. It emphasizes the role of localisation by showing the negative effects of economic globalization. It favors the local over the global and focuses on the 'strengthening local economies 'from the grassroots up'.[255]

According to De Feyter

> Localisation was defined as a process whereby local human rights needs inspire the further interpretation and elaboration of human rights norms at levels ranging from the domestic to the global and serve as a point of departure for human rights action. It was argued that taking inspiration from the local does not require abandoning the Universal Declaration of Human Rights and subsequent international law, but that it will contribute to the universal legitimacy of human rights. Localisation inevitably implies that a degree of plurality is

[249] Peggy Levitt and Sally Merry, 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United *States*States', *Global Networks* 9, no. 4, 2009; GabyOré.,*Supra note* 82.
[250] T. Destrooper, *Supra note* 248.
[251] Koen De Feyter, 'Localising Human Rights' in Wolfgang Benedek, Koen De Feyter and Fabrizio. Marrella (eds.), *Economic Golobalisation and Human Rights*. Cambridge University Press, 2007.
[252] Vandenhole 2012 cited in T. Destrooper, *Supra note* 248.
[253] L. Zimmermann, *Supra note* 239, p. 110.
[254]*Id*., p. 111.
[255] GabyOre, *Supra note* 82, p. 110-111.

> accepted within human rights discourse, but this is a welcome development. In any case, there are no legal obstacles to doing so.[256]

The relevance of the local for the legitimacy of the global human rights norms is also recognized. Baxi points that 'in the making of human rights, it is the local that translates into global languages the reality of their aspiration for a just world'.[257]

It is argued that different societies need to contribute to human rights as it is a work in progress.[258] In this regard, human rights need to be contextualized so that local experiences continue to improve international human rights norms.[259] Human rights can still be used as tool for various marginalized or excluded societies though the context and its content may vary from what it is globally envisaged. Emphasizing on this argument, Ibhawoh argues that

> To enhance its legitimacy, the emerging universal human rights regime must draw upon the cultural peculiarities of each society. . . . [B]ecause different people in different parts of the world both assert and honor different human rights demands, the question of the nature of human rights, must to some extent, ultimately depend on the time, place, institutional setting and the other peculiar circumstances of each society.[260]

Various methods are used to take into account the local context where human rights are applied. Among them 'margin of appreciation' technique adopted by the European Court of Human Rights is used to localize human rights by taking into account values that may vary from one nation to another.[261]

It is important to localize human rights as it is a factual phenomenon that abuses occur at the local level. Society and victims of abuse pursue various redress mechanism. These mechanisms might make human rights real or illusory. Whether an appeal to human rights is successful or not, it is essential to study why or how the community translated human rights to its local circumstances and its response. Based on the outcome of the responses, a mechanism can be devised on how to make

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[256] K. De Feyter, *Supra note* 251, p. 89.
[257] Upendra Baxi, *The Future of Human Rights*, New Delhi: Oxford University Press, 2002, p. 101.
[258] Paul. Zeleza, 'The Struggle for Human Rights in Africa' in Paul. T. Zeleza, *Human rights, the rule of law, and development in Africa,* University of Pennsylvania Press, 2004, p. 15; K. De Feyter, *Supra note* 188, p. 71.
[259] *Ibid*. K. De Feyter, *Supra note* 251, p. 71-72.
[260] B. Ibhawoh, 'Restraining Univeralism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse' in P. Zeleza and P. McConnaughay (eds.), *Human Rights, the Rule of Law, and Development in Africa*, Philadelphia: University of Pennsylvania Press, 2004, 28.
[261] K. De Feyter, *Supra note* 251, p. 73.

use of human rights in the way it corresponds to the context it is applied to and the contemporary need of the society where it is applied. According to De Feyter,

> Grounding human rights in local experiences offers the human rights movement the opportunity to emphasize similarities between the challenges facing different communities, whilst at the same time respecting and acknowledging local differences.[262]

Merry's study also asserts that

> [t]he localisation of human rights is part of the vastly unequal global distribution of power and resources that channel how ideas develop in global settings and are picked up or rejected in local places. … [V]arious actors in the localisation process contribute to 'translating' international human rights 'down' into local systems and 'translating' actors' local stories 'up' by telling these stories 'using global rights language' to achieve their objectives.[263]

The localization process requires cooperation among various actors. The involvement of community-based organizations, local human rights NGOs, international NGOs and international alliances are essential."[264]

Chapter Summary

This chapter has elucidated the conceptual and theoretical underpinnings of this research. Rural women's land rights should be understood as a bundle of rights which refer to their right to access, control, administer and use land. These rights are affected by gendered social norms. These social norms subscribe the expectations, role and behaviors of men and women in a given social setting. In a patriarchal society, these norms might exclude women from exercising and enforcing their land rights. The patrilineal inheritance prevents women from inheriting land while patrilocal marriages practice deprives women from accessing, using and controlling land from their natal family.

Formalization of land through land registration and certificates may play a role in cementing women's exclusion from accessing land or it may facilitate their access to land. The chapter has analyzed the advantages and disadvantages of formalization of land rights in general and on women in particular. Formalization of women's land rights, if implemented in a proper manner has the potential to increase land security, reduce land disputes, change land into capital by facilitating

[262] K. De Feyter, *Supra note* 251, p. 77.
[263] S. Merry, *Supra note* 99, p. 211.
[264] K. De Feyter, *Supra note* 251, p. 90; Gaby Ore, *Supra note*81, p. 115; S. Merry, *Supra note*98, p. 211.

credit and land rental, ensure women's access to land through joint titling and thereof reducing poverty. However, this depends on the commitments of government to undertaking land formalization by establishing a decentralization land administration system, ensuing prior consultation with stakeholder, implementing the land registration and certification in non-discriminatory manner, establishing accountability mechanisms, ensuring access to information, utilizing a digital and reliable recording system, having flexible system that recognize individual and communal land rights, ensuring accuracy of measurements and registration of land, establishing system to update the land registration recordings and transactions, ensuring good governance etc. This chapter has also analyzed land regime in terms of its implication to state authority, legitimacy, state-society relationship and capacity as a theoretical and conceptual framework that informs the study. Land is one of the factors that define state authority and legitimacy. The capacity of the state to penetrate the society depends of its authority over land.

The two theoretical frameworks that informed this thesis, i.e. human rights vernacularisation and translation is also discussed under this chapter. Vernacularisation of norms is necessary to translate global human rights norms, values and concepts into the practice in culturally appropriate manner. This process is going to either involve resistance of a norm or adaption of a human rights idea in a way it reflects the local context. This dissertation analyzes how the idea of rural women's right to access, control and use land rights has circulated at the global, national and local level in the subsequent section. It looks how these rights are reinterpreted and reframed at the various levels. In addition, the theory of norm localization informs the dissertation to understand how human rights are localized by analyzing local struggles for rural women's land rights. The dissertation analyses the various barriers women's face in claiming their rights and accessing justice. It also uses this theory to analyze how rights language becomes relevant and how the local community translated human rights into local responses.

Chapter Three: Women's Status and Position in the Socio-economic and Political Structure of the Sidaama Regional State

Introduction

This study analyses rural women's land rights in a plural justice system and the effects of land formalization using the Sidaama Regional State as a case study. As discussed under chapter one, data is collected from various stakeholders in the study area. Thus, it is important to provide a description of the study area in order to be able to understand the economic, social and political status and position of women in this regional State. This chapter lays down the contextual factors to understand the social and cultural norms that govern the Sidaama people and provides background information to understand the socio-political condition of the region. By doing so, it analyzes the social, economic, and political system in place and its impact on women's land rights. It examines how women's land rights are affected by gender and class-based structures that are grounded in historical and political realities.

The chapter reveals that the Sidaama regional state has its own unique history, social structure and cultural ethos which make it unique. The Sidaama people have their own language, and decentralized age-based administrative structure. Sidaama is orgainsed in sub-tribes which again organized in clans, villages and houses. It has nine sub-tribes. The society gives high value for truth. However, elder men are the only one considered to be the beholder of truth. This excludes women and young me from taking leadership responsibilities including taking mediation positions whenever there is a dispute. The society is patrilineal. However, there are women who have respectable positions. These women are elderly women who may be allowed to represent women before elders. Through the institute of Yakka, women only institute in Sidaama, women are able to protect their interest and physical integrity.[265] However, the place and role of these institutions is minimized in the modern state with its own legal and institutional apparatus adopted from western states in the name of modernization project as discussed under chapter eight of this dissertation.

In regard to political structure of the Sidaama regional state, it is one of the regional states which is formed recently out of the SNNP regional state. The road to autonomous regional state has been tortuous for the region which was accompanied by violent political agitation. Despite the legal and political complications, the region was able to form its own state. This chapter will narrate the road to form regional state and its implication on the legal and political status of the region.

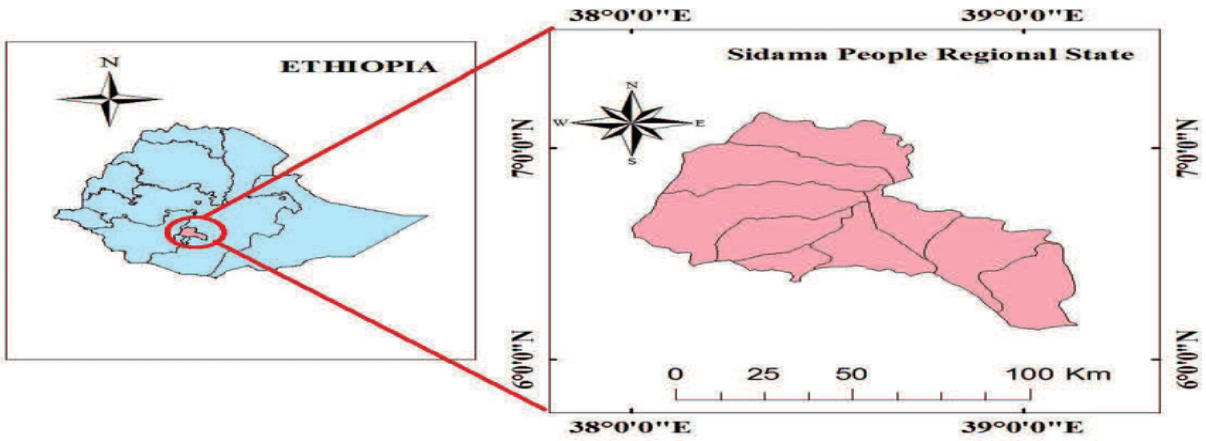
[265] Netsebrak Tamene, *Yakk*a: The Sidaama Women's Customary Institution and Its Untold Power, 2022 CARD, p. 73-77.

The chapter is structured in the following ways: the first section describes the study site including its demography, and source of its economy and administrative structures. The second section discusses the socio-political structure of the Sidaama people and women's position and status in these structures. The third section deals with the political structure of the Sidaama Regional State. It describes the transition from the Sidaama Zone to a regional state by analyzing the normative and procedural elements of self-determination and its application in the Statehood course of the Sidaama Regional State.

3.1. Description of the Study Site: Demography, Economy, and Administrative Structure of the Sidaama Regional State

Sidaama National Regional State is located in south central parts of Ethiopia, to the east and northeast of the Lake Abaya and to the east and southeast of the Lake Hawassa. The midlands are densely populated containing a chain of villages, while the highlands are scattered. The Sidaama land is also part of East African Rift valley (Rift valley is a deep volcanic rift which starts in the Middle East and goes through eastern Africa down to Mozambique before ending up at the Indian Ocean) especially the lowland to the west of Sidaama, including half of the Lake Abaya and Lake Hawassa.[266] The region is located in southern hemisphere around Equator in Horn of Africa at 6°14'N and 7°18'N latitude and 37°92′E and 39°19′E covering an area of 72,000 square kilometers.[267] The region share a border with Oromia in the north, northeast, east, southeast, southwest and northwest, with Gedeo Zone in the south-central and Wolayitta Zone in the West.[268]

Map 1: Map of Sidaama regional state



Source: adopted from Amare Yaekob.[269]

[266] Bahiru Z and et.al 2002 cited in Abebe Demewoz Mengesha, The Role of Sidaama Indigenous Institutions in Conflict Resolution: In the Case of Dalle Woreda, Southern Ethiopia, American Journal of Sociological Research, 2016; 6(1): p. 19.
[267] Amare Yaekob, Marketing Cultural Resources as Tourism Product, 2020, p. 5.
[268] Netsebrak Tamene, *supra note* 265, p. 48.
[269] Amare Yaekob, *supra note* 267, p. 5

Farming is the dominant source of livelihood in the region. 85% of the population is farmers. Sidaama regional State endowed with one of fertile land in Ethiopia. *Enset* (false banana) is the staple food of the regional state as the case in most community of the Southern Ethiopia and it is the most produced non-commercial crop of the region. In addition, the region produces export cash commodities such as coffee, *khat* (green shrub leaves chewed as stimulant). In addition, variety of grins and fruits are cultivated in the region.

Sidaama National regional State has 524 kebeles, 19 districts, 2 city administrations and 19 towns in 2022. However, the region is going through Zonal restructuring at the time of the writing of this dissertation. Hawassa is the capital city of the region located in the north part of the region adjacent to Lake Hawassa. The total population of Sidaama is estimated to be over four million as of 2015.[270] Sidaama language (Sidamu *afoo*) which is Cushitic family of language is the regional state's language.[271]

Based on the 1994 census, majority of the population follows protestant religion constituting 66.8%, 14.9% practiced indigenous religion, 7.7% Islam, 4.6% Catholicism and 2.3% orthodox Christian. A more recent estimation put it as 84% of the population to be protestant while 3% of the population to be followers of traditional religion.[272]

The Sidaama regional state has its own two kinds of land tenure system known as *Utuwa* (individual land) and *dannawa* (communal land). Under these systems, land is considered as common property of members of the Sidaama *gosa* (tribe). Individual member of the *gosa* has the usufruct rights over the land.[273] The research by Meron and Tadesse also demonstrate that there is a parallel system of state and non-state adjudicatory system to settle violations of property rights in the Sidaama Zone (this will be further explored in the last chapter).[274]

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[270] Amare Yaekob*, ibid*. See also Yohanan Yokamo, 'Commentary: The SidaamaPeople, the False Marriage with Nations and Nationalities and the Need for Legal Divorce', *Addis Standard*, 2019, available on https://addisstandard.com/commentary-the-Sidaama-people-the-false-marriage-with-nations-nationalities-and-the-need-for-legal-divorce/ (accessed on 20 Sep. 2023)

[271] Netsebrak Tamene, *supra note* 265, p. 48.

[272] Ibid. See also Sidaama Zone Finance and Economic Development Office. "Sidaama zone administration socio-economic profile 2014/15." (2016) cited in Hiwot Abera Areru, Mesay Hailu Dangisso and Bernt , 'Births and Deaths in Sidaamain Southern Ethiopia: Findings from the 2018 Dale-Wonsho Health and Demographic Surveillance System (HDSS)', *Global Health Action*, Vol. 13, 2020, p. 2.

[273] Muradu Srur, *State Policy and Law in Relation to Land Alienation in Ethiopia*, PhD Thesis (unpublished), University of Warwick, 2014, p. 18, 5http://wrap.warwick.ac.uk/74132/, (accessed on 30 February 2020).,.

[274] M. Zeleke, T. Kassa and B. Mossisa, *Supra note* 48.

3.2.Socio-Political Structures of the Sidaama People

Sidaama people were part of the Cushitic and Omotic people of the Southwest Ethiopia. The Sidaama is used to refer to Cushitic Peoples of the Southwest Ethiopia in early writings. Sidaama is mentioned in early writings on Aksum Empire. But it is not referred to in the writings of 10^{th}-14^{th} centuries. The term Sidaama is used by the Oromos in the 16^{th} Century to refer to those who have a different origin than Oromo. Sidaama community lived around Dawa river before they move out to Hawassa Lake in the 16th Century.[275] At the time, it existed as a tribal unit having many kingdoms. It falls under the definition of an ethnic group as it is an organized social group with its own territory, inhabitants and language with homogenous ethnic group. Sidaama (locally known as Sidamu *afoo*) is the Cushitic language spoken in the Sidaama regional state. It has three traditional administrative structures based on seniority and patrilineal purity that are organized to govern the social relation. The administration structure is further subdivided into patrilineal sub-tribes (*Gosa*) occupying different hierarchical levels, clans and families. The tribes in the highest hierarchical level are endowed with land while those in the lowest tribe are considered to be impure and belongs in the artisanship.[276]

The Sidaama has a patrilineal social structure and patriarchal family structure. The sub-tribes (gosa) is divided into three levels.

> The Sidaama has highly stratified Sub tribes (*gosa*) are divided in to three levels. First, the *bisallo* i.e. clans, second, the *aydde*: division that consist of all descendants of one ancestor for about the three or five generations and which consists an *olla* (village). Third, *mine*; (house) the nuclear monogamous or polygamous family. Based on this social structure, there are nine sub-tribes in the Sidaama society: *Alatta, Haweela, Qeweena, Saawoola, Fagisa, Garbicho, yanase, Malga*and *Holloo*. This series of the subtribes are in descending order of hierarchy (Bahiru and others 2002).[277]

Ola (village) or *mine* (house) are the social organization for the daily life which is led by male elders. It is men and elders who have the power to make decisions for the village and for their own households. Accordingly,

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[275] Lovise Aalen, *The Politics of Ethnicity in Ethiopia: Actors, Power, and Mobilisation under Ethnic Federalism*, 2011, Brill, p. 71.

[276]Bahiru and others 2002 cited in Abebe Demewoz Mengesha, 'The Role of Sidaama Indigenous Institutions in Conflict Resolution: In the Case of Dalle Woreda, Southern Ethiopia', *American Journal of Sociological Research*, 2016; 6(1): p. 19-20.

[277] ibid. Interview with informant 10, elders and former member of land Administration Committeeat Yiregalem on 22 July 2022.

social rule and truth, referred to as *halale*, proclaimed by masculine elders is hard to challenge and is a base for forced consensus. Therefore, in the society, children and their mothers are voiceless participant who are simply occupying the lower stratum in decision making because of their age and sex status.[278]

The Sidaama is patrilineal as they count their descendants on the father's line and marriage is patrilocal where newlyweds build their home near or on the land of the husband's father.[279] Marriage is expected to be clan exogamous. Thus, it is prohibited to marry from patrilineal or matrilineal family. Polygamous marriage is tolerated, and practices though monogamous marriage accepted form of marriage with the expansion of Christianity. The husband is considered as head of the family and make the ultimate decisions on major resources such as land and livestock.[280] This social background is one of the explanations for the low economic, political, and social status of women in Sidaama.

The customary political institutions in Sidaama include *luwa* (a generational class system) and *songo* (elders' council). *Luwa* is a class or age grade system that is used to transfer leadership roles from one generation to another generation. It involves the transformation of a persons from youth to adulthood every eight years through a generational cycle. This system helps young men to transit from youth to adulthood through trainings, mentoring to political, social, economic, cultural and ritual roles in the society. This generational class system excludes women and women's roles is limited to serving food and drinks and singing and dancing during the ceremony of the transition.[281] The study by Markos (2014) concluded that this has the implication of limiting women's participation in ritual and in socio-political affairs of the community.[282] However, another study pointed that though women do not participate in the *luwa* ritual, there is ritual called *logo* where the wife of the man who is promoted in the generational class, goes through a process to purify her. This ritual is taken to promote women's participation in *luwa* by some writers.[283]

The *songo* (elders' council) is another institution for political leadership in Sidaama. The membership in the Council are based on seniority and experience. It is again men only institute.

[278] ibid.
[279] Netsebrak Tamene, *Supra note* 265, p. 49.
[280] ibid.
[281] Netsebrak Tamene, *supra note* 265, p. 59.
[282]Markos Tekle, *State-Society Relations and Traditional Modes of Governance in Ethiopia: A Case Study of Sidaama*, A PhD Dissertation Submitted to the Department of Political Science and Internation
Relations, Addis Ababa University, Addis Ababa, 2014, p. 107 cited Netsebrak Tamene, *supra note 265*, p. 60.
[283] Ambaye Ogato. Navigating and Defying Patriarchy: A Moment of Empowerment for Women. *American Journal of Sociological Research 2016, 6(3): 61-65.* Max Planck institute for Social Anthropology, Germany, p. 62 cited in Netsebrak Tamene, *supra note 265*, p. 60.

There are four levels of *Songo*: *ayidu songo*, *oollu songo*, *garote songo*, and *mootete songo*. *Oollu songo* is the lowest council that exist in each neighborhood composed of lineage or kin members. It handles minor issues that arise among family, relatives and neighbors. *Ayidu songo* is the second level of the council which resolves complicated cases that are not handled by *oollu songo*. It is composed of highly regarded elders of the community. The third level is *garote songo* or *boossote songo.* It is composed of sub-clan as its member. It deals with important matters of the clan and serves an as an appellate to *ayidu* and *oollu songos*. It has permanent meeting place, and its jurisdiction covers a larger population of the sub-clan. The fourth level of elders' council is *Mootete songo.* It is the highest clan council having very respected clan elders. It is led by *Moote orgeelo*, who is assisted by *Woma* (a leader who administers religious and cultural issues in the clan) and *Gadaana* (who also leads a *luwa*). It settles major issues such as murder and inter-clan disputes.[284]

These four levels of elders' councils do not allow women's participation. It is old men called *chimeesa* who leads it and administer its function. Women's participation is limited to organizing ceremonies and rituals during the sessions of these councils. Women present cases through their male relatives. However, in some circumstances, *Qaricho* is a woman selected based on her age, maturity and abilities. She leads women and may be allowed to present a case before the male elders representing group of women as spokesperson.[285] Though women's direct participation is limited in *Songo* (elders' council), they influence their husbands or male relatives outside of the Council's sessions through informal means such as by presenting songs that demonstrate their thinking, views, preferences, grievances or concerns with metaphor pun.[286]

As shown above both the *luwa* and *Songo* systems are decentralized and relies on consensus building decisions in the elder's councils are reached by consensus. It is "characterized by pervasive gerontocracy in which older generations have served the people for centuries in preserving the moral order."[287] According to some, the fact that the system relies on "decentralized decision-making and consensual rule, and practices far more community participation and rational discourse than the people of nation-states practice."[288]

[284] Netsebrak Tamene, *supra note 265*, p. 61-62. Interview with Elders and former member of LAC at Yergalem.
[285] Seyoum Hameso, 'The Sidaama Nation: An Introduction' in Seyoum H. and M. Hassen (eds.), *Arrested Development in Ethiopia: Essays on Underdevelopment, Democracy, and Self-determination*, 2006, p. 63.
[286] Netsebrak Tamene, *supra note* 265, p. 62.
[287] Yohanan Yokamo, 2019, Commentary: The Sidaama people, the False marriage with Nations and Nationaities and the Need for Legal Divorce, Addis Standard, available on https://addisstandard.com/commentary-the-Sidaama-people-the-false-marriage-with-nations-nationalities-and-the-need-for-legal-divorce/ (accessed on 20 Sep. 2023)
[288] Ibid.

However, this socio-political organization system is fading away and replaced by modern institutions of governance through time. Expansion of modern education, western based governance systems, urbanization, and turn from communal life to more individualistic social and political life can be the explanation for this phenomenon. I would like to conclude with the following quote that summarizes the socio-political organization of the Sidaama people.

> The Sidaama people used to have an egalitarian political administrative system known as the "*Moote*" system whereby the "*Mootichcha*" is presented to a "*Fichche*" for "*Qeexalaa*". The *Mootichcha*, assisted by his "*Ga'ro*" rules in consultation with the council of people's representatives known as the "*Songo*", a council sharing similarities to both the Gada/Chaffee council and a modern-day parliament. They are also a nation with an indigenous and unimaginably complex systems (even by the standards of postmodernism) like the *Luwaa*, the *Seeraa*, the *Woma* and the *Kotta/Shuffo* systems that both govern and keep the social, economic and spiritual equilibrium both among themselves and their neighborhood.[289]

3.3.Women's Status and Position in the Sidaama's Social and Political structure

The roles, expectations and status of men and women differ in Sidaama. The social norms lay out a gendered division of labour. Women's status and role is undervalued in the society. Women occupies the private sphere, and they are expected to carry out house chores and looking after children and elderly while men occupy the public sphere and engage in farming and livestock rearing. Furthermore, women are not allowed either to inherit or transfer land and livestock. However, they can make use of land and livestock and sale its fruits and products such as crops, eggs, milk, butter or cheese of livestock.[290]

Women's reproductive role is respected in the Sidaama community. Though women's status in the community is low, there are historical women figures who played a role out of the ordinary. One example is Queen *Fura* who arise in the 14th or 15th century as queen of Sidaama and known to be "Queen of Women" is exceptional from the history where women were subjugated for long. She ruled for seven years as queen of Sidaama. The oral history portrays her as a very fierce and intelligent woman who was able to establish matriarchal system. Accordingly,

> she was known for supporting women and she is referred as 'friend of women' (*mentubiilo*). She challenged male authority and encouraged women "to conceal their private parts,

[289] Ibid.
[290] Netsebrak Tamene, *supra note* 265, p. 64.

maintain their beauty, and keep men at bay. Beyond this, she assigned men to do menial tasks while organizing the women to join the fighting in the battle fields after her observation that men were losing battles."[291] She is also portrayed to be cruel against men. According to the oral history, she killed men, particularly bald, elderly, and short ones. She targeted old men because they were respected among the Sidaama society and could effectively confront her. The men sought the assistance of one of the older and wiser men in the society. Then, they hid him in a cave beside a river, where he served them as a secret advisor. For instance, when the Queen asked them to build a castle in the air, the wise old man advised them to ask the Queen to lay the foundations.[292]

Though women's roles are very limited in *Luwa* generational system described above, they were the glue for the system to survive through their reproductive role and their administration of households. The place of elderly women in the community is relatively high. According to some observers, "elderly women behave with self-assurance, even smoking water pipe which is regarded as the prerogative of male elders, consistent with the increase in their authority (Brøgger 1986:54)" while male elders were mainly responsible to enact customary norms, take administrative measures, and resolve disputes through mediation and enforce their decision.[293]

Despite the fact that Sidaama social structure is patrilineal and patriarchal, there are women's only institutions. One of such institution is *Yakka.Yakka* is women's only informal institution which seeks to serve as a forum where women meet and denounce domestic violence, and violation of other rights and resolves marital disputes. It also serves as forum for prayer and contributed in creating network and bond among women.[294] It involves women marching out whenever there is an attack against them which can be physical, psychological or sexual violence or there is issue that affect them. It serves as place where women speak and get public attention.[295] The fact that meetings and gatherings are not regular and are organised based on need has made it flexible which created convenience for women who are mostly busy with domestic chore. The leader of *Yakka* institution is called *Qaricho* who is selected by women for her wisdom and abilities demonstrated by her knowledge of norms, traditions and customs of the society. She is considered as role model to others, and she assist all women when they are in trouble and act as mother for the whole village. *Qaricho* have a special stick called *siqqo* which she holds during special events such as prayers,

[291] Netsebrak Tamene, *supra note* 265, p. 65.
[292] Netsebrak Tamene, *ibid*.
[293] Seyoum Hameso, *supra note* 285, p. 63.
[294] Netsebrak Tamene, *supra note 265*, p. 73-77.
[295] Netsebrak Tamene, *supra note 265*, p. 71.

weddings or funeral. When she holds this stick, she is given respect. As mentioned above, she can take any case to elders' council, *songo*. When she takes cases, she is given priority since they believe that women's grievance can be heard by God, *maggano*o.[296]

Qaricho can exist at clan, lineage or village level having hierarchical status and power. Clan level *qaricho* handles difficult cases that was not settled by lineage level *qaricho*. Lineage level *qaricho* resolves and handles those cases that arise within her lineage. Village level *qarichoh*andles village level issues.[297] Thus, the *yakka* institute and appointment of *qaricho* is decentralised similar to that *Luwa* and *Songo*. However, the functionality of this institution is declining and is replaced by government structures in recent years because of the expansion of modernism, Christianity, modern form of governance institutions, education.[298]

From a human rights perspective, Netsebrak argues that the institute of *yekka* in Sidaama regional state can be instrumental to protect women's rights from physical, sexual and psychological violence. It also serves as a means to protect the right to practice religion.[299]

Despite the existence of women's only institution to resolve violence against women and marital problem, women still face various forms of harmful traditional practices in Sidaama. These harmful practices include FGM, abduction, polygamy, widow-inheritance etc. The tradition dictates that once a girl is abducted and raped, she is forced to marry the abductor. Furthermore, women are excluded from use, control and transfer rights of land.[300] Though it is reducing from time to time, a widow is required to marry her brother-in-law (widow-inheritance) to keep his property including land within his family.

3.4.Political Structure of the SidaamaRegional State

Before delving into the administrative structure of the Sidaama Regional State, it is imperative to discuss the transition of the Sidaama Zone which was structured under SNNP to that of an autonomous regional state following a referendum in November 2019.

3.4.1. Background to the Federal Structure and Self-determination

Ethiopia follows a federal parliamentary republic state structure following the adoption of the 1994 Constitution of Ethiopia. The Federation of Ethiopia was constituted of nine regional states which

[296] Netsebrak Tamene, *id*., p. 67.
[297] Netsebrak Tamene, *id*., p. 68.
[298] Netsebrak Tamene, *id*., p. 86-92.
[299] Netsebrak Tamene, *id*, p. 98-99.
[300] Netsebrak Tamene, *id*., p. 104.

are delimited on the basis of settlement patterns, language, identity and consent of the peoples concerned. Although these nine states are formed from the more than 80 ethnic groups in the country, the delimitation followed major ethnic lines.[301] Mainly for this reason, many scholars would like to refer to Ethiopian federalism as ethnic federalism.[302]

Well-founded in the Constitution, the federal arrangement has made ethnic identity the core structure of the state machinery. Article 39 of the Constitution bestows on each nation, nationality and People an unconditional right to self-determination including the right to secession. The autonomy that arises from the right to self-determination is expressed in the rights of the Nation, Nationality and People to develop its own language, to express, to develop and to promote its culture and to preserve its history. It is also expressed in the right to a full measure of self-government in its territory through establishing institutions of government. It is also important to note that the Nations, Nationalities and Peoples within the regional states have also the right to establish, at any time, their own States.[303]

Along with the federal state structure, Ethiopia has also established a parliamentary system of government with two houses. The two houses are: the House of Peoples' Representatives, with 547 members directly elected for five years, and the House of Federation (HoF), with 108 representatives of the country's nationalities. The House of Peoples' Representative's important function is the adoption of legislation in all matters assigned by the Constitution to Federal jurisdiction.[304] Whereas, the HoF is tasked with constitutional interpretation and deciding issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession related to national self-determination.[305]

The HoF and Regional State Councils address issues of identity and the right to self-determination. Below is description of the normative framework and procedures for self-determination and statehood demands.

[301] According to Article 47 of the FDRE Constitution, the nine regional states established by the Constitution predominantly along ethnic lines are the states of Tigray, Afar, Amhara, Oromiya, Somali, Benishangul-Gumuz, Southern Nations, Nationalities and Peoples, Gambela Peoples and Harari Peoples.
[302] Christophe Van der Beken, *Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia* available on https://core.ac.uk/download/pdf/55826062.pdf (accessed on 1 June 2019)
[303] Article 47(2) of the FDRE Constitution.
[304] Article 55(1) of the FDRE Constitution.
[305] Article 62 (1&2) of the FDRE Constitution.

3.4.2. The Normative Framework for Identity Questions

As mentioned before, the FDRE Constitution recognized the rights of Nations, Nationalities and peoples to unconditional self-determination, including the right to secession.[306] This makes the FDRE Constitution unique in allowing not only internal self-determination but that of an external one.

According to the FDRE Constitution and the Proclamation adopted on the powers and functions of the HoF, a "Nation, Nationality or People" is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.[307]

The Constitution further provides that every Nations, Nationalities and People in Ethiopia has the right to self-governance. This extends to "the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.[308]

It has already been mentioned that the constitution established ethnic based federalism and the HoF is the ultimate arbiter of issues arising from the specific ethnic groups which are empowered to exercise self-determination. Accordingly, the HoF decides on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession.[309] Furthermore, Article 52 (2 (a)) of the FDRE Constitution provides that regional States establish State administration that best advances self-governance, a democratic order, rule of law and the Federal Constitution.

Article 39(4) and 47(3) of the Constitution highlight the procedural guidelines applicable to determine the right to self-determination. The procedure for secession is set under Article 39 (4) of the Constitution and Article 26 of Proclamation No. 1261/2021.[310] Furthermore, Article 47 (3) of

[306] Article 39 (1) of the FDRE Constitution.
[307] Article 39 (5) of the FDRE Constitution and Article 2 (9) of Proc. 1261/2021.
[308] Article 39 (3) of the FDRE Constitution.
[309] Article 62 (3) of the FDRE Constitution and article 24 and 26 of Proc. 1261/2021.
[310] The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:
(a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned;
(b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
(c) When the demand for secession is supported by majority vote in the referendum;
(d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and
(e) When the division of assets is effected in a manner prescribed by law.

the Constitution and Article 25 of Proclamation No. 1261/2021 also laid down the procedure for the exercise of the rights of Nation, Nationality or People for statehood.[311]

This procedure is a generalization of the specifics that involve many stakeholders in the process of determining issues of self-determination. The constitution only provides which organ of the government ensures self-governance. The specific procedure for the determination of identity issues is set in the subsequent laws and in the cases decided by the HoF. It starts with a written application to the concerned body and ends up with a referendum conducted under the auspicious of the National Electoral Board of Ethiopia. Hence, the detailed procedural rules that are applied in the process of determining self-determination are spread in much subsidiary legislation as well as in the jurisprudence of the HoF and State Councils while handling cases submitted to the respective organs.

3.4.3. The Procedural Requirements and Practice of HoF on Identity Quests

A large number of identity claims have been brought before the HoF requesting the status of a 'nationality' or 'people'. Such identity claims include the *silte, kimant, menja, kontoma, denta, welene* peoples etc. Among these cases, the *Silte* and *Kimant* cases were successful in acquiring the status they demanded while the quest for identity of *Menja*, *Kontoma, Welene and Denta* communities were denied for the reason that these claims did not fulfill the criteria and the procedure to determine identity claims.[312] There were a number of identity quest such as *Gamo, Sidaama, Gadicha, basket, Christine, Zeyese, Eizo, donga* pending before the HoF in 2019.[313]

The first case decided by the HoF in regard to identity claims is the *Silite case*. In the case, *Silite* community which was perceived to be part of *Guraghe* ethnic group demanded to have a separate self-governance in the Southern Nations, Nationalities and Peoples (SNNP) Regional State. They

[311] Article 47 (3) of the Constitution and article 25 of Proc. 1261/2021 provide that the right of any Nation, Nationality or People to form its own state is exercisable under the following procedures:
a. When the demand for statehood has been approved by a two-thirds majority of the members of the Council of the Nation, Nationality or People concerned, and the demand is presented in writing to the State Council; When the Council that received the demand has organized a referendum within one year to be held in the Nation, Nationality or People that made the demand;
b. When the demand for statehood is supported by a majority vote in the referendum.
c. When the State Council will have transferred its powers to the Nation, Nationality or People that made the demand; and
d. When the new State created by the referendum without any need for application, directly becomes a member of the Federal Democratic Republic of Ethiopia.
According to article 25 (2) of Proc. 1261/2021, if the state Council fail to organize the referendum within one year period, any party claiming statehood can appeal before the HoF in writing. The House shall make final decision on such appeal within two years.

[312] Interview with Director of Identity Issues and Constitutional Interpretation Directorate, House of Federations conducted on 17 June 2019.

[313] Interview with Registrar at the House of Federation, conducted on 17 June 2019.

claimed that they were part of *Guraghe* against their will and they want now to have their rights respected. The case was referred to the State Council and to the HoF.[314] The HoF has requested the Council of Constitutional Inquiry (CCI) for its recommendation on two issues. The issues were 'who is the pertinent body that can decide on identity claims?' and 'what is the proper procedure or methodology to deal with identity claims?'.

The CCI to which the case was referred to recommended that the applicant should first exhaust the remedy available at the regional level and should bring the case to the HoF if unsatisfied with the decision of the State Council. Accordingly, the CCI held that

> a demand for the determination of identity must be entertained by the Council of the State where the issue is raised…. . But if there is a procedural irregularity or complaint that the issue was not resolved in accordance with the constitution; or if there are similar reasons, or if the group and the state council do not agree, the case will be submitted to the House of Federation for a final decision.[315]

Following this procedure, the case was brought back to the HoF which organized a referendum. In the referendum, a large majority of the member of *Silte*'s community chose to have their own self-governance.

This case has laid down the procedural foundations to determine identity claims. In this regard, the *Silte case* identified two procedures to be followed. The first is to ensure the identity claimant ethno-national community fulfill the criteria for a distinct ethno-identity group based on article 39 (5) of the constitution. The case set forth a mechanism to ascertain the distinctive ethno-identity of the claimant in the following way.

> 'mutual intelligibility of language' to be ascertained by a thorough investigation or study conducted by the experts in the field. Similarly, the criterion 'a common culture or similar custom' is to be ascertained by a study to be conducted by independent experts in the field. Moreover, the criterion, 'inhabit an identifiable, predominantly contiguous territory similarly to be ascertained on the ground by independent experts. However, due to the subjectivity of the criterion 'belief in a common or related identities and a common

[314] The decision of the HoF on *Silte's* identity quest in House of Federation (*Silte*'s case), *Constitutional Decisions Journal*, 2000 E.C. (2007), Vol. 1 (1) p. 41- 101. See also Assefa Fisseha, 'Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)', *Mizan Law Review*, Vol. 1, No. 1, 2007, p. 22.
[315] Lahra Smith, 'Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia', *The Journal of Modern African Studies*, vol. 45, no. 4, 2007, p. 581-582.

psychological makeup' which cannot be ascertained by a thorough study, it has been decided that a referendum should be conducted to ascertain its existence.[316]

The second procedure envisaged under the case is the setting up of a referendum to be undertaken to ascertain the interest of the concerned community. This unique approach of ascertaining peoples' ethnic identity through their vote has transformed what used to be considered as social or cultural matter into a direct political competition.[317] The group itself is made the decision maker on its identity.[318] Based on the referendum made on 1 April 2001, 99% of the *Siltie* people voted for separation from *Gurghe*. The question for ballot was 'Are the *Siltie Gurghe* or not?'.[319]

The *Silte* case raised various questions. First, who is the pertinent body that determines the right to self-rule was a very challenging issue in the case.[320] It was also observed that the HoF has been reluctant to entertain identity issues since such issues involve politically sensitive questions. Lack of well-organized system at state level to resolve such kind of issues has also created difficulty and lengthy process before the final decision is reached.[321]

The second case decided by the HoF is the *Kimant* case. However, this case was decided in a different manner from the *Silte* case. The *Kimant* case was first brought before the Amhara National Regional State (ANRS). The ANRS decided that the *kimant* does not have a distinct ethnic identity since it does not have its own distinct language and independent identity which separates it from *Amhara*. The Kimant Committee brought its claim to the HoF dissatisfied with the decision of ANRS. The ANRS reviewed the case and reversed its previous decision by recognizing the *Kimant* community as a distinctive ethnic group but not entitled to self-rule. This again resulted in an appeal of the case to the HoF for the second time. This time the HoF through its Constitutional and Regional Standing Committee conducted a study with the assistance of experts. Meanwhile, the ANRS requested the HoF to settle the case amicably. The region finally recognized the distinct and independent identity of *kimant* community as a new ethnic group in the Ethiopian federation in its

[316] Mustefa Nasser, Methods of Constitutional Interpretation in Constitutional Dispute Settlement in Ethiopia, (unpublished LL.M thesis), School of Law, Addis Ababa University, 2018, p. 45.
[317] Lahra Smith, *supra note* 315, p. 566.
[318] Lahra Smith, *id.*, p. 583.
[319] Lahra Smith, *id.*, p. 582.
[320] Assefa Fiseha, 'Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)', *Mizan Law Review*, Vol. 1, No. 1 (2007), p. 22
[321] Assefa, *id.*, p. 28.

decision. *Kiman*t community gained self-rule in 42 Kebeles. However, 12 Kebeles are still contested. The HoF has already endorsed this decision.[322]

The HoF applied inconsistent procedure in the *silte* and *kimant* cases. In the *kimant* case, the HoF did not refer the case to the CCI rather a study was conducted by the Constitutional and Regional Standing Committee of the HoF. It also did not resort to referendum. The HoF has also failed to resolve the case within the two years' period set in its Proclamation. It also preferred to relinquish its mandate twice by referring back the case to the State Council without any legal ground. It was also noted that the regional government (ANRS) lacked predictable procedure which resulted three different decisions.

Other four cases (of *Menja, Kontoma, Welene and Denta)* entertained by the HoF concerning identity quests were rejected because of the failure of the claimants to fulfill the procedural requirements provided under the previous proclamation (Proc. 251/2000). These cases in particular failed to exhaust the remedy available at the state level.[323]

All the procedures in the *siltie case* are not incorporated under Proc. 251/2001 which was adopted after the *Siltie* case. However, the recent proclamation which repealed 251/2001, Proclamation No. 1261/2021, has an elaborate procedure for identity quests. Accordingly, it provides that the HoF has the power to decide on the identity quest that comes from any community or Nation, Nationality or People "who believes that its self-identities are denied, its right of self-Administration is infringed, or promotion of its culture, language and history are not respected".[324] The House may decide a research to be conducted and its resulted to be submitted to it. The HoF entertains such case if the applicant exhausts state level procedure.[325]

With this in the backdrop, the subsequent section discusses the Sidaama case and subsequent decisions on the quest for statehood that are settled after 2020 which demonstrated a departure from the two cases that was adopted in the earlier stage of federalism in Ethiopia.

3.4.4. Procedures and Practice to Determine Identity Quests Before Regional State Councils

The State Councils in each region have their own roles in resolving the quest for identity. According to the FDRE Constitution and regional state Constitutions, State organs have various

[322] Mustefa Nasser Hassen, *supra note 316*, p. 46.
[323] *Supra note* 313.
[324] Article 24 of Proclamation No. 1261/2021.
[325] Article 27 of Proclamation No. 1261/2021.

roles that include providing any solution through various organs in the administrative hierarchy of the state concerned. The state should make decisions within two years.[326]

As there are more than 80 ethnic groups which are officially recognized in Ethiopia, all these groups cannot establish their own regions for self-administration. As argued by Aalen, the self-administration of these groups is exercised by establishing zones or special Woreda administration within regional states.[327] The claims for self-determination and identity are entertained by regional Councils and HoF.

The 2001 revised constitution of the Southern Nations, Nationalities and Peoples introduced a bicameral legislature unlike to other regions.[328] The lower chamber which is the State Council is the highest legislative. It is endowed with the power to issue laws, approve social and economic programs, establish additional administrative hierarchies that best advances self-governance etc.[329] The second chamber which is the Council of Nationalities (CoN) decides on issues related to self-administration and the quest by Nations, Nationalities and Peoples for Zonehood, Special Woreda and Woreda Administration.[330] The institution of the CoN is a replica of the HoF in its power and function. However, dissimilarity is also visible in the two parallel institutions in the procedure of representation.[331]

According to the recommendations of CCI in the *Silte case*

> the 'State Council to which the case is submitted is expected to conduct research that is cognizant of the conditions under Article 39(5) and then present the case for referendum. For the referendum to be democratic and fair, the members of the group which has raised the demand must participate directly, and the process should be free and held by a secret ballot.[332]

However, regional State Councils have been reluctant to hold referendum for identity questions. For instance, in the Wolayta case which demanded to have Zonal administration having independence from North Omo administrative area (which included the Dawro-Konta, Gamo and Gofa ethnic

[326] Article 48 of the FDRE Constitution.
[327] Negussie Afesha Aytaged, 'The Ethiopian Constitutional Promises to the Nation and Nationalities: The Myth and the Operational Reality', *Bahir Dar University Journal of Law*, vol. 6, no. 2, 2016, p. 249-250.
[328] Article 48 of the Revised Constitution of the Southern Nations, Nationalities and People Regional State, 2001.
[329] Article 51 (3) of the Revised Constitution of the Southern Nations, Nationalities and People Regional State, 2001.
[330] Article 59 (3) of the Revised Constitution of the Southern Nations, Nationalities and Peoples Regional State, 2001.
[331]Misganaw Addis Moges, Practice of Self-governance in the Southern Nations, Nationalities and Peoples' Regional State: The Case of Segen Area Peoples' Zone, Center for Federal Studies (Unpublished MA Thesis), p. 43
[332] Lahra Smith, *supra note* 315, p. 582.

groups) was not decided through referendum. They claimed they have a distinct language and culture from that of North Omo ethnic groups. At first the regional government argued its culture is not distinguishable from the other groups. However, later it recognized the zonal status of Wolayta without holding referendum.[333]

In case of the demand to statehood, the Council of Nationalities of the SNNP has been reluctant to decide. In the case of Sidaama nation, there was a request to separate itself from the SNNPRS and establish an independent region in 2005. Though the Council of nationalities was of the view that this is a constitutional right, it was not successful because of the intervention of the ruling party which stopped the process. The ruling party at the time did not want to accept such case because of the fear that other claims also arise from other ethnic groups.[334]

Similar identity claims have arisen in other regions. In Benshangul, the Berta ethnic group demanded for self-administration that can help them develop their culture and language pursuant to the Constitution in 2000 after their disagreement with Gumuzin regard to ascendancy to and division of power between the two ethnic groups. However, this claim was not entertained at the regional council level and HoF. Their demand was rejected by the Regional Council and HoF. The approach followed by the HoF was to mediate the Berat and Gumuzin regard to division of power in the region.[335]

The discussion above demonstrates that there was no clear-cut procedure for identity issues at regional level. Most of the decisions are politically driven than based upon constitutionally set rules and procedures. Lack of consistency in the decisions passed and the important role the ruling party (EPDRF) has been playing in providing direction in the identity claims resulted the identity issues to be politicized and resulted in conflict in some parts of the country.

The recently adopted law (Proclamation No. 1261/2021) has tried to clarify the procedure before the state council. Accordingly, upon the acceptance of the quest for statehood by two-thirds majority of the State Council of the requesting Nation, Nationality and People, a referendum is held

[333] Lovise Aalen, Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia, *International Journal on Minority and Group Rights*, vol. 13, no. 2/3, 2006, p. 258-259.
[334] Negussie Afesha Aytaged, *supra note* 327, p. 244.
[335] Negussie Afesha Aytaged, *supra note* 327, p. 245-246.

within a year.[336] If the state is unable to make decision within two years or the applicant is dissatisfied with the decision, he/she can refer the case to the HoF.[337]

3.4.5. Sidaama Zone's Transition to Regional State

After the EPDRF came to power in 1991, Sidaama nation was given autonomous self-administration by incorporating Gedeo and Burji for a brief period. However, it was later amalgamated with other fifty-five nationals and nationalities that constituted the SNNP and became a Zonal administration with 11 woredas. The SNNP was created by bringing various nations and nationalities without consultation of the people in the region.[338] This has pushed for a demand to arise in the region for self-governance and statehood structure.

The Sidaama quest for autonomy goes a long way starting from the imperial period. Sidaama is distigushable from other ethnic groups in the South by its language, social and political system based on age, and with its own land where it has been settling in since the sixteenth century.[339] This makes the Sidaama nation to qualify the requirements of article 39 (10) of the FDRE Constitution discussed above. The struggle for autonomy started during the Derg regime with theestablishment of the SidaamaLiberation Movement (SLM). The struggle became much stronger by opposing villagization program of the *Derg* and farmers being compelled to sale coffee through cooperatives rather than on open market. SLM was forced to moveout of Sidama and exile in Somalia and its tactic has been hit and run until the Derg regime falls in 1991. This was followed by an autonomous Sidaama in 1991 for a short time but later incorporated into SNNP until 2020. Because of the amalgamation of Sidaama into SNNP in 2005, SLM was left the transitional government and continued to function as an opposing party whose members faced imprisonment during EPDRF.[340] The merger of nations under one region was justified for two reasons. One is that the region shares cultural and social background which makes it convenient to administer it under a single region. The second reason is that the merger under one region facilitates the creation of "larger political units" of Sidama which enables smaller nations to access resources and power. Based on this ground, the *Hadicho* clan of Sidaama and communities involved in pottery, smithing, and tanning, which are small and marginalized clan and community, was in support of the merger with a view that the discrimination they face within Sidaama and the hierarchical clan system will reduce in the

[336] Article 25 of Proclamation No. 1261/2021.
[337] Article 27 of Proc. No. 1261/2021.
[338] Yohanan Yokamo, Commentary: The SidaamaPeople, the False Marriage with Nations and Nationalities and the Need for Legal Divorce, Addis Standard, 2019, available on https://addisstandard.com/commentary-the-Sidaama-people-the-false-marriage-with-nations-nationalities-and-the-need-for-legal-divorce/ (accessed on 20 Sep. 2023)
[339] Lovise Aalen, 'Ethiopia: The Interplay Between Federalism and Dominant Partyt Rule and Sidaama's Quest for Statehood', *International Journal on Minority and Group Rights*, Vol. 28, 2021, p. 977.
[340] Lovise Aalen, id., p. 978.

larger political unit. From a political perspective, EPDRF wanted the merger to consolidate its power.[341] The demand for statehood later in 2000s gain acceptance even among Sidaama politicians within the ruling party who had the view that Sidaama is losing power within the SNNP regional administration. Thus, the request for statehood was endorsed before the zonal administration of Sidaama and regional council in 2005. However, the Centralized system of the ruling party did not allow to proceed with the referendum arguing that this will affect the development of the region negatively and will result several of other nations and nationalities amalgamated under SNNP to follow suit which would become difficult to handle. This keeps the Sidaama quest for statehood to lurk below the surface for some time which reemerged in 2018 when the centralized party system cracks down from within EPDRF.[342] This demand for statehood was again endorsed with unanimous vote by the Sidaama Zone Council and the regional council in July 2018 for the second time after the 2005 request.[343] The government took some time to respond to the demand which has led to the rise of youth movement called *Ejetto* demanding the government to respond or else it will declare statehood without following the proper channel of referendum. This later resulted in protest and violence which brough the loss of life and arrests in Hawassa and its surroundings in July 2019 resulting in the declaration of state of emergency.[344] During the protest, Sidaama women also organized a march through their *Yekka* institute by holding fresh green leave and the stick called *siqqo* as demonstrated in the picture below.

Pic.2: The GaadoFurra march of April 2019

Source: Ethiopia insight[345]

[341] Lovise Aalen, *id*., p. 979.
[342] Lovise Aalen, *id*., p. 980.
[343] Yohanan Yokamo, *supra note* 338.
[344] Lovise Aalen, *supra note* 339, p. 980.
[345]Maya Misikir, Sidaama's Statehood Quest, Beyond Recognition,*Ethiopia Insight,* 2021 available on https://www.ethiopia-insight.com/2021/06/17/Sidaamas-statehood-quest-beyond-recognition/ (Accessed on 27 Sep. 2022)

Finally, on 20 November 2019, the referendum took place which was administered by the National Electoral Board of Ethiopia resulting in 98.5% of votes in favor of statehood. On 18 June 2020, power transfer was made from SNNP regional sate to Sidaama Regional State. The establishment of the regional state has resulted for the region to receive direct budget from the federal government.[346] The establishment of the regional state brought peace in Sidaama though the economy has been affected because of business has moved out of Hawassa after the unrest before the referendum. Furthermore, non-Sidaama has complained for lack of opportunity such as jobs since the regional state gives priority to Sidaama speaking individuals to fill government positions.[347] Though political positions have been given from oppositions such as SLM (which has merged with Prosperity Party of the ruling Party),[348] issues related to good governance, corruption and favoritisms has also started surfacing recently with the imprisonment of Hawassa mayor and others. This demonstrates that self-rule by itself may not transition to good governance unless such measure is supported other related measures to bring democratization and good governance.

The creation of Sidaama Regional State has resulted in the country to have more than the nine regional states recognized under article 47 (1) of the FDRE Constitution. Whether this should lead to constitutional amendment or not is still a controversial issue. Some argued that there is a need to amend the constitution by including the new regional states. However, this entails complying with constitutional amendment procedure which is cumbersome since it requires the consent of all regional states. Some argue that Article 47 (3 (e)) of the Constitution is clear by stating that "the new State created by the referendum without any need for application, directly becomes a member of the Federal Democratic Republic of Ethiopia." The SNNP Council adopted the later argument in its interpretation of the constitution in its motion No. 13/2019. It provided that upon a decision through the referendum and NEBE announcement of the result of the referendum, Sidaama becomes a regional state if it acquired a vote for it.[349]

The other controversial issue was related to the status of Hawassa which was the capital city of SNNP. It was agreed that the city can serve as capital city for both region during transition period for ten years after the referendum until the SNNP relocate its capital city.[350]

[346] Ibid.
[347] ibid.
[348] Maya Misikir, ibid.
[349] Kjetil Tronvoll, FilataBoroje and KairedinTezera, 'The Sidaama's Quest for Self-Rule: A Study of the Referendum on the regional Statehood', *European Institute of Peace*, 2020, p. 29-30.
[350] Lovise Aalen, *supra note 339*, p. 982.

The quest for statehood in SNNP did not end up with Sidaama. Several other Zones and special Woreda's such as Kaffa, Gurage, Bench-Maji, Hadiya, Dawro, Gamo, Wolayta, West Omo, Kembata-Tembaro, Gofa, South Omo and Gedeo has been demanding statehood and submitted their request to SNNP Regional State Council in 2018. After the referendum for Sidaama regional state took place, several requests for statehood mushroom. These requests were handled through the House of Federation which came up with its own recommendations. However, a 'scientific study' was conducted in July 2019 which came up with three options. Accordingly, it provided "1) leaving the SNNPR as it was; 2) dividing it in two (Sidaama state and the rest); and 3) freezing all demands for statehood indefinitely." However, it concluded that there is no consensus on these options among the population. Later, the regional and federal government decided to establish four regional states that includes the Sidaama regional State in SNNP based on a referendum that determine the various zones and special woredas wants to stay in the SNNP or establish their own regional state. After a referendum is conducted, two additional states are established which are the Southwest Ethiopia peoples' State (includes Kaffa, Sheka, Bench Sheko, Dawro, West Omo Zones, and Konta Special Woreda), and South Ethiopia Peoples State (includes Wolayta, Gamo, Gofa, South Omo, Gedeo and Konso – and special woredas – Derashe, Amaro, Burji, Basketo and Ale). The remaining part of SNNP is clusted by the House of federation based on their consent as Central Ethiopia State including Hadiya, Halaba, Kembata-Tembaro, Gurage, and Siltie zones and Yem Special Woreda. However, Gurage has opposed this arrangement though some of its Woredas such as Mareko, Qebena, Mesqan and Misraq Mesqan – and Butajira municipality has decided to join the Central Ethiopia State. Whether part of Gurage will join the new state or not will entail constitutional challenge and it remains undecided at the writing of this dissertation. Wolayta has also demanded to have a separate state at first though it later forced to join South Ethiopia peoples State.[351]

The establishment of these regional states is expected to ensure their rights to self-determination in handling their own resources and use their own capacity for their own advantage. The self-rule will endow them with their own state council to enact laws, to organize their own regional executive and judiciary organs. They can administer land and other resources. Furthermore, elite of these regions will enjoy more political power, access jobs, and administer regional budgets and federal subsidies.[352]

[351] Chalachew Tadess, 'Referendum in Ethiopia's Southern Region', *Brief paper*, 2023 available on https://riftvalley.net/sites/default/files/publicationdocuments/RVI%202023.03.21%20Referendum%20in%20Ethiopia%27s%20Southern%20Region.pdf (accessed on 27 December 2023.

[352] ChalachewTadess, ibid.

Chapter Summary

This chapter analyzed the demographic, socio-political and economic background of the study sites. In doing so, it discusses the customary norms, procedures and structures of Sidaama regional State. It also analyzed women's status and position in the socio-political and economic context of the region. It analyses the place of women in the unique political and social structure of Sidaama and how these have affected women's land rights in Sidaama.

The discussion has demonstrated that women's land rights are affected by gender and class-based structures that are grounded in historical and political realities.Accordingly, the patrilocal marriage system and patrilineage inheritance system in the Sidaama Regional State has excluded women from access, controlling and using land. The age-based customary system for the administration of the society and dispute resolution is also dominated by elderly men. However, women only institutions called *Yekka* institutions situations enable women to network and discuss their own marital and social matters. These kind of safe spaces for women are very important to protect themselves and to have a space to discuss their own matters.

As discussed under this Chapter, the Sidaama regional with its own social, political, and economic structure has impacted women in different ways. The gendered social norms have excluded women from accessing important resources including land. The subsequent chapters (chapter 7 and 8) rely of these historical, social, political and economic contexts in analyzing rural women's land rights in the Sidaama regional state.

The Chapter has also described the political structure of the Sidaama regional state as a basis for the discussion in the subsequent section. Accordingly, the Sidaama regional state gained its autonomy through political contestation. The road to its autonomy resulted in turmoil that costed life. However, the political and institutionalized responses to its identify quest in 2018 has brought its establishment as a regional state. This autonomous structure has enabled it to adopt its own regional laws and institutions which are discussed under chapter five.

Chapter Four: International and Regional Normative Framework and the Jurisprudence on Rural Women's Land Rights

Introduction

This chapter analyses the international and regional normative frameworks that deal with rural women's land rights. The international human rights framework which developed under the auspices of the United Nations (UN) and regional human rights bodies (African Union (AU), Council of Europe (CoE) and Organization of American States (OAS) has evolved to great extent since 1945. It has played a role in human rights norm and standard setting. The international community which used to consider human rights as a matter of internal affairs before 1945, progressed to a great extent and has laid down human rights norms on civil and political rights and economic, social, and cultural rights and on third generation rights (such as environmental rights, right to development, right to peace) in the various human rights instruments that developed afterward. The instruments that developed have evolved over time in terms of scope and contents. Though the trend was to set general rules at the beginning which are categorized as civil and political rights on the one hand and economic, social, and cultural rights on the other hand, the developments since the 1980s demonstrate that specific international conventions on thematic issues such women's rights, children's rights, the rights of persons with disability have developed as a standalone standards/instrument. The interdependence and interrelatedness of human rights are also affirmed in the Vienna conference on human rights in 1993. The human rights instruments developed at the UN and regional levels not only set normative frameworks on specific rights but also lays out the institutional framework to enforce those rights.[353] Though the international human rights mechanism has become successful in standard setting, a lot remains in enforcing these rights. The enforcement of these normative frameworks is left for domestic laws, institutions, and mechanisms. The institutional framework for the enforcement of rights in the various conventions is weak and depends on the voluntary acceptance by states.

This part of the dissertation elucidates the contents and implications of the international normative framework, both the UN and regional human rights mechanisms, in the protection of rural women's rights to land. By analyzing the various provisions that directly or indirectly relate to women's land rights, it lays down the state obligations in the protection of women's rights to land. The international human rights framework not only sets the normative framework to protect women's

[353] The UN human rights system is divided into two: Charter based system and treaty-based system. The Charter based system is established based on the UN Charter, and it comprises of the Human Rights Council. The treaty-based mechanism of the UN is created based on the core human rights treaties. See Sezanne Egan, *The United Nations Human Rights Treaty System: Law and Procedure*, 2011, Bloomsbury Professional.

land rights, it also prescribes the institutional and procedural framework for the implementation or enforcement of these rights. The jurisprudence from regional and UN human rights treaty bodies or human rights mechanisms that oversee the enforcement of the human rights treaties is also discussed under this chapter.[354] This chapter also tries to analyze the philosophical foundations behind norms that protect property rights, land rights and women's land rights.

The chapter finds that the human right to land is an emerging right which got explicit recognition recently only for specific groups of right-holders. Though the various international jurisprudence has shown the importance of land rights in relation to other human rights, there is a lack of a binding instrument on the rights to land. However, the right to land in relation to women and indigenous peoples is recognized in binding instruments as will be discussed in this chapter. The chapter elucidates the place of rural women's land rights in the global human rights agenda and provides the basis to the arguments in the subsequent chapters that discusses the responses to these rights at the local levels in relation to the formalization of women's land rights and access to justice in a plural justice system.

This chapter is organized as follows: The first section questions the existence of land rights as part of the human rights norms and elucidate the relevance of designating land rights as human rights, the content and elements of land rights, and the link between land rights and other human rights. The third section discusses the two models of land rights: the market-based model and the human rights-based model. The fourth section elaborates the normative and institutional framework to protect rural women's rights under international law by zooming in rural women's land rights under international and regional human rights frameworks.

4.1. Land Rights as Human Rights: Questioning its Existence

Before dealing into the various normative frameworks on women's land rights, it is important to address the question of whether land rights are recognized as a human right at an international level. It is important to raise this question because of the lack of any explicit provision under the core international human rights framework that recognizes land right. Most of the existing instruments and interpretation (as will be discussed in the next section) recognized land rights in connection with other rights such as the right to housing, food, water, health, work, freedom of opinion and

[354]The sources of international law are conventions, customary international law, general principles of international law, writings of publicists and judicial decisions of (article 38 of the Statue of International Court of Justice). Customary international law is a law that is inferred from state practice and *openio Juris* (state intention to be bound by the practice). This can be gathered from domestic laws, state statement during press statements, diplomatic correspondence, and other government statements of policy, opinions of legal advisers, official manuals on legal questions etc.
The jurisprudence of the regional and UN human rights treaty bodies can be emanated from general comments, decisions of international bodies, and general comments.

expression, and self-determination, as well as the right to participate in public affairs and cultural life.[355] This indicate that land right is provided as a means to achieve other rights not as a right on its own.

Land rights are expected to be subsumed within the protection given to property rights.[356] However, among the earlier UN human rights normative frameworks, only the 1948 Universal Declaration on Human Rights (UDHR), which is a non-binding instrument, recognized the right to property.[357] The two covenants, the Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social and Cultural Rights (CESCR) adopted in 1966, do not have any provision on the property rights in general or land rights in particular. Although some Western countries proposed a provision on property rights,[358] all the proposals to have a binding provision on property rights were rejected because of lack of consensus on the issue of land expropriation and compensation.[359] In addition, the ideological split between the capitalist states led by the USA and socialist states led by the USSR on the issue of property rights has resulted in no censuses during the drafting process of the

[355] Narula, Smita, *supra note* 4, p. 132.

[356] "According to Sofia Monsalve of the FIAN International Secretariat, in thinking about land rights, a distinction must be made between two very different groups of rights: "One group are the property rights, i.e. the rights protecting the interests of the owners, mainly landowners. The other group are the rights to property, i.e. the right to have land for those who have not got land, who do not have enough land or whose ownership of land is not protected". See, Jennifer C. Franco A, *supra note* 113, p. 19.

[357] Article 17 of UDHR provides that "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

[358] The USA pushed for the incorporation of a draft provision based on Article 17 of UDHR. The proposed provision by the USA envisaged for the recognition of property rights along the rights to life and liberty. It reads as 'No one shall be deprived of his life, liberty, or property, without due process of law.' Similarly, France proposed the following provision:

The states parties to this Covenant undertake to respect the right of everyone to own property alone as well as in association with others. This right shall be subject to the laws of the country in which the property owned is situated. Expropriation may not take place except in cases of public necessity or utility in circumstances defined by law and subject to fair compensation. See UN Doc.E/CN.4/L.313 and UN Doc.E/CN.4/L.66 as cited in Belachew Mekuria, Human Rights Approach to Land Rights in Ethiopia, p. 46-47.

[359] Craven Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A perspective on its Development', Clarendon Press*, 1995, page 25; See also H. J., Steiner & P. Alston, *International Human Rights in Context: Law, Politics and Morals*, 2nd ed., 2000, Oxford, page 246

The drafters of UDHR and the two covenants agreed that "a right to own property should be protected, and also that the ownership of private property is limited by the rights of other people, the public interest, and the State. Going beyond this simple consensus raised several questions. If the right to own property is a human right that should be protected, for what purposes should the property be expropriated and what compensation should be paid? If the human right to own property is limited, is there a minimum limit of property that is essential for a certain standard of living? And is there a maximum limit of property above which the right to own property should not be considered as a human right? There was some support for limiting the right to own property to that needed for a livelihood, but the proposals put forward were considered to be too difficult to define, subjective, and open to different interpretations"

See Drafting Committee, First Session, 8th meeting, 17 June 1947 (E/CN.4/AC.1/SR.8), 13th meeting, 20 June 1947 (E/CN.4/AC.1/SR13); Report to the Commission on Human Rights, Annex F, 1st July 1947 E/ CN.4/21). General Assembly, Third Committee, 126th meeting, 8 November 1948. Commission on Human Rights, Second Session, 2 to 17 December 1947 (document E/600); Sixth Session, 27 March to 19 May 1950 (A/CN.4/507); Seventh Session, 16 April to 19 May 1951; Eighth Session, 14 April to 14 June 1952; Tenth Session, 23 February to 16 April 1954 (E/CN.4/705); Annotations on the text of the draft International Covenants on Human Rights, 1 July 1955 (A2929). Cited in David Palmer Mika-Petteri Törhönen Paul Munro-Faure Anni Arial, 'Fostering A New Global Consensus: The Voluntary Guidelines on the Governance of Tenure', *Land Tenure Journal*, 2012, p. 26.

two covenants.[360] While the Western countries (capitalist states) desired the protection of property rights under international human rights treaties, Eastern countries (socialist countries) wanted national laws to determine the regulation of means of production such as ownership of industrial, commercial or other profit- making enterprise and the acquisition and use of private property.[361] This view – the view that protection of property rights are a national matter- was supported by newly independent states at the time because they sought to protect their sovereignty and the right to self-determination.[362]

The division between the West and East on the issue of whether property rights should be governed by international law or national law has disappeared subsequently. Subsequent UN human rights instruments such as CEDAW and CERD prohibited discriminatory practices in relation to property rights.[363] The international jurisprudence on property rights has also developed through its adjudication of cases before regional human rights treaty bodies.[364] However, none of the core UN human rights instruments provided a stand-alone provision that protect property rights in similar manner to that of UDHR.

Contrary to the status of property rights under the UN level human rights instruments, regional level Human rights frameworks recognize property rights. The European human rights framework of 1952 recognized the right to property as "Every natural or legal person is entitled to the peaceful enjoyment of his possessions."[365]Even this provision adopted by the Western states, which support private property rights, only provided protection to a "peaceful enjoyment" of possession. This is a weak protection considering that it failed to provide protection to private ownership rights.[366]

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[360]Jacob Mchangama, 'The Right to Property in Global Human Rights Law', *Cato Policy Report*, Vol. XXXIII No. 3, 2011, p. 5.
[361] Jacob Mchangama, ibid.
[362] José E. Alvarez, 'The Human Right of Property', 72 *U. Miami Law Review* 580 (2018) Available at: https://repository.law.miami.edu/umlr/vol72/iss3/3, p. 585.
[363]Article 5 (d) (v) and (vi) of CERD and Article 15 (2) and 16 (1) (C) and (h) of CEDAW. Article 5 (d) (v) and (vi) of CERD provides that "States undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, in the enjoyment of the right to own property alone as well as in association with others, the right to inherit and the right to housing." Article 15 (2) and 16 (1) (C) and (h) of CEDAW provides that "States shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. States shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In this context, States shall ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property."
[364] European Court of Human Rights, Inter-American court of Human Rights and African Commission on Human Rights have made a number of decisions related to property rights. See José E. Alvarez, *supra note* 362, p. 606.
[365] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III.1952, Art 1.
[366] Jacob Mchangama, 2011, The Right to Property in Global Human Rights Law, Cato Policy Report, Vol. XXXIII No. 3, p. 5.

Likewise, the inter-American human rights framework has also provided the right of use and enjoy property rights. It provides that "no one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law."[367]

The African human rights framework also recognized the right to property under Article 14 of African Charter of Human and Peoples' Rights which was adopted in 1981. It provides:

> The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate law.

Though the regional human rights frameworks are one step ahead of the UN based human rights instruments in incorporating provisions on property rights, one can observe that these provisions at the regional levels have a claw back clause that allow national laws to limit property right for public interest purpose.

The recognition of property rights as a human right under the regional instruments can be a basis to argue that land rights which are part of property rights are also human rights. The manner in which property rights are recognized has an implication on the recognition and protection given to land rights.[368] Though the recognition of land rights as human rights is implicit in the recognition of property rights as human rights, its specific recognition is important for it to be enforceable on its own.

The issue of whether land rights are human rights requires a look into relevant provisions of the core international human rights instruments. When we look into the existence of a specific provision that protect land rights in particular, there is a lack of an explicit provision for land rights.[369] Land right is not explicitly codified in the legally binding UN human rights instruments. However, various land rights movements in countries such as India, South Africa, Brazil, Mexico, Malaysia, Indonesia, the Philippines, and many other countries demanded the human rights to land.[370] In particular, the social movement called *La Via Campesina* demanded the recognition of a human right to land with a particular emphasis to the rights of peasants. The movement resulted in

[367] American Convention on Human Rights, adopted on November 22, 1969, 9 I.L.M. 673 (1970), Art. 21.
[368] UNOHCHR, *supra note 5*, p. 55.
[369] Narula, S., *supra note* 4, p. 136. See also Jeremie Gilbert, Land Rights as Human Rights: The Case for a Specific Right to Land, SUR - *International Journal on Human Rights*, 2013, p. 118.
[370] Jeremie Gilbert, *id*., p. 116.

the establishment of the largest transnational social movement by creating a network of peasant organizations at the global level. Because of their vulnerability, peasants worldwide face discrimination and human rights violation as a result of lack of any specific instrument dealing with their situation. They are not protected under any of the International Labor Organization (ILO) Conventions. In 2008, the movement has adopted a Declaration on the Rights of Peasants – women and men.[371] This later was adopted a declaration by the UN Human Rights Council in 2018 as United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

The Declaration recognizes that land rights of peasants as human rights. To this effect, Article 12 (5) provides that:

> States shall provide peasants and other people working in rural areas with effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating their human rights, arbitrarily dispossessing them of their land and natural resources or of depriving them of their means of subsistence and integrity, and for any form of forced sedentarization or population displacement.

Article 17 also provides that "Peasants and other people living in rural areas have the right to land, individually and/or collectively".

We find land rights provided as a substantive human right in relation to equality between women and men as well as the rights of indigenous peoples and their relationship with their ancestral lands or territories.[372] In relation to indigenous peoples, access to land as a land right is recognized as part of the spiritual, cultural and social identity of indigenous people under International Labor Organization (ILO) Convention 169.

Thus, one can argue that land rights are not explicitly recognized under a binding instrument as a stand-alone human right. However, the analysis under section 2.2.2 shows that land rights have been recognized under the various human rights instruments and their interpretation as an emerging human right.

[371] Geneva Academy, Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Academy In-Brief No. 5, P.7
[372]CEDAW and ILO Convention 169.

4.1.1. The Relevance of Designating Land Rights as Human Rights

Human rights are universal, interrelated, interdependent and indivisible rights. These rights are recognized and guaranteed under international human rights law. International human rights law lays down obligations of states to respect, protect and fulfill a set of human rights through binding treaties and conventions. States that ratify these treaties are duty bound by the obligations within these treaties unless they have provided a reservation based on the Vienna Convention on the Law of Treaties (1969).[373] These human rights laws are evolving through time through their interpretation by treaty bodies that monitor the implementation of treaty obligations.

It is important to determine whether land rights are human rights or not for various reasons. The designation of land rights as human rights will bring accountability on states if they fail to respect, protect, or fulfil such a right. The accountability mechanisms for human rights such as the requirement of states to make reports on the implementation of the right and a potential state liability through individual complaint mechanisms and inquiry mechanisms upon ratification of treaties or protocols that establishes these mechanisms is an important mechanism established at the UN and regional level. Government obligations under Sustainable Development Goals and other soft instruments can also serve as instruments to scrutinize government action towards fulfilling its goals such as securing land tenure, reduction of poverty, gender equality etc.

Furthermore, the prevailing discourse redefines land as a globalized economic and financial asset rather than as a local asset that determines social relation. This discourse underlines that commercial land and agribusiness investment are important forms of land acquisitions. It prevails over the commodification of land. Securing land or land tenure in some cases understood in the Western form of private property which gives exclusive right to alienate land. The land is secured to make it transferable or commodified in the market. In this sense, land tenure might promote transferability of the land to investors. Though usually land tenure system is promoted in order to ensure protection of land rights, in a system that promote private property rights, it might affect the most marginalized members of the society by facilitating the transfer of land to the most 'productive' and 'efficient' user through the market system.[374] In such situation, land tenure increase tenure insecurity and make the marginalized members of the society vulnerable to market pressure. However, if a land is recognized as a human right, the human rights of marginalized members will

[373] The Vienna Convention on the Law of Treaties (1969 and 1986)) provides that state can enter reservations on the provision of any treaty upon ratification of a treaty which does not go against the purpose and sprite of the treaty.
[374] FIAN International, 'The Human Rights to Land', *Position Paper*, 2017, p. 13

be protected. Thus, human rights to land can be useful to challenge the discourse that land is a globalized economic and financial asset. It rather sees land as

> a common good which communities and people access, control, manage and use in many different forms, in order to live a dignified life, according to their social and cultural context. As such, it recognizes, protects and guarantees a variety of tenure systems and tenure rights, seeking to democratize them wherever they are discriminatory.[375]

The human rights framework can, thus, help to mitigate the impact of free market in reinforcing inequality in resource distribution and exacerbating poverty.

4.1.2. Content and Elements of Land Rights

Land rights are usually associated with land laws. In such contexts, land rights refer to the "rights to use, control, and transfer a parcel of land" as discussed under chapter two. It includes rights to: "occupy, enjoy and use land and resources; restrict or exclude others from land; transfer, sell, purchase, grant or loan; inherit and bequeath; develop or improve; rent or sublet; and benefit from improved land values or rental income."[376]

However, under international human rights law, the content and elements of land rights is associated with state obligation i.e. duty to respect, protect, and fulfill land rights.

The duty to respect land rights relates to the state duty to "refrain from interfering directly or indirectly with the enjoyment" of land rights. The state is required to refrain from exercising forced eviction that impairs existing rights on land. The state should also take actions that respect the right to land such as defining the concept of public purpose in case of expropriation, recognizing customary rights to land, and establishing tenure systems by adopting laws or revising existing laws.[377]

The duty to protect requires the state to prevent any third-party interference in the enjoyment of land rights. Such kind of interference might be exercised by "individuals, groups, corporations and other entities as well as agents acting under their authority."[378] This duty requires the state to adopt laws that criminalize and restrain the actions of third parties that interfere in enjoyment of land rights such as forced eviction, dispossession of land and encroachment of customary rights such as

[375] FIAN International, *supra note* 3746, p. 15.
[376] Jeremie Gilbert, *supra note* 369, p. 115.
[377] FIAN International, *supra note* 374, p. 27.
[378] FIAN International, *id.*, p. 27.

grazing, usage rights. It is also expected to ensure the enforcement of such laws in a non-discriminatory way.[379]

The duty to fulfill requires states "to provide and facilitate secured and sustainable access to, use of and control over land and other natural resources for individuals and groups who have no or insufficient access to these resources but depend on them to realize their human rights."[380] The state is expected to implement agrarian reform to ensure equitable distribution of land to marginalized individuals such as women, to support customary and collective tenures of land and establish a system to restitute land to marginalized individuals whose land is unlawfully and arbitrarily taken.[381]

Laws governing the right to land are expected to be implemented in a transparent, participatory and inclusive manner.

The human rights framework to land rights does not promote one form of ownership. It recognizes many forms of ownership including communal, customary, state and private ownership of land. Whatever the forms of ownership to land, it intends to protect individuals' rights to access, control and use land.[382]

4.1.3. The Link Between Land Rights and Other Human Rights

The existing human rights framework does not have any explicit provision that provides for the substantive content of the right to land. However, the human rights jurisprudence demonstrates that land rights are linked to various forms of rights as human rights are interrelated and interdependent rights.

This interrelatedness has brought land rights to relate to many human rights. Access to land affects the realization of many other human rights. Most of the economic, social, and cultural rights are linked to accessibility of land. Securing land rights will lead to the realization of housing rights, right to water, the right to food, right to health, the right to take part in cultural life, the right to self-determination, the right to engage in gainful activities and the right of women. This is elaborated through interpretation of treaty provisions by the various human rights treaty bodies and charter-

[379] FIAN International, *id.*, p. 28.
[380] FIAN International, *id*., p. 28.
[381] FIAN International, id., p. 28.
[382] FIAN International, id., p. 25.

based mechanisms/special rapporteur in their general comments/recommendation.[383] Though general comments/recommendation are not binding; they are important instrument that help rights to evolve in response to changing circumstances through time. They play an immense role as soft laws by providing guidance in the interpretation of treaty provisions and their application by providing specific steps state should take to implement treaty obligation. According to Philip Alston, General Comments are

> a means by which a UN human rights expert committee distils its considered views on an issue which arises out of the provisions of the treaty whose implementation it supervises and presents those views in the context of a formal statement of its understanding to which it attaches major importance. In essence the aim is to spell out and make more accessible the "jurisprudence" emerging from its work.[384]

According to Otto, general comments carry 'enormous political and moral weight' now than in the past. They are considered as quasi-judicial and have a normative and prescriptive status.[385] General comments by treaty bodies have gradually become important guidance and elaborations of treaty provisions.

In addition to general comments developed by treaty bodies, special procedure mechanisms of the UN Human Rights Council and regional human rights bodies also play an important role in elaborating rights through their interpretation of these rights in their thematic and country mandates. Below is a discussion on the linkage between land rights and other human rights based on elaboration of international instruments, general comments, and other sources of international law.

Linkage between the right to food and land rights

The right to food requires states to ensure that individuals, either "alone or in community with others, have physical and economic access at all times to adequate food or means for its

[383] The link between economic, social and cultural rights and land rights are elaborated through the general comments of the UN Committee on Economic, Social and Cultural Rights (CESCR), the body authorized to interpret and monitor implementation of the ICESCR. These CESCR's interpretive general comments includes the General Comments (GC) No. 4 on the right to adequate housing, No. 7 on forced evictions, No. 12 on the right to adequate food, No. 14 on the right to the highest attainable standard of health, No. 15 on the right to water, No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights and No. 21 on the right to take part in cultural life. See FIAN International, *id.*, p. 20.

[384] Alston P (2001) 'The Historical Origins of the Concept of "General Comments" in Human Rights Law.' In Boisson de Chazournes L and Gowland DV (eds) The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab. Springer p. 775.

[385] Dianne Otto, '"Gender Comment": Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?' 14 *Canadian Journal of Women and the Law* 1, 2002, p. 11.

procurement."[386] States are expected to take measures to respect, protect, and fulfill this right.[387] The UN Committee on Economic, Social and Cultural Rights (ESCR Committee) argues that state must "refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves". Furthermore, the Special Rapporteur provides that tenure security is a necessary condition to respect the right to food.[388] The rapporteur, in his report argues that access to land is the key to eradicate hunger. In many countries, there are farmers who are landless or do not have secured tenure or have a small plot of land that does not allow them to produce food that is enough to protect themselves from hunger.[389] He also emphasized that eviction from land which is the primary means of livelihood violates the rights to food.[390]

In this relation, the Special Rapporteur recommends that states ensure formal legal land titling in recognition of the use and ownership rights, and customary and collective rights. It also requires states to protect individuals from arbitrary eviction by adopting a law to that effect and providing land expropriation procedure.[391]

In the past, the lack of legal interpretation of the right to food in relation to land has left room to justify eviction of peoples from their land when they do not have a formalized land right. One of the reasons for such action was that these individuals are not using the land in a sufficient, efficient, and sustainable way. The thinking was that their right to food can be realized by creating job opportunities for them that will bring them income. However, this has not often been realized because of the weakness of the economy to create jobs to all. Thus, the issue that people are better off if they "feed themselves through direct cultivation of lands or through an income and food distribution system" was later recognized.[392]

States are also expected to take a proactive role to fulfil the right to food. The Special Rapporteur notes that this "could mean improving employment prospects, by introducing an agrarian reform

[386]Committee on Economic, Social and Cultural rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12 (Twentieth session, 1999) on the Right to Adequate Food (art. 11), E/C.12/1999/5, para. 6.
[387] Narula, S., *supra note* 4. p. 128.
[388] Narula, S., *id.*, p. 128.
[389]Commission on Human Rights, Report of the Special Rapporteur on the right to food, Jean Ziegler, para. 22, *U.N. Doc. A/57/356* (Aug. 27, 2002)
[390] Ibid. See also Commission on Human Rights, Preliminary report of the Special Rapporteur on the Right to Food, Jean Ziegler, para. 27, *UN Doc. A/56/210* (Jul. 23, 2001)
[391]Narula, S., *supra note* 4, p. 128.
[392] FIAN International, *supra note* 374, p. 16.

programme for landless groups or promoting alternative employment opportunities,"[393] and has emphasized that "access to land and agrarian reform must form a key part of the right to food."[394] In case of the existence of unequal distribution of land, states should pursue "agrarian reform that leads to more equitable land distribution for the benefit of smallholders".[395] The Special Rapporteur encourages states to provide access to agricultural investment to small-scale farming, not only to large-scale investors.[396] The Special Rapporteur provided a set of principles whenever there is a large-scale land transfers of land to investors.[397]

In 2010, based on the recommendation of the then Special Rapporteur on the right to food, Olivier de Schutter, Committee on ESCR issued a General Comment providing land as a human right.[398]

Violation of the right to land results in the violation of the right to food. This is illustrated in case of the African commission on Human Rights in SERAC case. The case showed the necessity of protection to land rights in order to protect the right to food. The Commission implied the right to food (which is not recognized under the African Charter on Human and peoples' rights) from the right to life (Article 4), the right to health (Article 16) and the right to economic, social, and cultural development (Article 22) of the African Charter by developing and using implied rights concept. In applying these rights, the Commission found that "the destruction of individual and communal

[393] Commission on Human Rights, Preliminary report of the Special Rapporteur on the Right to Food, Jean Ziegler, para. 29, *UN Doc. A/56/210.*
[394] *Supra note* 389.
[395] U.N. Special Rapporteur on the Right to Food, Rep. of the Special Rapporteur on the Right to Food, 65th Sess., para. 27, transmitted by Note of the Secretary-General, *U.N. Doc. A/65/281* (Aug. 11, 2010) (by Olivier De Schutter)
[396] U.N. Special Rapporteur on the Right to Food, Rep. Submitted by the Special Rapporteur on the Right to Food, 16th Sess., para. 8, *U.N. Doc. A/HRC/16/49* (Dec. 17, 2010) (by Olivier De Schutter)
[397]These principles are eleven which calls on relevant parties to:
1) Conduct investment negotiations in full transparency with the participation of host communities;
2) Consult with local populations prior to any shifts in land use, with a view towards obtaining their free, prior, and informed consent for the investment project;
3) Enact and enforce legislation that safeguards the rights of host communities;
4) Ensure that investment revenues are used for the benefit of local populations;
5) Adopt labor-intensive farming systems that maximize employment creation;
6) Adopt modes of agricultural production that respect the environment;
7) Ensure that investment agreements include clear obligations and predefined sanctions, with non-compliance determined by independent and participatory ex post impact assessments;
8) Ensure that investment agreements require that a minimum percentage of food crops produced be sold locally;
9) Conduct participatory impact assessments prior to the completion of negotiations;
10) Comply with indigenous peoples' rights under international law; and
11) Provide agricultural waged workers with adequate protection of their fundamental human and labor rights.
See Narula, S., *supra note* 4, p. 130.
[398] FIAN International, *supra note* 374, p. 21.

farmland by acts and omissions of the State rose to violations of the obligations to respect and to protect the implicit rights to food and adequate housing.".[399]

Linkage between the right to adequate housing and land rights

The right to housing is directly linked to land. According to the report by the Special Rapporteur on adequate housing, "[l]and is often a necessary and sufficient condition on which the right to adequate housing is absolutely contingent for many individuals and even entire communities."[400] The report has emphasized that the lack of protection to land rights may result in violation of housing rights. It emphasized that "land, as a housing resource, is a critical element of the human right to housing." The report underlined that the right to housing of the poor cannot be realized because of lack of access to land, credit, and materials with which to build a house. Accordingly, the lack of legal provisions to secure tenure has been one of the main obstacles to the implementation of the right to adequate housing.[401] In 2007, the Special Rapporteur on the right to adequate housing, Miloon Kothari, in his recommendation argued that the Human Rights Council should recognize the right to land as a human right. This recommendation is in line with the 2005 report of the Special Rapporteur, Paulo Sérgio Pinheiro on housing and property restitution in the context of the return of refugees and internally displaced persons.[402]

Likewise, the general comment/recommendation on forced disappearance has also provided protection against forced eviction. It provides that "States cannot arbitrarily deprive people of their property, nor can they evict settled communities that rely on a piece of land but lack legal title to it, without meeting certain conditions."[403]

Linkage between the right to water and land rights

The realization of the right to water as a human right, which "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses,"[404] is dependent on access to land.

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[399] African Commission on Human and peoples' Rights: The Social and Economic Action Center and the Center for Economic and Social Rights v. Nigeria. Communication No. 155/96 (27 May 2002) as cited in OHCHR, Land and Human Rights: Annotated Compilation of case law, p. 23.

[400] Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, p. 41, *U.N. Doc. E/CN.4/2005/48* (March 3, 2005).

[401] Report of the Special Rapporteur on adequate housing (*A/HRC/7/16*), para. 66 cited in UNOHCHR, *supra note* 5, p. 23.

[402] FIAN International, *supra note* 374, p. 21.

[403]General Comment No.7, Forced evictions, and the right to adequate housing, 1997, *UN Doc. E/1998/22*

[404] General Comment No. 15 on the Right to Water by the Committee on Economic, Social and Cultural Rights (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), at 7, U.N. Doc. E/C.12/2002/11 5 (Jan. 20, 2003),available on https://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf (accessed on 28 Jan. 2022), para. 2.

Both the Special Rapporteur on the Right to Water and Sanitation and the U.N. Committee on Economic, Social and Cultural Rights (ESCR Committee) recognized that the right to water should not be denied based on the lack of land.[405] In this relation, the General Comment No. 15 on the Right to Water by the ESCR Committee requires not to discriminate in providing access to water based on landownership or tenure or lack thereof. It also retaliates that protection from eviction should not be based on the tenure status or the informal nature of the settlement.[406]

Linkage between cultural rights with the right to land

Indigenous peoples'[407] right to culture has been associated with the right to land. The thinking has been that the culture of indigenous peoples will disappear if there is no protection to their right to land.[408] Land is taken as a "source of spiritual, cultural and social identity" of indigenous peoples.[409]

According to the General comment of the Human Rights Committee on article 27 of ICCPR, the committee provides that

> With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That

[405] *ibid*; Special Rapporteur on the Promotion and Protection of Human Rights, Realization of the Right to Drinking Water and Sanitation, U.N. Economic and Social Council, Commission on Human Rights, Sub commission on Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2005/25 (July 11, 2005), para. 5.4 available on https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/149/09/PDF/G0514909.pdf?OpenElement (accessed on 28 Jan. 2022).

[406] *ibid*.

[407] Indigenous peoples are "those people beyond Europe who lived in the territory before European colonization and settlement, and who now form a non-dominant and culturally separate group in the territories settled primarily by Europeans and their descendants." See Abjorn Eide, The Relationship and Distinction Between the Rights of Persons Belonging to Minorities and Those of Indigenous Peoples, Working Paper submitted to the sub- Commission on the Promotion and Protection of Human Rights, UN Commission on Human Rights, UN doc E/CN 4/Sub 2/2000/10 para. 8 cited in Solomon Deresso, 'The Right to Self-Determination, Minorities and Indigenous Peoples in Africa' in Solomon Dersso (ed.), *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa*, 2010, p. 278.
The definition given by Martinez Cobo provides that "historical continuity with pre-invasion or pre-colonial societies" is a basic element to identify indigenous peoples. However, this definition is not applicable to Africa since all the people that exist before the colonialism are considered as indigenous. Thus, all Africans are indigenous to the continent. See. Dorothee Cambou, 'Addressing the rights of Indigenous Peoples in the Development of Ethiopia: A Difficult Compromise or a compelling Necessity?' in Eva Brems, Christophe Van der Beken and Solomon Abay (eds.), *Human Rights and Development: Legal Perspectives from and for Ethiopia*, 2015, p. 146.
In the context of Africa, indigenous peoples are not those who appeared on the continent for the first time. Rather the criteria of 'marginality' and 'self-identification is mainly applied. See Frans Viljoen, *International Human Rights Law in Africa*, 2007, p. 280 &281.See also African Commission on Human Rights and Peoples' Rights, 2007, "Advisory Opinion the United Nations Declaration on the Rights of Indigenous Peoples," (Banjul- Gambia), para. 1.1 and para. 9-12.

[408] Jeremie Gilbert, *supra note* 369, p. 19.

[409] Jeremie Gilbert, *id.*, p. 19.

right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.[410]

The relationship between indigenous peoples' cultural rights and land has been endorsed by several cases.[411] The African Commission on Human and Peoples' Rights in the Case of Endorois Community in Kenya, the commission argued that eviction of indigenous community from their ancestral land violates the right to cultural integrity.[412]

Land rights of indigenous peoples is also recognized in UN Declaration on the Rights of Indigenous Peoples in 2007.[413] ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples links cultural rights of indigenous peoples' rights with land rights under Article 13. It reads as "governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."

Linkage between the right to self-determination and land rights

The right to self-determination can be achieved through access to land, water and natural resources. The right to self-determination "cannot solely consist of territory, boundaries, and political institutions, but should be defined in terms that recognize the needs of all human beings, including the right to live beyond the bare minimum of survival."[414] It is a basis to collectively claim access to resources including land.[415] Thus, the right to self-determination is a collective right.

In General Recommendation No. 21 (1996) on the right to self-determination, the Committee on the Elimination of Racial Discrimination provides that the right to self-determination has two elements: external self-determination and an internal one. The Committee underlines that the internal aspect of self-determination entails "the rights of all peoples to pursue freely their economic, social and

[410] General comment of the Human Rights Committee on article 27 of ICCPR, 1994.
[411] The Inter-American Court of Human Rights (IACtHR) linked land rights to cultural rights of indigenous peoples in several cases. In the 2001 case of the Awas Tingni community against Nicaragua, the court stated: "Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations." (Inter-American Court of Human Rights, 2001, para. 149)
[412] African Commission on Human and Peoples Rights, 2010,
[413] See article 25 of UN Declaration of the Rights of Indigenous Peoples provides that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."
[414] Christine Chinkin and Shelley Wright, The Hunger Trap: Women, Food, and Self-Determination, 14 *Michigan Journal of International Law*, 1993, p. 262 and 293.
[415] OHCHR, *supra note* 5, p. 57.

cultural development without outside interference" while the external self-determination implies "all people have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject people to alien subjugation, domination and exploitation."[416] Thus, the realization of the right to self-determination requires the rights of peoples to natural resources including to land to be respected. The Committee on Economic, Social and Cultural Rights has recommended states to "address the adverse effects of largescale land acquisitions and exploitation of natural resources on the right to self-determination of indigenous peoples" in its concluding recommendations.[417]

Linkage between the Right to Land with other Human Rights

The right to land is also linked with the right to health and the right to work. To realize the right to work which provides the right of everyone to the opportunity to gain his/her living by work of his/her choice, it is necessary access to resources including land is guaranteed. In rural places, the main means to realize the right to work is through access to land.[418]

The right to the highest standard of living and the right to the highest attainable standard of health is also dependent to the right to land. As discussed above, the right to food and water is linked with the right to land. The Status of health, in turn, depends on access to food and water. This creates an indirect link between the right to health and land rights. Thus, landlessness affects the right to health and the right to work especially in rural areas.[419]

In sum, though the international human rights framework does not provide an explicit normative provision on the rights to land in binding human rights instruments, land right is an emerging right from the jurisprudence of international and regional human rights bodies. The linkage of land rights with various human rights, as shown above, demonstrate that the realization of many human rights depends on access to land. Thus, land rights serve as gateway to the realization of other human rights. However, this approach (the approach to see land as a corollary right) does not guarantee the realization of land rights on its own. States may find other ways to realize land related human rights

[416] General recommendation No. 21 (1996) on the right to self-determination, the Committee on the Elimination on Racial Discrimination, para. 4 cited in OHCHR, *,id.*, p. 58
[417] Concluding observations on Brazil (E/C.12/BRA/CO/2), Cambodia (E/C.12/KHM/CO/1), Chad (E/C.12/TCD/CO/3) and Sri Lanka (E/C.12/LKA/CO/2-4). Cited in OHCHR, 2015, *supra note* 5, p. 58.
[418] Elisabeth Wickeri and Anil Kalhan, Land Rights Issues in International Human Rights Law, *Malaysian Journal on Human Rights*, Vol. 4, No. 1, 2010, p. 25.
[419] Elisabeth Wickeri and Anil Kalhan, *ibid*.

by avoiding the duty to respect, protect and fulfill the right to land.[420] For instance, states may prefer to respect the right to work by creating job opportunities than providing access to land.

In relation to indigenous peoples right, land right has developed as a substantive human right. This approach should also be followed in relation to other rural communities. Thus, the international human rights regime needs to move away from its instrumentalist approach which sees land rights as a means to realize other rights and recognize and codify the human rights to land as a stand-alone right. This is important considering the fact that land sustains life and is a basis for dignified life and plays an important role in the formation of identity and culture. The recognition of the right to land can be useful to claim redistribution of land and a basis for states to undertake agrarian reform. In addition, the normative clarity of land rights can help states to elaborate the substantive contents of land rights and to develop bench-marks and indicators to implement such right.[421]

4.1.4. Contemporary Normative Developments on the Right to Land

In an effort to clarify the content and elements of the right to land, a soft instrument has been adopted in 2012. This instrument, which is known as "The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests", also known as "Voluntary Guidelines on Governance of Tenure (VGGT)", was developed in the context of National Food Security. It is the first instrument to provide land rights/tenure right as economic, social, and cultural rights. The guideline provides "guidance to states on how to apply their human rights obligations to the governance of natural resources."[422]

VGGT was adopted by the Committee on World Food Security (CFS) at its Thirty-eighth (Special) Session on 11 May 2012.[423] It was developed through a consultative process among government officials, civil society organizations, private sector representatives and academics in 2009-11. It was subjected to "the CFS-led intergovernmental negotiations that took place during 2011-12, and which included the participation of international agencies, civil society organizations, farmers' associations, private sector representatives and research institutions."[424] Thus, there is no single sponsor or drafter of the Guideline as multiple actors have participated in the drafting process.

[420] Narula, S., *supra note* 4, p. 171.
[421] Narula, S., *supra note* 4, p. 172.
[422] FIAN International, *supra note* 374, p. 23.
[423] CFS is the United Nations' forum for reviewing and following up on policies concerning world food security.
[424] Paul Munro-Faure and David Palmer, 'An Overview of the Voluntary Guideline on Governance of Tenure', *Land Tenure Journal*, 2012, p. 8.

Though the VGGT is a soft law, it can have a persuasive effect and guide states action in tandem with binding treaty provisions. In this regard,

> The legal principle of *Pro hominem*, which calls for the application of the norm or standard most favorable for protecting vulnerable social groups, enables state and non-state actors alike to interpret the Tenure Guidelines in line with the highest standards developed by the UN and regional human rights systems, as well as with case law. The guidelines are therefore an important step towards establishing the human right to land in international customary law and, hopefully soon, in positive international human rights law.[425]

VGGT sets principles and standards for tenure governance. It emphasizes on vulnerable and marginalized groups of the society. It can be considered as framework to guide states actions such as the development of legislations, polices, programs and strategies. It can serve as a benchmark for sates, civil society, and private actions to measure their actions is based on internationally acceptable practices.[426]

VGGT provides two sets of principles: General Principles and Principles of implementation. The first principles, known as general principles, provide the principles that should be applied by states. There are:

> States should:
>
> 1. Recognize and respect all legitimate tenure right holders and their rights.
> 2. Safeguard legitimate tenure rights against threats and infringements.
> 3. Promote and facilitate the enjoyment of legitimate tenure rights.
> 4. Provide access to justice to deal with infringements of legitimate tenure rights.
> 5. Prevent tenure disputes, violent conflicts, and corruption.[427]

VGGT requires states to protect 'legitimate' tenure not only 'legal' ones. Thus, whether or not the tenure is 'legal' or not should not be a condition upon which states provide protection to tenure. This is an important principle in the circumstances where land rights are not yet formalized.[428] It will also able state to recognize customary tenures. In addition, "no blind implementation of land

[425] FIAN International, *supra note* 374, p. 23.
[426] Paul Munro-Faure and David Palmer, *supra note* 4244, p.7.
[427] Paul Munro-Faure and David Palmer, *id.*, p. 10.
[428] Jorge Muñoz, VGGT: The Global Guidelines to Secure Land Rights For All available on https://blogs.worldbank.org/voices/vggt-global-guidelines-ensure-secure-land-rights-for-all (accessed on Jan. 20, 2022)

use rights on State lands is possible. The existing users of State lands needs to be recognized, and their rights need to be respected."[429]

The VGGT requires non-state actors to respect human rights and legitimate tenure rights. They are expected to act with due diligence not to affect the rights of others and should address any negative impacts. They are also expected to cooperate in non-judicial mechanisms whenever their act causes an adverse effect on tenure rights and provide remedies for any damage sustained.[430]

The principle of implementation provides the following principles as guiding principles: human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach, consultation and participation, rule of law, transparency, accountability and continuous improvement.[431]

In relation to rights and responsibilities related to tenure, VGGT provide that "legal recognition should be given to legitimate tenure rights that are not currently protected by law, that legitimate tenure rights should be protected, and that all forms of discrimination related to tenure rights should be removed"[432] (Section 4 of the Guideline). In relation to Policy, legal and organizational frameworks, it also recommends "States to ensure that all policies, laws and administrative structures for tenure recognize and respect legitimate tenure rights, are non-discriminatory, and address the obstacles often faced by women and girls with regard to tenure. States should ensure coordination between implementing agencies, as well as with local governments, and indigenous peoples and other communities with customary tenure systems"[433] (Section 5 of the Guideline on Policy, legal and organizational frameworks related to tenure).

VGGT recommends Sates to provide prompt, accessible, affordable, and non-discriminatory services in relation to securing tenure rights and resolving related disputes (Section 6 of the Guideline). The section on safeguards, stresses that State should put in place safeguards not to violate the tenure rights of others whenever they undertake recognition or allocation of tenure rights. In this regard, they are expected to "first identify all existing tenure rights and right holders, whether recorded or not. Men and women should enjoy the same rights when tenure rights are recognized. People whose tenure rights are recognized or who are allocated tenure rights should have full knowledge of their rights." (Section 7 of the Guideline)

[429]Jorge Muñoz, *id.*
[430]Paul Munro-Faure and David Palmer, *supra note* 424, p. 11.
[431] Paul Munro-Faure and David Palmer, ibid.
[432] Paul Munro-Faure and David Palmer, id. , p. 14.
[433] Paul Munro-Faure and David Palmer, ibid.

Section 9 (Indigenous peoples and other communities with customary tenure systems) emphasizes that particular attention should be given to the recognition and protection of customary tenure rights. States and other parties should hold good faith consultations with indigenous peoples and other communities before initiating any project that affects the resources for which the communities hold rights. Section 10 (Informal tenure) encourages States to acknowledge the emergence of informal tenure, particularly where it arises from large-scale migrations. States should give legal recognition to informal tenure where this is possible, and where it is not possible, States should prevent forced evictions.

Section 14 (Restitution) recommends that States should consider providing restitution for the loss of legitimate tenure rights by returning the original parcels to the people who suffered the loss. Where the original parcels cannot be returned, adequate compensation in the form of money, alternative parcels or a combination should be provided.

Though VGGT does not have a single provision of women's right to land, gender issues are mainstreamed throughout the Guideline guided by the principle of gender equality and non-discrimination.

In light of the limited consensus among states regarding tenure and human rights during the negotiation of UDHR and the two covenants, the Guidelines "distinguish between human rights and tenure rights in general, but yet they place tenure rights in the context of human rights. The Guidelines specifically declare that their implementation should be consistent with a State's existing obligations under international law, including the UDHR and other international human rights instruments, and further say that they do not limit or undermine any legal obligations to which a State may be subject under international law (paragraphs 1.1 and 2.2)."[434]

4.2. Models of Land Rights

In general terms, two models of land rights exist. These models are market-based models and rights-based model.

4.2.1. Market-based Model

The market-based model or Market-Plus Approach is based on the argument that land should be considered "as commodity whose productivity must be enhanced in order to yield beneficial food

[434]David Palmer Mika-Petteri Törhönen Paul Munro-Faure Anni Arial, Fostering a New Global Consensus: The Voluntary Guidelines on the Governance of Tenure, *Land Tenure Journal*, 2012, p. 28.

production outcomes."[435] It provides a framework for the commodification of land. It supports the commercialization and transfer of 'available' or 'underutilized' land to efficient producers. It contends that undertaking land titling to support land market system is important to ensure efficient allocation of land.[436]

However, these arguments of market-based model are criticized for several reasons. The argument that underutilized land should be commercialized is criticized for its failure to take into account that such land provides support to the local community and smallholder. The assumption that any open land is available may not be accurate since such land might be operated under customary tenure though it is not recognized based on the Western property rights regime.[437] The formalization of land which recognizes private ownership may fail to recognize customary land use rights.[438] Furthermore, the market-plus approach may pressurize the poor and the vulnerable to sale their land.[439] Titling may further reinforce the inequality to access land especially in countries which have a justice system that require certification as evidence in formal claims. The commodification of land mostly benefits elites and those with access to capital and credit rather than productive producers.[440] Studies demonstrate that titling without better polices that provide support to smallholder farmers with technical assistance and access to credit will not result an improvement in productivity.[441]

The market model approach to rights is that its violation is a risk that one has to take in order to promote economic growth and agricultural productivity.[442] However, this goes against the international human rights obligations and morality.

This approach is supported by Bretton Woods institutions such as the World Bank. Though the international community promote an agrarian reform that brings redistribution of land and secure access to land to marginalized and vulnerable groups, the Bretton Woods institutions promoted an agrarian reform which goes in line with Washington Consensus.[443] The'market-assisted' model offers for the provisions of credit to landless or poor farmers to buy land at market value. It limits

[435] Smita Narula, S., *supra note* 4, p. 145.
[436] Ibid.
[437] ibid.
[438] Special Rapporteur on the Right to Adequate Housing, Basic Principles and Guidelines on Development-based Evictions and Displacement, *U.N. Doc. A/HRC/4/18* (2007), para. 25.
[439] Narula, S., *supra note 4*, p. 145.
[440]Narula, S., *supra note 4*, p. 146.
[441] Narula, Smita, *supra note 4*, p. 147.
[442] Smita Narula, *supra note* 4, p. 172.
[443] The Washington consensus is a market parading which does not support any state and policy intervention to achieve economic or social equity goals. See Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, *A/HRC/7/5*, para. 26.

states' role only to provision of credit. This was criticized by the proponents of right based approach as it "shift the logic of agrarian reform away from a concept of a right to land and redistribution towards a view that access to land is only possible through purchase of the land at market prices, despite a context of historically produced inequities."[444]

4.2.2. Human Right-Based Model

Human rights-based Model or Rights-Based Approach tries to guarantee access to land with the minimum distributional effect of the market in tandem with the view that land is a means to realize other human rights. The human rights framework argues that the sale of land should be restricted to "protect smallholders from pressure to cede their land" and to "protect use rights regarding communal land and preserve communal forms of land management."[445]

This approach does not reject land titling. It rather argues for "greater recognition of use rights over full ownership rights, as well as customary and collective rights as an alternative to individual titling."[446] However, the Special rapporteur of the rights to food warns that the customary system should not be romanticized as a better means of granting access to land than the individual ownership. It should rather be reformed.[447] This is because of its negative effect on women. In most customary systems, land is held by male members of the family. Women can only access land through either their husband or male family members. In case of the formalization of land rights, these customary rights are recognized, and women are excluded from decision making on the land. It is male members of the family and customary leaders that gets land title and can bring legally cognizable claims.[448]

The right based approach is in favor of land redistribution through a state-led process of agrarian reform.[449] The redistribution land reform is slightly distinct from agrarian reform. The former results "the distribution of privately owned land from big landowners to landless workers, agricultural and poorer peasants already cultivating the land as tenants or sharecroppers."[450] It can

[444] Human Rights Council, Promotion and protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, *A/HRC/7/5*, para. 27
[445] U.N. Special Rapporteur on the Right to Food, Rep. of the Special Rapporteur on the Right to Food, 65th Sess., transmitted by Note of the Secretary-General, *U.N. Doc. A/65/281* (Aug. 11, 2010) (by Olivier De Schutter), para. 20 cited in Narula, Smita, *supra note* 4, p. 149.
[446] Narula, Smita, *supra note* 4, p. 149.
[447] U.N. Special Rapporteur on the Right to Food, *supra note* 389, p. 149.
[448] Susana Lastarria-Cornhil, Impact of Privatization on Gender and Property Rights in Africa, 25 *World Dev*. 1317, 1322 (1997) cited in Narula, Smita, *supra note 4*, p. 149.
[449] Narula, Smita, *supra note 4*, p. 149.
[450] M. Riad El-Ghonemy, The Political Economy of Market-Based Land Reform, United Nations Research Institute for Social Development, 1999, p. 3.

result in “redistribution of purchasing power and opportunities” from the powerful landlords to tenants. It demonstrates a commitment to improve the poverty level and inequalities in rural areas. It can serve as a mechanism to offset market failure and disrupt the monopoly of land, labour and credit markets. Agrarian reform embraces

> a wider scope of institutional and technical changes associated with access to land, including one or more of the following: distribution of public land for land settlement schemes; registration of land titles; tenancy regulations; consolidation of fragmented holdings; and so forth.[451]

Both redistribution of land reform and agrarian reform can promote productivity and economic growth in addition to being right-based and strengthening access to land. This is supported by Article 11(2)(a) of the ICESCR which calls on States Parties to "improve methods of production, conservation and distribution of food by ... developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources." The Special Rapporteur interprets article 11(2)(a) "as encouraging agrarian reform that leads to more equitable distribution of land for the benefit of smallholders, both because of the inverse relationship between farm size and productivity and because small-scale farming (and linking farmers more closely to the land) may lead to more responsible use of the soil."[452] This approach brings economic growth and reduces rural poverty. Furthermore, it can bring equitable access to land to women and other vulnerable groups. However, for it to succeed, it should be supported by polices that develop the capacity of farmers such as making technology available and credit and other productive resources accessible.[453]

There are plenty of studies that shows the success of land reform based on redistributive land reform or agrarian reform in bringing economic growth.[454] The existing evidence shows that efficiency in productivity, which is main aim of market-based model, can be achieved in right-based approach through redistribution of land to small holders and by undertaking a host of policy measures.[455]

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[451] Ibid.
[452] U.N. Special Rapporteur on the Right to Food, supra note 389, p. 149.
[453] Narula, Smita, *supra note 4*, p. 150
[454]In a study that analyzed land policies in 73 countries, it is found that economic growth of two to three-fold higher was achieved in countries that undertook egalitarian land distribution between 1960 and 2000. See. Klaus Deininger, Land Policies for Growth and Poverty Reduction 115-16 (2003), p. 18 available on https://openknowledge.worldbank.org/handle/10986/15125 (accessed on 28 February 2022)
[455]Narula, Smita, *supra note 4*, p. 150

Similarly, land titling can become successful in reducing tenure insecurity when it is implemented with the support of good governance. If it is implemented in situations where there is a lack of good governance, it may bring tenure insecurity and negatively affect the vulnerable members of the society.[456]

Recent developments show that right-based approach is more endorsed than market-based approach. This is demonstrated in VGGT which call on states to consider redistributive reforms as a means of facilitating "broad and equitable access to land and inclusive rural development."[457] The Guideline shows a shift in the thinking towards right-based agrarian reform rather than market driven land distribution.[458] Furthermore, the right-based approach assist in the promotion, protection and fulfillment of human rights recognized under the binding and legally enforceable human rights frameworks. Thus, it helps to set limitations on the adverse effects of free market economic models on the poor and marginalized."[459]

A human rights-based approach takes the following as its foundations in relation to land tenure:

(i) "people are viewed as rights-holders, rather than mere "beneficiaries"
(ii) states are viewed as duty-bearers with the obligation to respect, protect and fulfil people's human rights, rather than "service providers" and
(iii) governments should be held accountable when they fail to meet this obligation and rights are violated."[460]

To sum up, the right based approach gives much focus on equitable distribution of land which the market-based approach focuses of ensuring productivity through market distribution. Market-based approach may exacerbate inequality in land distribution and reinforce hierarchy-based access to land.

4.3.Jurisprudence on Women's Land Rights Under International and Regional Human Rights Law

This section of the chapter discusses the international and regional jurisprudence on women's land rights. It will discuss the jurisprudence of various international and regional treaty bodies on

[456] Narula, Smita, *supra note 4*, p. 156.
[457] Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, para. 15 (1)
[458] Narula, Smita, *supra note 4*, p. 169.
[459] I. Ikdahl et al., *supra note 121*, p.82.
[460] Jennifer Whittal, 'A New Conceptual Model for the Continuum of Land Rights', *South African Journal of Geomatics*, Vol. 3, No. 1, January 2014, p. 16.

women's rights including that of CEDAW Committee. If further elaborate the normative framework on women's land rights in both binding and soft international instruments.

4.3.1. Women's Land Rights under the UN Mainstream Human Rights Instruments

The UN human rights instruments recognize the equality and the non-discrimination principle. Based on these principles, the international treaty bodies have affirmed women's equal rights to land though there is no explicit provision to this effect.

The Committee on Economic, Social and Cultural Rights prohibits any discrimination on the status of property ownership such as land ownership and tenure to be a basis of discrimination under its general comment No. 20 (2009).[461] The committee also recognize women's right to own, use or otherwise control housing, land and property on an equal basis with men under general comment No. 16 (2005).[462] In relation to this, General comment no. 28 (2000) of the Human Rights Committee, a body that monitors the implementation of ICCPR, provides "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground" (para. 19).

The Special Rapporteur on the rights to housing in its study on women's rights to own property and to adequate housing highlights that the "lack of recognition of land rights of women directly affects their right to adequate housing". The Special Rapporteur also underlines that there is a "close link between violence against women and the right to adequate housing, and how the recognition of land rights for women could potentially play a positive role against domestic violence."[463]

General Comment no. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights by the Committee on Economic, Social and Cultural Rights states that implementing the right to an adequate standard of living based on equality between women and men "requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so" (para. 28). In addition to the mainstream human rights instruments, CEDAW and other soft laws included specific provisions and jurisprudence on women's land rights as discussed below.

[461] General comment No. 20 (2009) of the Committee on Economic, Social and Cultural Rights, para. 2.
[462] General comment No. 16 (2005) of the Committee on Economic, Social and Cultural Rights, para. 28.
[463] Jeremie Gilbert, *supra note* 369, p. 125.

4.3.1.1. Women's Right to Land under CEDAW

CEDAW is the first binding international human rights instruments adopted in 1979 dealing exclusively on women's rights. CEDAW defined discrimination against women as "any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights."[464] CEDAW has broad approach to equality and non-discrimination. It intends to eliminate both formal (de jure) and substantive (de facto) discrimination.

Formal (de jury) discrimination occurs "when a state's constitution, laws and official policies discriminate against individuals or groups on prohibited grounds."[465] Changing these types of discriminatory legal frameworks is an important step. However, such changes do not necessary eliminate discrimination or ensure substantive equality. It is important to address substantive (de facto) discrimination which results in gender inequality despite the fact that there is formal equality. According to general comment No. 20 (2009), the Committee observes that tackling substantive discrimination requires "paying sufficient attention to groups of individuals who suffer historical and persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations."[466] To bring substantive equality, states are required to "take necessary steps to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination."[467]

CEDAW did not have its own individual complaint mechanism to ensure its enforcement upon its adoption. It provided for inter-state compliant mechanism and state reporting procedure to ensure sates' compliance. It was later, in 1999, an optional protocol was adopted to enable CEDAW Committee to entertain individual complaints and conduct inquires (enable the committee to make on-site visits when there is systematic and grave violation of women's rights). The lack of individual complaint mechanism until 1999 has diminished the voice of women in shaping international law.[468] The individual complain mechanism is applicable to states upon accession to the Protocol. State has the option to opt out of the inquiry procedure under the Protocol. The Committee provides its views and recommendations in concluding observations based on the

[464] Artcile 1 of CEDAW.
[465] UNOHCHR, *supra note* 5, p. 12.
[466] UNOHCHR, *id.*, p. 13.
[467] UNOHCHR, *id.*, p. 13.
[468] Loveday Hodson, "Women's rights and the periphery: CEDAW's optional protocol." *European Journal of International Law* 25, no. 2, 2014, p. 563.

periodic state report. However, the Committee's recommendations during the review of state reports and decisions on individual communications have non-binding effect.

CEDAW explicitly recognized state obligation to ensure equal treatment between men and women in land and agrarian reform, including land resettlement schemes.[469]Article 15.2 of CEDAW obliges states to accord women equal legal capacity in civil matters, in particular "equal rights to conclude contracts and to administer property". In addition, Article 16 of CEDAW obliges states parties to establish equal property rights for women in relation to marriage, divorce and death.

CEDAW also protects rural women and recognizes their contribution in the unpaid domestic work. In this regard, it states that 'States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetarized sectors of the economy' (Article 14(1)). In General Recommendation 21, the CEDAW Committee clearly states that financial and non-financial contributions to property 'should be accorded the same weight' during division of property upon divorce, and woman should be consulted when property owned by the parties is disposed of.[470]

The CEDAW Committee, in its general recommendation No. 21 (1994) underlines that "in countries that are undergoing a programme of agrarian reform or redistribution of land amongst groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed" (para. 27)."[471] However, lack of recognition of women's autonomy denied women the right to control over land. In connection with this problem, the Committee recognizes that "when a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or male relative's concurrence or guarantee, she is denied legal autonomy" (para. 7).[472] The CEDAW Committee has also prohibits discriminatory practices such as customary practices and legal provisions that authorize only the "head of household" to sign official documentation such as landownership certificates and receive pieces of land from the government are prohibited since it prevents women from acquiring ownership of land. It recommends that governments to abolish the

[469] Article 14 of CEDAW.
[470] General recommendation No. 21 on Equality in marriage and family relations (1994) of CEDAW Committee, para 31 and 32.
[471] UNOHCHR, *supra note* 5, p. 55.
[472] UNOHCHR, *id.*, p. 13.

concept of head of household in administrative practices and recognize joint or co-ownership of land, as well as to amend national legislation to ensure joint or co-ownership.[473]

Furthermore, CEDAW prohibits direct and indirect discrimination as discussed above (article 1 of CEDAW). It requires states to eliminate de facto (indirect) discrimination in addition to eliminating formal (de jury) discrimination by making laws gender sensitive. Indirect or de facto discrimination can be detected by looking into the existing gender difference between men and women. In reality, access and use right to land is gendered. This resulted in discrimination against women though state apply a gender-neutral laws and policies on land. These gender-neutral laws that does not take into account the situation on the ground result in indirect/*de facto* discrimination which are prohibited under article 1 of CEDAW. In relation to land, the following illustrates direct or de jury and indirect or de facto discrimination.[474]

- Statutes, customs and practices that explicitly treat men and women differently constitute direct discrimination. Any customary law and practice that bar equal land rights for women, particularly in relation to marriage, divorce and inheritance should be eliminated.
- Gender neutral laws may also indirectly discriminate women. For instance, if the law simply guarantees equal access (*de jury* equality) without providing for joint registration of husband and wife, it may discriminate women since land might be already held by men because of customary laws (*de facto* discrimination).
- In practice, "the increasingly unified and gender-neutral body of law which puts individual women on an equal footing with men co-exists with gendered practices, norms and values on the ground." This leads to indirect discrimination.

In a nutshell, an indirect discrimination might occur because of[475]

- gender-neutral laws and norms that favor male life situation
- biased criteria of property acquisition
- biased principles of land registration[476]
- tenure regimes based on the assumption of household and community unity

[473] UN Women and United Nations Office for Human Rights, Realizing Women's Rights to land and Other Productive Resources, 2013, p. 7.
[474] I. Ikdahl et al., *supra note 121*, p. 21.
[475] I. Ikdahl et al., *supra note 121*, p. 21-24.
[476] Land reforms that provide for the establishment of individual title deeds within the communal areas through the registration of existing rights may in practice reinforce existing inequalities in the protection of land rights, especially in instances where there is patrilineal system.

Though CEDAW prohibits discrimination, it recognizes positive discrimination. Accordingly, the "adoption by states parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination" under CEDAW.[477]

A very important general recommendation on the rights of rural women by the CEDAW Committee is general recommendation 34 (2016).[478] This recommendation considers "rural women's rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights."[479] The general comment underline that the rights of rural women under article 14 of CEDAW should be interpreted and read in light of the whole text of CEDAW.[480]

It recognizes that women face discriminatory practices related to inheritance and are subject to property grabbing when they become widows.[481] It requires states to take all steps to realise substantive equality including affirmative measures.[482] States should also prevent the infringement of rural women's land rights by creating awareness among traditional, religious and customary leaders, lawmakers, the judiciary, lawyers, law enforcement authorities, land administrators, the media and other relevant actors.[483] States are also required to[484]

> (a) Promote rural women's access to and meaningful participation in agricultural cooperatives, in which women may be members or the sole members;
>
> (c) Strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights to land, water and other natural resources, including community paralegal services.

The general recommendation also requires states to "ensure that land acquisitions, including land lease contracts, do not violate the rights of rural women or result in forced eviction, and protect rural women from the negative impacts of the acquisition of land by national and transnational companies, development projects, extractive industries and megaprojects."[485] It further requires states to ensure free and informed consent of rural women before the approval and implementation of any projects that has an impact on rural land and

[477] Article 4 of CEDAW.
[478] General recommendation 34 of CEDAW Committee adopted in 2016 has a significant contribution as it is the first authoritative interpretation of Article 14 of CEDAW. It recognized rural women's land rights as a human right and requires states to respect, protect and fulfil these rights. See FIAN International, *supra note* 374, p. 23.
[479] General Recommendation No. 34 (2016) on the Rights of Rural Women, para. 56.
[480] *Id.*, para. 2.
[481] *Id.*, para. 22.
[482] *Id.*, para. 57.
[483] *Id.*, para. 58.
[484] *ibid*.
[485] *Id.*, para. 62 (c).

resources.[486] Any kind of land registration and titling activity and land distribution should ensure rural women equal rights to land.[487]

4.3.1.2. Other UN Soft Instruments on Women's Land Rights

The Beijing Platform for Action (1995), the Habitat Agenda (2003) and Sustainable Development Goals (SDG) (2015) are among the most significant soft laws that ascertain women's land rights. The Beijing Platform for Action (1995), which identified 12 areas, calls on governments to enable women to access land and to undertake legislative and administrative reforms to give women equal access to economic resources, including the right to inheritance and ownership of other property.[488] Beijing Declaration requires the integration of human rights in development. Human Rights Based Approach to Development (HRBA) balances the liberalist and welfarist approaches towards pro-poor and gender equal development. Similar to the human development approach developed by Amartya Sen and Martha Nussbaum, it underlines human agency, capability and entitlements as factors to alleviate poverty and achieve development.[489]

The human rights approach to development integrates human rights principles and norms in any form of development. This approach considers individuals as the central actors and focus on individual rights rather than needs. In relation to women's land rights, various principles are established under this approach based on human rights instruments including the following:

- discriminatory norms in the formal and informal systems that disadvantage women such as inheritance and gender-neutral laws and practices that indirectly discriminate women should be eliminated.
- Land reform or formalization of land rights through certification and registration should be based on the principles of gender equality and non-discrimination.
- Equal participation and empowerment of women in land reform and formalization process- Bringing equal participation of women is envisaged under various human rights instruments as an important element of the protection of rights of women. For this purpose, affirmative actions as a temporary measure may need to be taken to achieve equal participation of women to ensure *de facto* equality.

[486] *Id.*, para. 62 (d).
[487] *Id.*, para. 78 (b).
[488] Beijing Platform for Action (1995), para. 165 (e).
[489] I. Ikdahl et al, *Supra note* 121, p. 13.

- Due process and rule of law- This envisages procedural safeguards to be set during land reform and formalization process. It requires setting legally enforceable rights and ensuring access to justice when these rights are violated.[490]

According to UN Common Understanding (2003), participation, accountability, equality, non-discrimination, transparency, empowerment and strengthening of capacities of duty-bearers and rights-holders are the principles of HRBAD.

The Habitat Agenda (2003) adopted at the second United Nations Conference on Human Settlements, reminded governments to undertake legislative and administrative measures to give women full and equal access to economic resources, including equal access to land and other property and provide legal security of tenure.

Goal 5 of the SDG sets to "achieve gender equality and empower all women and girls".Target 5.A provided state should "undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws".Performances under target 5.A are monitored through two land indicators:

> Indicator 5.A.1 (a) percentage of people with ownership or secure rights over agricultural land (out of total agricultural population), by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure.
>
> Indicator 5.A.2: percentage of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.

The first indicator (Indicator 5.a.1) requires of generating land-related statistics by focusing on *de facto* or output indictor while the second indictor (Indicator 5.a.2) focuses on legal reforms that should be undertaken by countries both in the formal laws and customary laws to ensure women's equal rights to land ownership and/or control. The later one is a de jury or process indicator.

These indicators use "the unitary model of the household" which may not reflect how control of land is allocated within a household.[491] These indicators will not show how household dynamics in

[490] I. Ikdahl et al, *Supra note* 121, p. vii and viii.
[491] The unitarian household/community model is based on the assumption of common interest and equal power relations between a husband and wife in a household. This has a discriminator effect on women since based on this model husbands are entitled to own and decide on the land on behalf of his family. This hides the dynamics in the household decision and control over land. (See I. Ikdahl et al., *supra note 121*, p. 2, and 31)

relation to resource use and allocation affect control over land. It only shows women's access to land but fails to show changes in decision making process on the land. Thus, the indicators show descriptive changes or changes in number of women with ownership rights on land but does not show substantive changes such as change in the right to administer and control land. Thus, the indictors needed to be complimented with a human rights-based approach which emphasize the need to ensure equality within family and marriage relations.

4.3.2. Rural Women's Land Rights under African Human Rights System

The Africa Human Rights System attempts to imitate the UN and other regional human rights system in terms of norms and enforcement mechanisms. Prof. Frans Viljoen argues that the Africa Human Rights system appropriated most of the norms created by the UN in order to ensure universality of norms and their legitimacy in the African context.[492] However, this does not mean that the African Human Rights System does not have its own peculiar features that can be seen as its contribution to the international human rights system. It has contributed to norm creation, institutional mechanisms and in its innovative jurisprudential approaches.[493] It envisages to reflect the particular concerns to Africa and conceptualize African understanding of human rights.[494] In such a way, it aims to compliment the universal human rights and address peculiar needs in Africa.[495] As explained by An-Na'im

> [e]nhancing the (cultural) legitimacy for a given human right should mobilize political forces within a community, inducing those in power to accept accountability for the implementation or enforcement of that right. With internal cultural legitimacy, those in power could no longer argue that national sovereignty is demeaned through compliance with standards set for the particular human right as an external value.[496]

The various regional instruments have appropriated norms from UN human rights instruments on similar themes. However, these regional instruments have also contributed to international human rights by introducing or expanding/elaborating some specific rights.[497] Below is a discussion on the

[492] Frans Viljoen, 'Human Rights in Africa: Normative, Institutional and Functional Complementarity and DistinctivenessDistinctiveness', *South African Journal of International Affairs*, vol. 18, No. 2, 2011, p. 191.
[493] Frans Viljoen, ibid.
[494] Frans Viljoen, ibid, p. 192.
[495] Frans Viljoen, ibid, p. 193.
[496] Abdullahi A. An-Na'im, Problems of Universal Cultural Legitimacy for Human Rights, in Cross-Cultural Perspectives, supra note 7, 331, 332 cited in Makau Wa Mutua, 1994/5, The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties, *Virginia Journal of international Law*, Vol. 35, 359.
[497] Frans Viljoen, *supra note* 492, p. 193.

normative and jurisprudential contributions of the African human rights mechanism on rural women's land rights.

4.3.2.1. Normative Framework on Rural Women's Land Rights under the African Human Rights System

The African Charter on Human and Peoples' Rights (African Charter) included provisions that guarantee equality between men and women and provides for the elimination of discrimination against women under article 2, 3 and 18 (3). The lack of any complaint on women's rights before the African Commission on Human and Peoples' Rights (African Commission) has compelled regional women's non-governmental organizations and Africa Commission to initiate a separate Protocol on women's rights in 1995.[498] Based on this initiative, the African Protocol on the Rights of Women in Africa (Maputo Protocol) was adopted in 2003 to strengthen the protection of women's rights in Africa.

The Protocol substantiates further the principle of non-discrimination in relation to land and food security. In addressing the right to sustainable development, article 19 (C) obliges states parties to "promote women's access to control over productive resources such as land and guarantee their right to property". Furthermore, Article 15a obliges states parties to take appropriate measures to "provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food". This requires states to give recognition not only to productive use of land but to its domestic use too. In this connection, the Protocol provides that states parties shall 'take the necessary measures to recognize the economic value of the work of women in the home' (Article 13(h)).

The Protocol provides for an equitable sharing of the joint property deriving from the marriage in case of separation, divorce or annulment of marriage. It guarantees a widow's right to an equitable share in the inheritance of the property of her husband, and that women and men have the right to inherit, in equitable shares, of their parents' properties (Art. 21). In relation to the implementation of these rights, Article 8(d) places an obligation on state parties to ensure that "law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights." The Protocol states that educational measures shall be taken to ensure that women are aware of their rights (Article 8c).

[498]Fareda Banda, 'Blazing a Trail: The African Protocol on Women's Rights Comes into Force.' *Journal of African Law*, Vol. 50 (1), 2006, p. 72-73.

The Commission has also issued its general comment No. 6 on Article 7 (d) of the Maputo protocol in 2020. The General comment clarified the meaning of 'equitable share' from joint property of the marriage during divorce or annulment of marriage. The General comment requires non-monitory contributions such as cultivation and improvement of land, among others, to be considered and recognized during separation, divorce or annulment of marriage.[499] In regard to "equitable share" of joint property during divorce or annulment of marriage, the general comment interpreted it using the lens of substantive equality. It provides that state should recognize the difference men and women have in the social, political, economic and cultural life and that these differences have in most case disadvantaged women.[500] Thus, it provides that 'equitable share' under article 7 (d) should be interpreted as "the apportionment of marital property in excess of half of the property on the basis of awarding material recognition to both the unequal enjoyment of property rights that the woman endured during marriage and the non-monetary contribution of the woman to the household and the family within the context of substantive equality."[501]

In addition to the Maputo protocol, which is a binding instrument, soft normative frameworks have also been developed to protect women's land rights. In this regard, the 2004 Solemn Declaration on Gender Equality in Africa calls for actions to address gender inequalities in accessing land. In addition, the Framework and Guidelines on Land Policy in Africa, adopted by the African Union in 2009 contains a specific section on strengthening the land rights of women. It provides that "it is necessary to deconstruct, reconstruct and reconceptualize existing rules of property in land under both customary and statutory law in ways that strengthen women's access and control of land while respecting family and other social networks."[502]The AU Declaration on Land Issues and Challenges in Africa (AU Declaration on Land) (2009) set "to ensure equitable land access for all land users and improve access and security of land tenure for women, as key priorities."[503] It urges states to strengthen tenure security for women and ensure that legislations are gender sensitive and aim for equitable access to land.[504]

[499] General Comment No. 6 on the Protocol to the African Charter on Human and peoples' Rights on the Rights of Women in Africa (Maputo Protocol): The Right to Property During Separation, Divorce or Annulment of Marriage (Article 7 (D)),2020, para. F (47).
[500] General Comment No. 6, *id.*, para. 40.
[501] General Comment No. 6, *id.*, para. 43.
[502]African Union, African Development Bank and Economic Commission for Africa, Framework and Guidelines on Land Policy in Africa: Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, 2010, p. 8.
[503]AU Declaration on Land Issues and Challenges: A Review of Progress Made: A Report to the Conference of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment, 2017, p.3
[504]*Id.*, p.11-12.

The other important instrument, AU Agenda 2063, provides key targets and indicators on land governance. It provides for 20% of rural women to have access to and control of land by 2023 (AU Goal 17). It establishes Land Policy Initiative (LPI) as an institution to promote agricultural productivity and production.

AU has also developed a Declaration on Land Issues and Challenges in Africa in 2009.[505] The AU target 30% of land to be registered in the name of women.[506] This target focuses on descriptive outcomes. It is important to have indicators showing substantive changes. The effect of land certification should go beyond numbers.

The ACHPR have also introduced a resolution on women's land rights in 2013.[507] The resolution reinforces Maputo Protocol. It encourages states to revise discriminatory laws and take legislative measures against customary practices that negatively affect women's access, use and control land rights and other productive resources. It also calls on states to conduct educational campaigns and provide information to bring social changes in the social and cultural practices that goes against women's land rights. It also recommends states to take agrarian reform and land distribution. States are also reminded to provide legal protection against forced eviction and dispossession that is perpetrated against women's land rights by public and private actors. Access to justice with the provision of legal aid is also required to be provided to women who are deprived of their land rights.

4.3.2.2. Institutional Mechanisms and Jurisprudence on the Enforcement of Women's Land Rights under the African Human Rights System

The African human rights system comprises three institutions for the enforcement of the rights guaranteed under various regional instrument. These are the African Commission on Human and Peoples' Rights (African Commission), the Committee on the Rights and Welfare the Child (African Children's Rights Committee) and the African Court on Human and Peoples' Rights

[505] Declaration on Land Issues and Challenges in Africa, *Assembly/AU/Decl./ (XIII) Rev. I*, 2009

[506] This is the recommendation by Specialized Technical Committee (STC) on Agriculture, Rural Development, Water and Environment of AU. See AU Declaration on Land Issues and Challenges: A Review of Progress Made, A Report to the Conference of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment, October 2017.

[507] African Commission on Human and Peoples' Rights, 262 Resolution on Women's Right to Land and Productive Resources, *ACHPR/Res. 262(LIV)*, 2013.

(African Human Rights Court).[508] It also comprises of political mechanisms such as the Africa Peer Review Mechanism (APRM).

The African Commission is a quasi-judicial Commission without a power to make binding decision established under the ACHPR. The Commission has promotional and protectoral mandates under the Chapter. It used various mechanisms and methods to fulfill it mandates. Unlike the UN individual complaint mechanisms, the individual complain mechanism of the Commission is not optional. It is an in-built mechanism in the Charter since the states which ratified the ACHPR are subjected to its jurisdiction without any further action.[509] The Commission examines state reports, individual and group communications against a state.[510] The Commission can receive complain from NGOs on behalf of victims. This created an opportunity for victims to reach the Commission through the representation of others in situations where they cannot by themselves bring cases before the Commission unlike the European, Latin America and UN systems which requires only victims to bring the compliant. Its decisions are publicized after its approval by the AU Assembly.

A special mechanism such as Special Rapporteurs and Working Groups exits at both the UN and AU levels established by the Human Rights Council and African Commission respectively.[511]

The Commission has contributed by is progressive decisions. In relation to land rights, in COHRE v. Sudan[512], the Commission has laid down important decision in relation to forced eviction from land and destruction of resources. The case arose in the context of the Darfur conflict where destruction of food and water resources of the civilian has happened. Among other issues, the case has dealt with whether legal title to land is a necessary condition for the protection of property rights.[513] The African Commission found violations of the right to property (Article 14 of ACHPR) related to forced eviction from homes and land, including land used for agricultural or herding purposes. Importantly, the Commission held that "It doesn't matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for

[508] Upon civil society organizations campaigns, the African Human Rights Court is established through its Protocol in 1998. Individuals, NGOs with observer status and the African Commission can access the court if the state ratifying the Protocol declares to this effect. The Court can give a binding decision which is lacking at the UN level. The court has a mandate to adjudicate cases not only based on regional human rights treaties but also those of the ratified treaties of the UN. This court is merged with the court of Justice to form the African Court of Justice and Human Right under the Protocol on the Status of the African Court of Justice and Human rights in 2008 which has not yet come into effect because of the insufficient number of the required ratification. See Frans Viljoen, *supra note 492*, p. 208.
[509] Frans Viljoen, *supra note 492*, p. 206.
[510] Frans Viljoen, *id.*, p. 200.
[511] Frans Viljoen, *Id.*, p. 206.
[512] African Commission on Human and peoples' Rights: Center on Housing Rights and Evictions (COHRE)v. Sudan, Communication No. 296/2005 (29 July 2010).
[513] OHCHR, Land and Human Rights: Annotated Compilation of Case Law, 2015, p. 28.

generations means they have been deprived of the use of their property under conditions which are not permitted by Article 14."[514] Here, the Commission considered traditional usage as a means to property rights rather than land titling. The Commission has also provided an important jurisprudence in line with the UN Principles on housing and property restitution for refugees and displaced persons (Pinheiro Principles) as "emerging principles in international human rights jurisprudence" including Principle 5 which states that "States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of lands as a punitive measure or as a means or methods of war."[515]An important take away from the case is that lack of titling should not be a ground to deny the right to land and its correlated rights.

However, resource constraints, lack of visibility, credibility and legitimacy resulted in few cases to be entertained by the Commission.[516]

Chapter Summary

Land rights is one of the most critical rights which is gateway to realize many other rights. Though the international human rights framework does not give an explicit recognition to the right to land, the demand for recognition of this right driven by social movements in several countries has shifted rhetoric under international law towards its recognition. The current trend shows that land is recognized as a human right through extensive international and regional jurisprudence, in soft laws and interpretation by treaty bodies. This recognition of land rights as a human right is fundamental to make states accountable for its protection, promotion and fulfillment. However, there remain a number of issues for further deliberation and clarification. One issue in this regard is that the human rights framework is not yet clear whether land rights will promote human rights when held as public good or as private property. The lack of a binding normative framework has made it open for countries to decide on such matters.

In relation to women's land rights, the international framework has advanced for equal rights of women to access, control and use land rights with men in binding instruments. The jurisprudence on women's land rights assures women's land rights despite the fact that the land tenure is based on statutory or customary, individual or communal ownership. In particular, it protects women from losing their rights for the mere fact that they do not have a formal title to it. This protection

[514] ibid.
[515] ibid.
[516] Frans Viljoen, *supra note* 492, p. 201.

considers substantive equality considerations. The existing framework also ensures women's participation in land reform initiatives, the recognition of informal/customary rights during formalization of land rights, application of non-discrimination principle in land redistribution process, making the justice system accessible to women, ensuring land institutions transparency, representativeness, and accountability, and creating awareness on women's land rights.

The human rights framework recognizes the pitfalls of the market-based approach to land which has the effect of aggravating inequalities and tries to address them using right based approaches. While the market-based approach emphasized on a utility-based analysis (i.e. promoting efficient and productive owners of land), the rights-based approach sets normative value.[517] The discussion under this chapter is a basis to understand the place of rural women's land rights under international and regional human rights frameworks. As such, it is a basis for the discussions under the next chapters which tries to analyze the extent to which rural women's land rights are recognized in the national and regional legislative, institutional and judiciary responses in a plural justice system.

[517] Narula, Smita, *supra note* 4, p. 173.

Chapter Five: Historical Trajectories of Rural Women's Land Rights in Ethiopia: From 1989 to the Present

Introduction

The previous chapter has elaborated the place of rural women's land rights under the global human rights framework. It has demonstrated that the burden of protecting the rights rests on domestic laws and institutions. This chapter examines the legal and institutional protection to rural women's land rights in Ethiopia. In doing so, it tries to situate the discussion by presenting the historical and political context that exists on land rights in general and rural women's land rights in particular. Thus, this chapter presents the history of women's land tenure in Ethiopia to serve as a steppingstone to understand the context of the status of rural women's land rights. It provides the political, social, and legal factors and explanations that have led to rural women's marginalization in accessing land by narrating what existed in the past.

Under this chapter, the history of women's land rights in Ethiopia is analyzed from three dimensions. The first is social history which looks into the existing social relations during the three periods of study (Imperial, Derg and EPDRF period) and its effect on rural women's access to land. It examines the intersectional elements such as gender, class, age etc. which have led to exclusion of various social groups in the land tenure system of Ethiopia at various times. Thus, it analyzes who was excluded and how such exclusion affected women with various social backgrounds such as class, ethnic origin, social status etc. The second dimension is the political history of land rights in Ethiopia. It looks into what were the political driving forces for the policy choice on land rights in Ethiopia during the different regimes. It examines the political implications of land issues. This is important because according to Cousins (quoting Lund) "Power relations are key to understanding how tenure regimes work in practice, since 'struggles over property are as much about the scope and constitution of authority as about access to resources' (Cousins, 2007: 282)."[518] The third dimension is the legal dimension which investigates the legal history of women's land rights in Ethiopia.

In a nutshell, this chapter is devoted to discussing how the law on women's land rights evolved through time and the political drivers and implications of such changes overtime. It analyses the development in the land laws during three eras in Ethiopia and their gender implications on rural women's land rights, by focusing on the protection of rural women's land rights during the imperial era, the Derg era and the EPDRF era and analysis the reality of rural women during each period by

[518] Jennifer C. Franco, *supra note* 113, p. 6.

giving a focus on how the political-economic structure affected the lived realties of women during these periods.

The chapter is structured as follows: the first section deals with rural women's land rights during the imperial period from 1889-1974. This section discusses the types of land tenure system that existed during this period, rural women's land rights in this tenure system and the place of women's questions and land questions during the student movement from 1960-1974. The second section discusses rural women's land rights during the Derg era from 1974 to 1991. It presents the rural land reform that took place during this period, the role of the Peasant Associations in land distribution and the gender implications of these reforms. The third section has dealt with rural women's land rights during the EPDRF period from 1991 to 2018. This section discusses the gender implication land redistribution that took place in the Amhara Regional State and the land policies adopted under the FDRE Constitution. The fourth section analysis the federal and regional legal framework on rural women's land rights in Ethiopia. It compares these laws and identifies its lacuna. The fifth section has given its attention to the institutional framework on rural land administration in Ethiopia and its gaps and benefits. It reveals the roles of governmental and non-governmental institutions in addressing women's land rights in Ethiopia.

5.1.Rural Women's Land Rights During the Imperial era (1889-1974)

Before Menelik assume power in Ethiopia in 1889, land was commonly owned, and there was no shortage of land and all member of the society had access to land on equal basis in the Northern part of Ethiopia. This was the case due to the limited population size at the time among other factors.[519] Furthermore, lack of centralized form of administration during the ZemeneMesafint has contributed to the lack of state control over land. During the pre-imperial period, land was used to sustain rulers that ruled the different parts of the current Ethiopia by collecting taxes and tributes.[520]

The Imperial period, which included the period when Emperor Menlik (1889-1913) and Emperor Haile Seillassie (1931-74) ruled Ethiopia, was characterized by a feudal system. The feudal system has promoted landlordism. This system has created a division in the social and economic status of those who own and control land and those who were producing on the land by their labor. This has impacted the political-economy of the imperial state.[521] The section below discuss the tenure system that existed during the imperial period.

[519] Mersha Gebrehiwot, *Gender Mainstreaming in Forestry in Africa: Ethiopia*, 2007,p. 4.
[520] *Ibid*.
[521] Dessalegn Rahmato, *Agrarian Reform in Ethiopia*. Scandinavian Institute of African Studies, Uppsala. 1984, p. 16.

5.1.1. Land Tenure System During the Imperial Period

During the imperial system, the country established a heterogenous land tenure system which divided the economic and social status of the population in the North and South. In the Southern Ethiopia, feudal system which created landlord-tenant relationship existed while in the Northern Ethiopia, 'tributary' known as *rist* system, which is hereditary for both men and women, existed.[522] Thus, the land tenure system during the imperial can be characterized by a spatial division between the north and south (Aberra Jemberre 2000, Pausewang 1983) or Center and periphery (Donham 1986). Most of the literature (Alemneh Dejene 1987, Cohen and Weintraub 1975, Hoben 1973) focused on the northern imperial land system. Few literatures (Donham and James 1986, Pausewang 1983, Dessalegn Rahmato 1984) are intellectual writings found on the South tenure system.

According to Dessalegn, three land tenure systems existed in the Northern part of the Country: communal or '*rist*', church or *Samon* and State tenure. The communal or *rist* system refers to a patrimony right that is inherited from one's ancestor (both from the paternal and maternal line) irrespective of one's gender. Though the land is from one's ancestor and commonly used by descendants thereby considered as communal, it is individuals who have usufruct rights and can use and benefit from the land.[523] According to Dessalegn, the usufruct rights that is inherited from ancestor is a lifetime right which cannot be transferred to others who are outside of the family by sale, mortgage, bequeath or gift.[524] Each holder of the right has paid a tribute to the state. One of its negations has been fragmentation of land in the North. In addition, its communal ownership has resulted in disputes over land among its different users which increased land insecurity.[525] This is because of lack of specificity in allocation of part of the ancestral land to descendants which created competitiveness among family members with usufruct rights. However, its positive aspect is its redistributive effect which allowed the majority of rural peasants to access land in their own without state's intervention and control of whatsoever.[526] It allowed continued landholding within the

[522] Dessalegn Rahmato, *id.*, p. 16-17)
[523] Solomon Dessalegn Dibaba, 'Ethiopia History of Land Tenure and The Present Land Governance: The Case of Oromia Region', *International Journal of Academic Research and Development*, Vol. 5, Issue, 1, 2020, p. 34.
[524] Dessalegn Rahmato, *supra note* 521, p. 17
[525] Dessalegn Rahmato, *id.*, p. 17
[526] Atakile Beyene 2004 and Hoben 1973, McCann 1988 as cited in Wibke Crewett, Ayalneh Bogale, and Benedikt Korf, *supra note 105*, p. 8.

descendants of the ancestorial land. Though there was no tenancy system in the North part of Ethiopia, there was tenant relationship.[527]

On the other hand, Semon land is a church land on which the Ethiopian Coptic church collected tributes and taxes. It was perpetually given for the church for it to support its activities, its clergy and others who provided service to it although in theory the land is considered to be under the ownership or control of the state.[528] It was clergy, servitors and parishioners who cultivated the land and the church collected tributes from these individuals. They had the rights to use or lease the land to others. But they did not have the right to sale or exchange the land.[529] There were also state lands called *maderia* land that was given to former combatants and officials, patriots and meritorious individuals as a pension or salary by the Emperor.

In the South, the land tenure system included church, state and private (freehold) or *Gult* (which also referred as *gebbar* tenures).[530] This complex land tenure system only reflects the major tenure systems. There were a plethora of local land tenure systems that were operational at the same time.[531]*Gebbar* or private property rights used to refer to those who were paying tribute to *gult* holder or local elites (*balabbat*) before 1941. Following Emperor Menlik II (1889-1913) territorial expansion with a view to create a modern empire state which was the mechanism of state building of the time, Menlike used land as an incentive to recruit his soldiers and administrators in the South.[532] Both the northern nobility and the southern landlords who are willing to pay tax to the emperor were granted land for their loyalty.[533] This resulted the land of the indigenous people in the south to be expropriated by the state and given to local elites (*balabbat*), with some having only a usufruct rights on a portion of the plot of land (Bereket Kebede 2002, Pausewang 1983). The peasants were disproportionately affected with burdensome tributes and services they have to render to the *gult* holders and local elites. This continued during Haileselassie period too. This turned into largescale expropriation which results in the eviction of indigenous peasants for the purpose of large-scale agriculture in 1950s (Bereket Kebede 2002). Emperor Haileselassie used to grant land to his loyal administrators using the freehold rights to land. Those who were part of the crown and protected the state's power were given land by taking it from peasants and local chiefs. This land

[527] Solomon Dessalegn Dibaba, *supra note* 523.

[528] Dessalegn Rahmato, *supra note* 521, p. 19.
[529] Dessalegn Rahmato, *supra note* 521, p. 19.
[530] Dessalegn Rahmato, *supra note* 521.
[531] Wibke Crewett, Ayalneh Bogale, and Benedikt Korf, *supra note* 105, p. 7.
[532] Pausewang 1990:42 cited in, Yonas Tafesse Qoricho, "Women and Land Rights in Rural Ethiopia: The Case of Wolaita." Master's thesis, Universiteteti Tromsø, 2011, p. 36.
[533] Mersha Gebrehiwot, *supra note* 519, p. 4.

tenure system was considered as private tenure.[534] After 1941 when the emperor returned from exile (after Italian occupation from 1935-1941) and after the introduction of the tax reform, the emperor granted land to those who were fighting the Italian. The tax reform declared the land to be granted to those who were paying tax which resulted in *gebbars* becoming owners of land as a private owner. Lands for which no tax was paid turned into government land. This has abolished the *gult* and *rist gult* system by landlord and the church. However, those landlords who were paying tax to government became owners of land while those who the original landowners left evicted become tenants who sharecropped on the land owned by landlords. The sharecropping tenants were required to pay more than half of the products to the landlords or pay in their labor.[535]

The other land tenure system was *Gult*. It is a type of fief right imposing on the *rist* holding peasants tributes and taxes in cash, kind or labor to landlords (Bereket Kebede 2002, Cohen and Weintraub 1975, Pausewang 1983). In the North and central part of the country, the gult holders were aristocrats who were loyal to the imperial whereas in the Southern Ethiopia, the civil and military servants of the imperial, who had served the regime, were the gult holder as a compensation for their services (Aberra Jemberre 2000, Dejene Aredo 1999, Pausewang 1983). This right was granted to royal family and nobles in the Sothern region of the country (Cohen and Weintraub 1975, Pausewang 1983). *Gult* right does not only refer to the right to land but also to the labor of those who are living on the land. It vested the *gult* holder to levy taxes in cash, kind and labor. The Ethiopian Coptic church was also one of the beneficiaries from the *gult* system of the day. The *gult* holders in return to their *gult* right have responsibilities towards the state in form of military and administrative services, maintenance of peace and security etc (Donham 1986). The *gult* right was neither hereditary nor can be inherited. It was granted by the state and can be withdrawn by the same at any time (Cohen and Weintraub 1975). But there was a *rist gult* system which can be inherited.

As discussed, tenants were the most vulnerable in the land tenure system because of they had the lesser rights and could face eviction at any time. However, most of the population of the South Ethiopia fall under this category.[536]*Gult* holders and *gabbar* holders enjoyed the most complete rights. The following table summarize the kind of rights that are recognized under the different types of tenure system during the imperial period based on Ostrom and Schlager (1996) analytical framework elaborated under chapter two,

[534] Dessalegn Rahmato, *Supra note* 521, p. 21.
[535] Wibke Crewett, Ayalneh Bogale, and Benedikt Korf, *supra note* 105, p. 10.
[536] Dessalegn Rahmato, *Supra note* 521, p. 24.

Table 4: Bundle of rights recognized under the land tenure system of Imperial regime

	Access rights	**Withdrawal rights**	**Management rights**	**Exclusion rights**	**Alienation rights**	**Type of right holder**
Representative of *rist* holder corporation/elders			×	×		Unknown
Individual *rist* holder	×	×	×			Claimant
Gult holder during the period of service	×	×	×	×		Proprietor
Rist *gult* holder	×	×	×	×	×	Owner
Gebbar holder (rights after 1941 tax reform)	×	×	×	×	×	Owner
Tenant	×	×				Authorized user

Source: Adapted from Wibke Crewett et al.[537]

5.1.2. Rural Women's Land Rights in Emperors' Land Tenure Systems

When we examine women's rights within the land tenure system, we find very few literatures. Donald Crummey has addressed women's property rights in Gonderine Ethiopia using the marginalia of church documents. Accordingly, women from the nobility in the highland part of Ethiopia had the right to land and political offices thereof. These women were able to access courts to protect their rights through court litigation.[538] However, their role in the society was of subordinate to men in any of land transactions.[539] Based on the above discussion and from the few writings available, women's land rights have not been accorded with equal treatments with men.

In the Southern Ethiopia, women were excluded in the three land holding systems (by the government, church and private land), . According to Original,

> Before 1975, the majority of the farmers in this country were tenants. The tenants in turn had their own tenants - in the form of their wives and daughters - to work for them for more

[537]Wibke Crewett, Ayalneh Bogale, and Benedikt Korf, *supra note* 105, p. 11.
[538] Donald Crummey, 'Women and Landed Property in Gondarine Ethiopia', *International Journal of African Historical Studies*, 1981.
[539] Belete Bizuneh, 'Women in Ethiopian History: A Bibliographic Review', *Northeast African Studies,* vol. 8, no. 3, 2001, p. 11.

than 16 hours a day. Hence, women were called the tenant's tenants - a very apt and accurate description.[540]

In the South, tenants did not only loss their lands to landlords, but they were also required to provide their labor and other services to landlords. Majority of the people including women were discriminated and lost their rights to customary land that existed before the feudal system took its root. This relationship created subjugation in the population in the south by land owning political elites and co-opted local chiefs called '*balabats*'. This resulted women in the South to be landless.[541]

The exception was in the norther part of Ethiopia where daughters were entitled to inheritance of land in similar way as sons.[542] The rist system allowed land to be inherited through 'bilateral descent', the male and female lineages.[543] This is common in the *rist* system where both men and women are entitled to land as birth right. This kind of right on *rist* is inherited from ancestors and all who are considered to be free members of the community (note that slavery existed at the time until it was abolished in 1942 by Emperor Hailesselassie) are entitled to it. *Rist* system does not allow the *Rist* holder to transfer the land through sale or bequeath or gift to another person other than family members.[544] Though women were able to access land through the *rist* system which allowed land inheritance through both male and female lineage, the land was commonly owned and women were not allowed to pough and enter into land related transaction. According to Hoben, the mother *rist* is entrusted to the father as 'wife *rist*' which he can use and administer until the children grow and take their 'mother *rist*'.[545] *Rist* system created an advantage for the nobility by conferring it with a political power to administer, govern and adjudicate land related cases. Though women had inheritance rights, the power relation between men and women and prohibition of women from plowing did not allow them to exercise their use rights on the *rist* land. The *rist* system has eroded through time with expansion of commercialization and rapid population growth. However, the practice in the *rist* system had variations from place to place in the Northern part of Ethiopia.

[540] Original Wolde-Giorgis, "Land Tenure and Gender." In Taye Assefa (ed.): Food Security Through Sustainable Land Use: Policy on Institutional, Land Tenure, and Extension Issues in Ethiopia: Proceedings of the First National Workshop of NOVIB Partners Forum on Sustainable Land Use. Addis Ababa: NOVIB Partners Forum on Sustainable Land Use, 1999, p. 210.
[541] Mersha Gebrehiwot, *supra note* 519, p. 5.
[542] Original Wolde-Giorgis (1999): *supra note 540*, p. 204.
[543] Allen Hoben, *Land Tenure among the Amhara of Ethiopia: The Dynamics of Cognatic Descent*, The University of Chicago Press, 1973, p. 132.
[544] Mersha Gebrehiwot, *supra note* 519, p. 4
[545] Hoben, *supra note* 543, p. 136.

The following table summarize the land tenure system and the place of women's land rights in the various tenure systems.

Table 5: Summary of women's land rights in the imperial land tenure systems

Tenure system	Description
"communal" or *rist*	Acquired by being descendant of the original holder of the land or founder of the community irrespective of gender, could not however be transferred to others by sale, mortgage or gift, although the possessor could lease them or inherit it to his/her children. It was prevalent in the north. Thus, both men and women descendants were entitled to *rist* land.
Gult	granted to members of the ruling aristocracy, recipients were empowered to collect taxes or tribute from the people on *gult* property. It was common both in north and south Ethiopia.
semon land	church land to support its activities, its clergy and others who provided service to it. Church leased the land to its clergy, servitors and parishioners in return for tribute. It was common in the north and south Ethiopia. Women did not have access to this type of land as clergy and others who provided service to the church are men except in case of nun who can use the *semen* land.
Mengist and *MaseriaIt* land	Is land registered as government property. It is given to citizens as long as they are loyal to the government to use or lease it but cannot pass it on to others by sale, gift, or mortgage. It can be inherited. It was common in South and North Ethiopia.
private land (freehold)	Given to soldiers and administrators in the conquered areas to collect contributions from productive peasants. It created landholders-tenant relationships. It was common in Southern Ethiopia. Since most of the soldiers and administrators were men, women did not have access to this type of land in the South.

Source: Author's own construction

5.1.3. The Articulation of women's Questions and Land Questions During Student Movement (1960-1974)

The Ethiopian students played one of the major roles in opposing the feudal system and leading the way to the 1974 revolution in 1960s. The student movement housed at Addis Ababa University started with supporting the coup d'état against Haileselassie in December 1960. Students organized a demonstration in support of the failed coup. This demonstration helped to arise political consciousness of students and their discontent against the feudal system of the day.[546]

[546] Legesse Lemma, The Ethiopian Student Movement 1960-1974: A Challenge to the Monarchy and Imperialism in Ethiopia, *Northeast African Studies*, Vol. 1, No. 2, 1979, p. 31.

The Ethiopian Student Movement is based on the rejection of oppression on the basis of class and gender.[547] The demands of the ESM are centered on three questions: land question, women's question and nationalities question. The land question was known for its slogan of 'land to the tiller'. It mainly aimed to dismantle the feudal landlord system. It was this slogan that was echoed in the demonstration that was held in 1965 with the objective of demanding the state to address the economic and social inequality created through the feudal land tenure system.[548] The women's question was driven by the socialist thinking that aim to emancipate women from a capitalist system that exploit their labor. The main goal was to ensure women's public participation based on the socialist ideology.[549] The Ethiopian Student movement has taken an intersectional approach to women's question by arguing that women are subjected to double oppression that emanate from class oppression and gender.

The three questions are interlinked in the fact that they are all against the various forms of oppression and inequalities that existed at the time. These questions of equality have been behind the measures that have been taken place during the Derg and EPDRF era.

The student movement had the Marxist orientation in its world view and instances against imperialism. It is informed by social justice questions as was the case in similar demands that arise in other countries in the 1968.[550] However, it has taken an ethno-nationalist outlook/stance at a later stage which was embolden by the liberation movements that arose at the same time such as that of TPLF and OLF that started armed struggle.

The Ethiopian Student Movement has also increased female students' consciousness on women's emancipation.[551] However, the number of female students at Addis Ababa University was very small and this has suppressed their voice in relation to other questions that was raised at the time such as the nationality question. Women's land rights issues did not have separate attention at the time but was considered to be subsumed in the other questions on nationality and land questions. As discussed in the subsequent section, the land question has resulted the land reform that was introduced by the Derg regime.

[547] Bahru Zewde, *The Quest for Socialist Utopia: The Ethiopian Student Movement c. 1960-1974*, 2014, p. 187
[548] Ibid.
[549] Indrawatie Biseswar, "The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality, 1974-2005.", *PhD thesis*, 2011, p. 107.
[550] Bahru Zewde, *supra note* 547.
[551] Bahru Zewde, *supra note* 547.

5.2.Rural Women's land rights during the Derg era (1974-1991)

'Land to the Tiller' uprising envisaged to bring reform in the land tenure system to make it justice to all. However, this Student Movement and subsequent upheavals has resulted a military government based on Marxism-Leninism known as Derg to take power.

5.2.1. Rural Land Reforms During the Derg Period

The Derg era introduced rural land reform through Proc. No. 31/1975 entitled the Public Ownership of Rural Land. The proclamation attempted to abolition landlord-tenant relationship by nationalizing rural land under article 3 which states "all rural lands shall be the collective property of the Ethiopian people". It also prohibited private ownership of land and the sale, lease, mortgage of land under article 4. It abolished landlordism and declared rural land to be common property of the Ethiopian people. The Proclamation was thought to be a new hope to bring development and eliminate inequities in possession of land (Kifle (1999):138). The Proclamation has limited the maximum land size to 10 hectares per household and the rest to be nationalized. The law under Article 6 of proc. No. 31/1975 abolished tenancy and freed all peasants from any labor or service obligation towards the landlord. The proclamation also established Peasant Association (PA) which was later backed by other legislations such as Proclamation No. 71, December 1975 (on Peasant Associations Organisation and consolidation proclamation); No. 130, September 1977 (on formation of nation-wide Peasant Associations); and No. 223, May 1982 (on restructuring Peasant Associations).

The nationalization of land through land reform laws had the implications of "centralizing politico-legal authority' of the Derg regime over land through the use of the Peasant Associations. Though the land reform has the objective of addressing past inequality in access to land, however, it was also an instrument to territorize state power into the rural milieu.[552]

5.2.2. Role of Peasant Association (PA)

The PA was organized at lower administrative level and empowered to extensive mandate including judicial power to resolve disputes through its tribunals, undertake land redistribution, administer public land, establish service cooperatives, establish educational and health services providers, and carryout villagization program.[553] It was mass-based organization including all peasants above 18 years of age as its members. It had a general assembly with the highest decision-making power, executive council and judicial tribunals. It also expanded to have producers' cooperatives, defense

[552] David Chinigo, The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu, *Review of African Political Economy*, Vol. 42, No. 144, p. 177.
[553] Dessalegn Rahmato, *Agrarian Reform in Ethiopia*, 1985, p. 38.

squads (for security and enforcement of the decisions of tribunals), and women's associations. PA existed at *Woreda* and *Awuraja* (district, provincial) and national levels (All Ethiopia Peasant Association (AEPA). Rahmato called these institutional structures "quite an achievement in itself, for what was a scattered and inaccessible mass of people has now been brought under a network of local organisations."[554] He also retaliate that judicial tribunal of the PA has been pivotal vehicle to resolve land disputes internally by peasants themselves rather than involving the police or Woreda courts which are inaccessible and outsiders to the peasants.[555] However, the PA was also used as instrument of political control by the regime and has been criticized for its discriminatory practices as discussed in the subsequent section.

5.2.3. Rural Land distribution During Derg

The initiation to land distribution began with the establishment of PA in 1975 and 1976 by university and high school students and later by the PA and peasants themselves carried out the distribution of land.[556] The land distribution was not uniform throughout the country. The approach and criteria applied to distribute land differ from place to place. The distribution did not result in equal distribution of land as family size, farming abilities, quality of land and previous land holding was considered.[557]

Though the Derg regime took measures of land law reform to abolish landlord system, establishment of decentralized PA and distribute land, it failed to eliminate landlessness created by landlord-tenant system and avail new lands for distribution. The redistribution of land that was made during the Derg period was by nationalizing the land that was under the feudal system. This has led to fragmentation of land which was aggravated by collectivization/villagization and resettlement measures taken by the regime.[558] In general, the land reform introduced by Derg resulted in material deprivation, food insecurity (leading to the 1985 famine) and political disempowerment.[559]

5.2.4. Gender Implications of the Derg Period's Rural Land Reform

From a gender perspective, the land reform proclamation is biased towards women's needs, roles and capabilities. Though the proclamation recognized women's rights to access land by stating that

[554] Dessalegn Rahmato, *id.*, p. 75.
[555] Dessalegn Rahmato, *id.*, p. 74.
[556] Fassil 1993:107; Balsvik 2007:53 & 58 cited in Yonas Tafesse Qoricho, *supra note* 532, p. 39-40.
[557] Fassil 1993:110 & 132 cited in Yonas Tafesse Qoricho, *supra note* 532, p. 42.
[558] Original Wolde-Giorgis, *supra note* 540, p. 204
[559] Zenebework Tadesse, 'Revisiting Rural Development in Ethiopia Though the Gender Lens' in Zenebework Tadesse (ed.), *Issues in Rural Development - Proceedings of the Inaugural Workshop of the Forum for Social Studies*, 18 September 1998, Addis Ababa, Forum of Social Studies, p. 29.

"without differentiation of the sexes, any person who is willing to personally cultivate land shall be allocated land,",[560] the practice has demonstrated that women were discriminated in the distribution of land. As discussed in the below section, land was given to the head of the family who is the husband except in female headed households as a result of death of the husband. According to Zenebework, in "using the household as the unit of allocation, the policy assumed that households were uniform and it failed to take account of the intra-household distributional relations."[561] Furthermore, although the law prohibited to lease land to others, it allowed women to use the labor of someone else to plow. This reinforced the existing social norm or taboo that a woman cannot plow. According to Zenebework,

> the policy assumed that the gender division of labor in agriculture was immutable and classified women with persons who, due to illness or age, could not personally cultivate their holdings. In other words, the reform failed to challenge the cultural taboo against women ploughing and sowing and, hence, reaffirmed the beliefs, practices and contracts which governed the relations between women and men.[562]

This has deprived women from accessing rural land. Divorcee women, women in polygamous unions and women who attain majority age after land distribution was the most affected category of women. Female-headed households were allocated land. However, the lands apportioned to them were less in size and fertility. This had further affected them because of they have to seek the labor of male relatives to farm the land. This has diminished their control over its products.[563]

Furthermore, land was distributed to those who are member of peasant associations and are residents of the kebele. However, women often moved to their husband's place upon marriage. This deprived them the chance to get land in their parent's "*Kebele"*/district. Similarly, divorcee women forfeit their land when they move out of their marital home upon divorce. The existence of inheritance practices in the pre-reform period determined women's access to land. In the Northern part of Ethiopia, where there exists the practice of women inheritance of land, enhanced women's claims to land upon returning to their natal family during divorce. Judges and peasant association leaders had also a role in determining women's access to land upon divorce.[564]

[560] Article 4 (1) of Proclamation No. 31/1975.
[561] Zenebework, *supra note* 559, p. 29.
[562] Zenebework, *id.*, p. 29-30.
[563] Zenebework, *id*., p. 30.
[564] Zenebwork, *id*., p. 30.

5.2.5. Impact of Redistribution of Rural Land by Peasant Association (PA) on Women

PA was originally established to distribute land and mobilize peasants to protect the environment. And at the beginning, it was committed to undertaking these tasks in a genuine manner. However, later PA is engulfed with favoritism whereby they distributed fertile lands to their families and friends. They also retain large tracts of land for their own exclusive use. The widespread bribery has led the public to loss trust from the public. The PA leaders were part of nepotism and bribery which was referred as "talking intimately with PA leaders'. They led the PA to be perceived in the same way as landlords. It was coopted by Derg government and became the military's wing. PA served as a tool of the government to collect tax, contributions, mobilize the youth for political ends, enforce the quota system for grain distribution, channeling the government's demand to the peasant, facilitating the resettlement and villagization program and enhancing the collectivization program of the government. This shift of responsibility has led it to divert from its primary responsibility of land management, environmental protection and enabling development activities in the community. It was not also doing a favor to women. Though PA was envisaged to support women (female-headed households) by assisting them in farming,[565] it was not able to fulfill this endeavor. In case of male-headed households too, land was distributed to the household husband who was considered as head of the household. By 1990, women representation in the PA was 12% while it was 7.5% in the Agricultural Producers Cooperatives (APC) (APC distributed seeds, fertilizers and facilities marketing for farmer).[566] The representation of women in the PA grew to 20-25% at the end 1990s because of the civil war which caused resettlement and death of male members of PA.[567] Women were not encouraged to participate in the PAs because of its de-politicization and discriminatory practices by PA leadership.[568] The PA leaders who had the power to distribute land also distributed less fertile land to women. Since the culture precluded women from plowing, they were using the land for farming through the labor of relatives or used sharecropping. PA leadership was encouraging women to remarry to benefit from land distribution.[569]

Because of the failure of the PA to assist Female-headed households with farming, they resorted to sharecropping. The sharecropping arrangements were not on equal basis because of weak bargaining power of women. When women able to use the labor of their relatives, relatives were

[565] Proclamation 71/1975 requires the PA to "cultivate the holdings of persons who, byreason of old age, illness, or in the case of a woman, by reason of her husband's death, cannotcultivate their holdings".
[566] Original Wolde-Giorgis, *supra note* 540, p. 293-294.
[567] Zenebework, *supra note* 559, p. 31.
[568] Dawit Bekele, 'Peasant Associations and Agrarian Reform in Ethiopia', *The IDS Bulletin* 13, no. 4, 1982, p. 65.
[569] Original Wolde-Giorgis, *supra note* 540, p. 295.

willing to plough their land after they work on their own land which delayed harvest. Furthermore, women did have limited access to oxen and other farming equipment. In comparison to married women, women in female headed households were better off since the women themselves were members of the PA because of the absence of head of the household that represent them. They had also the advantage of deciding by themselves on their own land.[570]

Women in polygamous marriage were the most disadvantageous groups during the 1975 land redistribution. This was as a result of polygamous men reluctant to register their wives to prevent getting a diminished land size from the 10 ha allocated to a single family. They only registered one of the wives while the other wives remain outside of the land allocated. Since they were not also considered as female-headed households as their marriage is still intact, they were not entitled to get land. This affected women in polygamous marriages in places such as Keffa, Hararge etc. Women also did not benefit from the resettlement and villagization program. Upon moving from place to place, they lost their networks and resilience. According to Original,

> Women's access to land revolves around their relationship with men. Acquiring land just by virtue of being human beings had virtually been non-existent for women in the past. …When women moved from place to place, they were given proof of residence in the belief that their rights should transfer to their new residence but in reality, women, whatever their tag at the time of movement (society gives women tags such as daughters, wives, mothers and sisters), never get land this way.[571]

5.2.6. Agricultural Extension During Derg

The agricultural extension program during the Derg period aimed to increase agricultural production through informal educational programs conducted by extension agents. It has also focused on improving productivity of larger farms and improving the individual crop production rather than farming system. These have created a focus on production of crops as commodities and engaging in farming as business activities. This marginalized women farmers who are producers of small-scale farming for home consumptions. The needs of female-headed households were not also considered in this program. Women were made to focus on home economics, gardening and child raising skills. This limited women's access to productive resources, new technologies, etc.[572]

[570]Original Wolde-Giorgis, *supra note* 540, p. 207.
[571] Original Wolde-Giorgis, *id*, p. 210.
[572] Original Wolde-Giorgis, *id.*, p. 295.

From a gender perspective, the 1975 land reform did not enable to tap in women's potential by allowing them to participate in land management. The fact that everything was state controlled discouraged farmers from participating in efforts related to natural resources conservation, afforestation, or environmental protection.[573] Upon the ascent of EPDRF to state power in May 1991, PA and APC were dissolved. PA was replaced with kebele Administration.

5.3. Rural Women's Land Rights During the EPDRF Era (1991-2018)

The Derg regime has been engaged in war with various liberation movements, Tigray People's Liberation Front (TPLF) being the major one which was able to overthrow the regime and establish a federal government. TPLF has been pursuing its own policy on land since its inception in 1976. TPLF was an adherent of the Marxist-Lenin ideology during its struggle and its land related actions was informed by this ideology. During its struggle, land reform was instrumentalized by TPLF to mobilized the Tigrayan peasantry.[574] it has undertaken various land reforms in the area it controlled, mainly in Tigray, which included distribution of land. Land was distributed to married individuals who were granted usufructuary rights. The distribution of land was not based on household by taking households as unit. This gave women the chance to acquire land irrespective of their marital status. Land law was promulgated in 1987 by TPLF which granted access to land to both women and men with the minimum age of 15 and 22 respectively. However, the division of labor which prohibited women from ploughing and sowing persisted. Though women constituted more than 30% of the liberation movement, the division of labor based on cultural views were not abolished, resulting women to benefit less from the land distribution. Women were forced to get the labor of men to benefit from their land.[575] The section below discuss the land redistribution that took place in Amhara regional state after EPDRF came to power.

5.3.1 Redistribution of Rural Land During EPDRF (in Amhara Regional State)

Amhara regional State enacted Land Use Law in Nov. 1996 (Proc. No. 16/1996 amended as 17/1996) which served as a basis for redistribution of land. This legislation was enacted even before the Federal Rural Land Use and Administration Proclamation No. 89/1997 on the 7th of July 1997. The Amhara regional proclamation was enacted contrary to Article 51 (5) of the FDRE Constitution which endows the power to enact laws on land utilization and conservation. This law was challenged as unconstitutional in the *Biyadglegn Meles, et al Vs the ANRS* case as discussed, the subsequent section under this chapter.

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[573] Original Wolde-Giorgis, *id.*, p. 295.
[574] Tom Lavers, *Ethiopia's 'Developmental State': Political Order and Distributive Crisis*, Cambridge University Press, 2024, p. 114.
[575] Zenebework Tadesse, *supra note* 559, p. 32.

The Amhara Regional State Land Use Law established various committees to undertake redistribution of land. The main reasons for redistribution were [576]

- to confiscate land from a certain class of farmers and to distribute it to poor farmers and land-short middle farmers;
- to remove the constraint on agricultural productivity caused by the large holding of the former PA officials and to correct the injustice perpetuated by the former land holding system;
- to establish food self-sufficiency by means of fair redistribution of land;
- to correct the weaknesses of the 1975 land reform law, for which millions had fought under the slogan of land to the tiller,
- by avoiding eviction in the allotment of land, to enable justice to triumph, assure the stability of the rural community, and pave the way for sustainable land use and eventual food security;
- to get rid off unemployment; avoid insecurity in land holdings; improve resource management and serve as an incentive for enhancing food production.

The process involved confiscating land from Bureaucrats (includes PA leadership, leaders of Youth and Women Associations, Kebele justice Committees, etc), feudal remnants (this classification was given to land-rich families from imperial period), and rich farmers with land in excess of 12 *timad* (3 ha.). Those who were categorized as poor farmers (victims of *Derg* rule, land-short peasants, not member of PA leadership, born from land-poor family) benefited land distribution by becoming land distributors and beneficiaries. Among 756,809 people who applied for land, 76% of household heads acquired land. Among these 129,000 (22%) were women farmer. However, the size of land distributed to women was less and no women got four *timad* (1 ha.).[577] This has affected female heads of households who were allocated with the smaller size of land.[578] Furthermore, the women who were allocated with land were categorized based on the business they carried out such as brewing *Tella/Areke* (local alcohol drink) or *Shemena* (spinning cotton) rather than their status as widows, divorcees or daughters etc. And according to the interview the author, Original, had with the then president of the region, the allocation of land was conducted on the basis of women's business because "now that these women have land they would be able to get husbands".[579] This

[576] Original Wolde-Giorgis, *supra note* 540, p. 296-297.
[577] Original Wolde-Giorgis, *supra note* 540, p. 297.
[578] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh Kassaw Agegnehu and Gernot Stoeglehner, 'The Contribution of Land Registration and Certification Program to Implement SDGs: The Case of the Amhara Region, Ethiopia', *Land 2023*, 12, 93, p. 7.
[579] Original Wolde-Giorgis, *supra note* 540, p. 206.

narrative demonstrate the State is not also immune from gendered bias and stereotypes against women which presumes that when a woman gets land, she needs a husband who will farm it and the allocation of land would be an incentive for men to marry her. This does not take into account that women can by themselves become productive in farming and can contribute to the economy of the country.

In general, women's role in agriculture was undervalued, and unrecognized throughout history of Ethiopia. The contributions of men who plough were valued. Though women were prohibited from ploughing in the various part of the country, they had contributed in various ways in weeding, harvesting and post-harvest activities.[580] According to Original,

> Women prepare the ground for plowing, collect and place manure, weed, gather produce, transport grain to the granary and store it, and grind grain. They do gardening, milk cows and tend such animals as sheep and goats, collect firewood, fetch water, prepare food and feed the family, take care of children, tend to the health of animals, and prepare dung cakes. In pastoral areas, they construct mobile houses, look after the cattle and move them from place to place. In areas where hoe-farming is carried out, women do all the work except sowing."[581]

The distribution of the land was made possible through Keble level Committees and EPDRF. The Committees included Household and Holding Size Screening Committee (registered residents, returnees (landholding youngsters who returned from the towns), household size and heads, and size of the land), Land Allocation Committee (distributed land to those selected by the screening committee) and Appeals (Grievance) Committee (hear complaints from peasants dissatisfied with the redistribution).[582]

Overall, the process of redistribution was politicized, and public consultation was limited to discussion of the steps to be taken not on the necessity of the redistribution. Furthermore, public meetings were used to expose bureaucrats who were not identified in the screening process. The distribution was led by kebele, no line ministry or Bureau was involved. This has created many challenges. The lack of written guidelines has resulted the work to be arbitrary and decisions to be inconsistent. The lack of written definition of who bureaucrats are resulted in inconsistent identification even among adjacent kebeles. There was intimidation applied and many lost their land

[580] Zenebework Tadesse, *supra note 559*, p. 28.
[581] Original Wolde-Giorgis, *supra note* 540, p. 208.
[582] Original Wolde-Giorgis, *supra note* 540, p. 298.

though they do not fall within the definition of bureaucrats. The size of land redistributed was not also adequate for farming, and plots that are located in different places were given for the same individual which resulted fragmentation of land.[583] The process was not also clean from nepotism and favoritism based on political affiliation through becoming member of EPDRF, collaborating in identifying the bureaucrats or rich farmers or feudal remnants, and supporting the political party. There were instances where rich farmers got more than 12 *timad* (3 ha.) while poor farmers got only ¼ ha. The redistribution has also affected the land inheritance system that existed in the north. Now that the redistribution has taken land from parents who would have inherited their land to their descendants, they were not able to do so with the reduced land size. The past political affiliation and birth to feudal family of the parents are considered as grounds to deprive the children from such families from the benefit they would have acquired had it not been for land redistribution.[584] This resulted the AAU students to organize a demonstration in 1997 opposing the land redistribution that took place in Amhara regional state. The demonstrators underlined that the redistribution was politically motivated and has resulted in unfair treatment of people. However, no one gave attention to the demonstration because of the government position that they represented few people who were beneficiaries of the previous system.[585]

The EPDRF government has also rolled out agricultural extension program. The extension program aims to provide technical assistance to farmers on new agricultural technologies, use of fertilizers and seeds to increase their productivity. It involves development agents (DAs) and utilizes the one-to-five networking to share experiences among model farmers and others. The extension program of EPDRF has mobilized many women. However, it is criticized for being top-down without any genuine grassroot mobilization and male dominance as it involved as DA graduates from technical and vocational training centers with only 10% being of female graduates.[586]

5.3.2. Gender Implications of Land Policies in Ethiopia: Public Vs Private Land Debate

The dichotomization of land ownership as 'private' and 'public' emanates from 'wave of globalization'. According to Franco, it is a legal construct "devised and used by centralizing state authorities to claim and control foreign or so-called frontier lands and populations and make them 'legible' for modern nation-state building, part of the "simplification" process associated with

[583] Original Wolde-Giorgis,*supra note* 540, p. 298.
[584] Original Wolde-Giorgis,*supra note* 540, p. 299.
[585] Abebaw Yirga Adamu and Randi Ronning Balsvik, 'Students' Participation in and Contribution to Political and Social Change in Ethiopia' in Elina Oinas, Henri Onodera and Leena Suurpää (eds.), *What Politics?: Youth and Political Engagement in Africa*,2018, p. 278.
[586] Kristie Drucza, *Ethiopian Gender and Agriculture Stakeholder Analysis*, 2018, p. 8.

"seeing like a state" (Scott 1998)."[587]Accordingly, much of land in Africa is state owned or public because of colonialism. However, this dichotomy is too simplistic as it does not reflect what happens in urban areas where public lands are commercialized and therefore privatized through informal means.[588] Even in rural places where the influence of state law is not much, the distinction is obsolete.[589] Thus, some suggested that the legal construct of private/public land must be examined against the realities on the ground by applying sociological and anthropological view of property rights as "property rights [is] essentially about historically dynamic social relations among and between people and key institutions -- such as the state and state law, of course, but also important non-state regulatory institutions, such as customary law or what might be called "cacique law."[590] Thus, property rights should not be only evaluated through the lens of public vs. private ownership, but it should be seen as a dynamic social phenomena.

The human rights perspective requires taking into consideration the heterogeneity in agrarian society in terms of gender, class, ethnicity and history in designing land policies and laws. It is important to analyze the interaction and effect of these factors in designing a pro-poor and gender sensitive policy on land. Land policies should avoid being pro-elite by considering heterogeneity in the society.[591] Thus, land policy should consider the following.[592]

1. Land policy must be class conscious by ensuring that landless working class is protected from losing their land. Rural working class is a diverse group which may include peasants, rural labourers, artisanal fisherfolk etc.
2. Land policy must be inclusive of all and women in particular. Diverse rural women including peasants, rural labourers, forest dwellers or pastoralists, should be able to access land on their own. However, women have been excluded in policy design or/and implementation.
3. Land policies should also recognize the rights of indigenous groups in relation to their claim to the land.[593]

[587] Jennifer C. Franco, *supra note* 113, p. 5.
[588] Jennifer C. Franco, ibid.
[589] Jennifer C. Franco, *id.*, p. 6.
[590] Jennifer C. Franco, *id.*, p. 6.
[591] Jennifer C. Franco, *id.*, p. 22.
[592] Jennifer C. Franco, *id.*, p. 22-23.
[593] The recognition of indigenous peoples was mainly influenced by the developments in Americas and pacific regions. According to a 'blueprint doctrine', indigenous peoples are "those people beyond Europe who lived in the territory before European colonization and settlement, and who now form a non-dominant and culturally separate group in the territories settled primarily by Europeans and their descendants." Many of the African states are reluctant to adopt the definition of indigenous peoples and their rights to land and natural resources and to self-determination upon the fear that this would threaten their political unity and territorial integrity of the state. Similarly, in Ethiopia, the historical factors that lead to the recognition of indigenous peoples' rights in Americas is lacking. Ethiopia has not been colonized

4. Land policies should be historically grounded to be inclusive of socially invisible groups and society. Ahistorical land polices are likely to fail since they are blind to the effects of landlessness or land ownership in granting one power and wealth in society.

The EPDRF has made all land to be common property of nations, nationalities, and peoples of Ethiopia based on the socialist version of property rights. This was justified by reasons of equity and fairness based on the socialist thinking on the 'rural question' which believe that enhancing small-scale farming through strong state interventionism is imperative for equal distribution of growth and development.[594] The EPDRF has opted for state ownership of land for three reasons. The first reason is that privatization of land will lead farmers to sale their land and become landless. The second reason is that privatization will lead to land to be concentrated under the hands of few individuals which will increase the inequality between the rich and the poor. The third reason was that rural people will be displaced and the rural land will fall in the hands of investors, urban dwellers and non-indigenous elites.[595] For these reasons of equity, land is placed under the state ownership. However, proponents of privatization of rural land argue otherwise. They argue that land should be privatized for the purpose of increasing efficient use of the land and thereby to increase productivity and the contribution of agriculture in the economy. The above argument that farmers will be displaced if land is privatized is also challenged by arguing that farmers can make decisions by making risks and benefit analysis of selling their land. Though there is no comprehensive study that finds out the interest of the rural population and their choice between the two policy options,[596] a study conducted by the Ethiopia Economic Policy Research Institute in 2004 indicated that only 4.5% of farmers wanted to sell their land if allowed while 90% preferred to

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by foreign force. Thus, it does not have the colonial and post-colonial experience that exists elsewhere. However, there are peoples who have been marginalized because of their way of life such as pastoralist. Pastoralists have the tendency to attach a special place to their land and natural resources as that of indigenous peoples. Their livelihoods be it social, spiritual, economic and cultural depend mainly on their land and natural resources. Thus, the protection of their ties to their land is very crucial. However, these rights might be threatened because of the developmental plans on their land. See Solomon Deresso, 2010, The Right to Self-Determination, Minorities and Indigenous Peoples in Africa cited in Solomon Dersso (ed.), Perspectives on the Rights of Minorities and Indigenous Peoples in Africa, p. 278. Dorothee Cambou, Addressing the rights of Indigenous Peoples in the Development of Ethiopia: A Difficult Compromise or a compelling Necessity? Cited in Eva Brems, Christophe Van der Beken and Solomon Abay (eds.), Human Rights and Development: Legal Perspectives from and for Ethiopia, p. 144 & 141

[594] David Chinigo, The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu, *Review of African Political Economy*, Vol. 42, No. 144, p. 177.

[595] Kifle 1999:135 cited in Temesgen Solomon Wabelo, 'Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries', *Beijing Law Review*, Vol. 11, 2020, p. 82-83.

[596] Hussein Jemma, The Politics of Land Tenure in Ethiopia History: Experience from the South, Paper Prepared for XI World Congress of Rural Sociology, Trondheim, Norway, 2004, p. 12.

keep their land in whole or in part.[597] The study by Ethiopia Economics Association (EEA) concludes that

> The general attitude towards the current land policy is that it is inadequate. The policy does not give land ownership rights along with renting, selling, building a property and selling it, resulting in low tenure security. It will be all round beneficial if the land policy allowed the use of land as a collateral for credit. The current policy has, for all intents and purposes, deprived the feature of land as a production capital. The policy is not conducive for private owners or even investors.[598]

Thus, State ownership of land is seen as limiting factor to make long investment on the land because of the fear that farmers might loss the land arbitrarily by the state.[599] The government has also used land an instrument of political control. The formalization of land rights helped the state to consolidate its power over land and enabled the lower level of local administrative to exercise political authority.[600] According to some commentators, this disempowers the people from having confidence in the exercise of their rights to use, control and administer their land. The concentration of power at the local administrative structures in effect politicized land administration since the local administration used its power over land to reward or punish their political supports or opponents. This is reflected during land certification process, provisions of agricultural services, land expropriations and safety net provisions.[601]The division between those for 'equity and fairness' and 'efficiency and productivity' has shifted in recent years by the state's actions which support the later objectives through its laws that allow land rental, land collateralization and large-scale land investment. These choices were made by the EPDRF after adopting the 'developmental state' model in the late 2000s because of the need to address the rural productivity crisis. It intends to bring

[597] Temesgen Solomon Wabelo, *supra note* 595, p. 83. The finding of the EEA based on the survey is criticized by Centime as it takes methodological individualism as a given. According to her, the survey "does not consider how, despite whatever logical choice the farmer might have made in the context of a survey, the individual farmer' s choices are in fact conditioned by the political economy of the entire productive system in Ethiopia, in which agriculture plays a substantial role. Because the report' s methodology takes the questions being asked as eliciting self-evident truths, the report must deny that a contradiction can exist between an ideally logical answer and an answer as it might play out in reality." See Elleni Centime Zeleke, When Social Science Concepts Become Neutral Arbiters of Social Conflict: Reading the Ethiopian Federal Elections of 2005 through the Ethiopian Student Movement of the 1960s and 1970s, *Northeast African Studies*, Vol. 16, No. 1, 2016, p. 120.

[598] Mintewab Bezabih and Degye Goshu, 'Land Issues in Ethiopia: Trends, Constraints and Policy Options', *Policy Working paper 06/2022*, Ethiopia Economics Association (EEA), 2022, p. 35.

[599] Tom Lavers, 'The Political Economy of Land Policy in Ethiopia: Evolving Rationales and Challenges of State Ownership' in Melaku Gebeye Desta, Dereje Feyissa Dore and Mamo Esmelealem Mihretu (eds.), *Ethiopia in the Wake of Political Reforms*, 2019, p. 312.

[600] David Chinigo, The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu, *Review of African Political Economy*, Vol. 42, No. 144, p. 175.

[601] David Chinigo, *id.*, p. 182-183.

structural transformation by promoting agrarian capitalism with state-controlled commoditization, market formation and balancing of socio-economic differentiation.[602] This is reflected in the 2005 land Proclamation which allowed land rental for limited size of land. The draft revised land law of 2024 has also allowed land collateralization and land rental without any restriction.

From the perspective of women's land rights, this current policy choice to hold rural land tenure under state ownership has minimum implications on women's rights. This is because women are already marginalized in accessing rural land and when they have access to it, they do not have full right to exercise control and make decisions on the land. If land is privatized under the current status of women's land rights, it might facilitate their further marginalization as land is likely to end up in the hands of those with capital and land transactions may not be inclusive of women. Thus, the policy choice for public ownership of land has not affected women's land rights from gender perspectives. However, in practical terms, rural women have been affected by informal transactions that fall short of land sale which are undertaken without their involvement and consent. Thus, they have not been beneficiary from the state ownership of land as expected. The effect of this informal transaction on women's land rights requires critical attention.

According to Tom Lavers and as found out through interviews with experts, land policy choices should be informed by the following four circumstances and context that exist in Ethiopia after the adoption of the constitution.

a. Shortage of land since the government has refrained itself from redistribution of land for agricultural purpose though it has been allocating large amount of land for investors by dislocating rural population from their agricultural land. This has been described as land grabbing by some. This has resulted the young generation from accessing land except through inheritance or donation from parents and relatives.[603] This means of access to land has excluded women in places where inheritance is patrilineal, and marriage is patrilocal. The land acquired from parents is very small land which some call 'starvation plots'. This has led to most landless individuals in rural areas to depend on Production Safety Net Program (PSNP) or on humanitarian aids. With growing internal conflict and internal displacement in many parts of the country, landlessness is a problem that will persist as one of the main challenges for the rural population. This changing circumstance requires a

[602] Davis Chinigo, *id*, p. 178.
[603] Tom Lavers, *id*., p. 309.

dynamic policy response that takes into account the current reality and challenges in the country.

b. In peri-urban areas, rural land has been expropriated for priority economic areas such as agricultural investment, to build infrastructures for industrial parks, expansion of infrastructures with payment of very low compensation to rural landholders who are dislocated from their land for these public purposes. This has been one of the sources of resentments that resulted in protests such as the Oromo Protest from 2015-2018.[604]
c. Urban expansion. Ethiopia has two land systems i.e. the Urban land hold system and the rural land systems with their own separate governance, laws and institutions. The urban landholding system allows a certain form of marker such as sale of leaseholds, rental of land and house collateralization. Thus, in peri-urban areas and in urban areas, land is expensive in the informal market which is sold with very little infrastructure on the land. The difference in the land tenure system in rural and urban areas has created a very high value/marketability difference between urban and rural land.[605] And this has also created a challenge to come up with a policy direction that takes into account these situations of the ground.
d. The fourth challenge relates to the politicization of ethnicity and territory in Ethiopia. This has resulted in intercommunal conflict in the country by mobilizing politics alongside ethnic lines. Thus, land is given to those who belong to the ethnicity but not to those who came from another ethnicity.[606] This is employed in Sidaama. The narrative that Sidaama belongs to only to the Sidaama national has negative effect on non-Sidaama as discussed in the previous chapter.

Any form of land policy reform should take into account the above and aim to make land more secure, welfare-enhancing and transactable.

The Ethiopian government has introduced a liberalization of the economy since 2018 in the telecom sector and it is in the process of liberalizing the banking sector too by making it open for private company investment. This new move demonstrate that the government is likely to follow the policy of liberalization of land market at least in the urban areas as implied from the Prime Minister recent speech. In the event of liberalization, it is important that the government ensure farmers in peri-urban areas are not displaced from their land and rural women are protected from further marginalization.

[604] Tom Lavers, *id*., p. 309.
[605] Tom Lavers, *id.*, p. 310
[606] Tom Lavers, *id*., p. 311.

The second level land certification and the reform in land laws which started with the Amhara regional land administration proclamation which unrestricted land rental and allowed land collateralization in 2017 and the draft revised land proclamation of the federal government shows that liberalization of the land policy is the future policy option being pursued for now.[607]

5.4. Ethiopia Laws on Rural Women's Land Rights

Law is an instrument for change in the status quo. It is reflective of the society which made it. Ethiopia laws have been an instrument of modernization and a tool for political power consolidation under the various governments. The discussion below will focus on the laws on rural women's land rights during the EPDRF.

In the 1990's, many of African countries has introduced a "new wave" of land legislations as part of restructuring of social relations within African countries. This restructuring included the structural adjustment measures that were promoted by the World Bank and Western developed nations. The structural adjustment measures introduced liberalization of economies including private ownership of land. It targeted a reduced role of the state in the economy which has been facilitated through the market economic system where the market determines the economy of a country. As a result, the state institutions, capacity, and power have been replaced by the private institutions and civil society organizations which advocated for liberal land policy and its implementation. This was kick started with the introduction of new constitutions that aspires good governance, democracy and protection of human rights and freedoms. Some of these constitutions (eg. Uganda, Eritrea, Ethiopia) regulated land tenure and land relations in an explicit manner.[608] In the section below, a discussion is made on Ethiopia' constitutional provisions on land and other subsequent legislation on land at federal and regional levels.

5.4.1. Rural Women's Land Rights under the FDRE Constitution

The FDRE constitution which adopted after Ethiopia ratified CEDAW in 1981 recognizes both formal and substantive equality of women. The constitution under article 25 guarantees equality before the law without any discrimination on the ground of race, nation, nationality and other social origin. Article 35 which is a specific provision dedicated to women's rights not only require women equal rights but also provide for affirmative actions. The Constitution entitles women for

[607] Tom Lavers, *id*., p. 313.
[608] Lorenzo Cotula, Camilla Toulmin and Ced Hesse, *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues*, 2004, p.1.

affirmative actions in order to remedy the "historical legacy of inequality and discrimination suffered by women in Ethiopia".[609] It ensures women's equal rights during marriage and divorce.[610]

The FDRE Constitution, the federal and regional states land laws in Ethiopia have given recognition to women's land rights.[611] The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution provides that women should have equal rights with men with respect to use, transfer, administration and control of land.[612] Further, it provides that women shall enjoy equal treatment in the inheritance of property and during divorce.[613] The Constitution declares that it is the state that own land but individuals have the right to use, control and access land. Individuals are only deprived of the right to sale land.[614] They have all other rights on the land related to *usus*, *fructus*, and *abuses* rights including the ability to transfer land through donation, inheritance, rent/lease and benefit from the fruits of the land.

The Constitution decentralized responsibility for land administration to regional governments.[615] Initially, a provision was drafted for land redistribution which was later abandoned since land redistribution in the past led to "a continued tenure insecurity which undermined investment in land by users and was a major contributory factor to land degradation and a decline in agricultural productivity."[616]It also guarantees protection from eviction from ones land without any compensation under article 40 (4) of the FDRE Constitution.

Departing from the previous approaches, the FDRE Constitution recognizes the role of the customary and religious institutions in adjudication of family matters.[617]The constitution under article 34 (5) recognizes religious and customary laws to be applicable in personal and family matters with the consent of all the parties. The article reads as "this Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute." The Constitution does not allow criminal matters to be adjudicated by customary or religious justice system. However, human rights actors and institution including the Committee on the Elimination of Discrimination against Women

[609]Article 35 (3) of the FDRE Constitution.
[610] Article 34(1) and 35 (2) of the FDRE Constitution.
[611] Tigray regional state Proclamation No. 239/2014; Amhara regional state Proclamation No. 133/2006, Oromia Regional States Proclamation No. 130/2007 and SNNP regional States Proc. No. 110/2007.
[612] Article 35 (7) of the FDRE Constitution.
[613] Ibid.
[614] Article 40 (3) of the FDRE Constitution
[615] Article 52 (2(d)) of the FDRE Constitution
[616] Chiara Romano, Land and Natural Resources Learning Initiative for Eastern and Southern Africa (TSLI-ESA), Case Study Report: Strengthening Women's Access to Land in Ethiopia, 2013, p. 5.
[617]FDRE constitution allows customary and religious laws to be applied on personal and family matter based on the consent of parties (art. 34 (5). It also gives recognition of customary courts under article 78 (5).

has objected such recognition on the ground that such recognition would undermine the rights of women guaranteed under a constitution. Accordingly, "there are no mechanisms for defining "consent of the parties", and thus women may be forced to consent to the use of customary law. In addition, women may not be aware that certain practices under customary law are discriminatory, and thus may unwittingly submit themselves to discriminatory treatment."[618] This is also what is observed in the *Kidija Case* and *W/ro Riniya Ahmed Iberahim Vs Dr. Ibrahim Mohamme Hassen*[619] entertained by the CCI/HoF. The cases involved Muslim women being subjected to the jurisdiction of Sharia Court without the court ascertaining their explicitly consent. In the cases, the Sharia courts presumed that the women have consented since they have continued to litigate before the court without any objection to its jurisdiction. The CCI/HoF held the decisions are against the constitution since the Sharia Courts did not ascertain their consent to be adjudicated before these courts before entertaining the case. Thus, the onus is on customary and religious courts to ascertain that a woman has given her explicit consent to be subject to the jurisdiction of these courts. This will be further explored under the last two chapters.

Until recently, there is no law that specifically authorizes the customary justice system to adjudicate cases in a general manner.[620]The national legal system does not accommodate customary rules in the broad sense of the term. The main reason for this is that the modernization process of the Ethiopian state in the early 19th century opened the gate for modern laws to be transplanted from

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[618] Birte Scholz and Mayra Gomez, *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa*. 2004. https://issuu.com/cohre/docs/cohre_bringingequalityhome_sub-saha., The Centre on Housing Rights and Evictions (COHRE), 2004. https://issuu.com/cohre/docs/cohre_bringingequalityhome_sub-saha. Accessed on 27/4/2019. See also Committee on the Elimination of Discrimination against Women [CEDAW] (2011), *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/ETH/CO/6-7, United Nations.

[619] *Kedija Beshir et al. vs. Ansha Ahmed et al* available in HoF, *Journal of Constitutional Decisions*, Vol. 1, No. 1, the case was brought by the Ethiopian Women Lawyers' Association before the House of Federation, by alleging that the adjudication of the case by the Sharia Courts is against Kidija's express objection. The case was first entertained by the 3rd Naiba court which continued to entertain the case despite Kedija's objection. Again, the cases was appealed before the Federal Sharia High Court, Supreme Sharia Court, and Federal Sharia Supreme Court, all the courts affirmed the decision by the 3rd Naiba court by rejecting the appeal.

The other case is *Rania Ahemed Ibrahim vs. Ibrahim Ahemed*, File No. 1352/07 in Recommendations of Council of Constitutional Inquiry, Journal on Constitutional issues, Vol. 1(1), May 6, 2007 E.C., p. 112-114. In this case, Rania, the wife of Ibrahim, was subjected to the jurisdiction of the Sharia Court when she was abroad. Though the court issues a summon for her appearance, she did not appear before the case. The Sharia court presumed her absence and failure to appear before the court and object its having jurisdiction, as if it entitles it to have jurisdiction over the divorce proceeding that is brought by her husband..

[620] Oromia Regional State has adopted a proclamation to establish and recognize the Oromia Regional Customary Courts (Proclamation No. 240/2021). It has also issued a Regulation to implement the Oromia Region Customary Courts, (Regulation No. 10/2021). These laws provide for a procedure for giving recognition and establishing customary courts that resolve disputes and reconcile in accordance with customary laws, their responsibilities, and the manner of revocation of the recognition given to them etc. The introduction of such law regulating the relationship between customary courts and formal courts is a very important step to ensure the decisions of customary courts do not contravene human rights norms. For a detailed discussion see Sisay Kinfe Gebrewold, Design of Integration of Customary Justice System with the Formal System and Women's Empowerment in Oromia, Ethiopia, Unpublished, 2024 (filed with the author).

other foreign legal systems. The modern law in Ethiopia, which was developed in the 19th century, is characterized by codification of laws based on the western legal system i.e., predominantly the civil law legal system. It resulted in the codification of the civil code, criminal code, commercial code etc. in the 1960s. The Civil code explicitly made any customary rules which was applicable in the country null and void save for those which are expressly recognized under the Code.[621] However, it attempted to incorporate some customary rules in family, successions and property laws.[622] Similarly, the customary laws in Ethiopia have not been subjected to much of interference or influence by foreign system or the state system until recently. The lack of history of colonialism and the Ethiopian state's approach towards customary justice system that did not profoundly allow for any relationship to blossom can be considered as an explanation for the customary system to maintain its existence free of state intervention during the imperial and Derg regime.[623] Though the modern laws introduced during the imperial period were transplanted from Western nations, the customary law was neither integrated with the modern law nor was given state recognition for its operation. However, in recent years, it is observed that the relationship between the actors of the customary system and the state has been changing. The state is using the elders of customary system to resolve various communal conflicts by admitting the limits of its mechanisms in terms of reach, legitimacy, and capacity.[624] However, this relationship has also been observed to be political with a view to get political allegiance as demonstrated by Tom Lavers in his case study in Oromia.[625] Accordingly, the Oromia regional state instrumentalized the elders of the Gada system to strengthen its legitimacy by allowing the customary system to operate side by side to the formal justice system.

A specific law on the scope of customary system's jurisdiction, the rules that should be applied by these institutions which include both substantive and procedural laws and their relation with formal justice system has not been introduced.[626] The exception to this is the Proclamation that has been adopted in relation to sharia courts providing its jurisdiction[627] and the recently adopted Oromia Regional State that law to recognize and establish Oromia Regional Customary Courts. This later law establishes customary Courts at kebele level to make them accessible to the community. The

[621] Article 3347 of the Civil Code.
[622] Vanderlinden 1966–67:259 cited in Getachew Assefa, "Towards widening the constitutional space for customary justice systems in Ethiopia" in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020
[623] Getachew Assefa, Id., p. 56.
[624] Gebre Yntiso, "Understanding Customary Laws in the Context of Legal Pluralism", in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020, p. 82.
[625] Tom Lavers, Responding to Land-Based Conflict in Ethiopia: The Land Rights of Ethnic Minorties Under Federalism, *African Affairs*, 117/468, 2018.
[626] Getachew Assefa, supra note 622, p. 55.
[627] The Federal Courts of Shari'a Consolidation Proclamation No. 188/1999.

law aims to ensure access to justice and promote the culture of Oromo. The advantage of this law is that it ensures the enforcement of the customary courts' decisions through state organs that enforce judicial decisions such as police. It also requires the elders of the customary courts to be elected by the community of the Kebele where they preside. The participation of the community ensures their legitimacy in the community. It requires the decision of the customary courts to comply with human dignity. It also made the decisions of the customary courts reviewable on appeal to the formal courts on certain grounds.[628] It also ensured for the judges a moderate remuneration through contribution of the community, government and CSOs.[629] The introduction of such law regulating the relationship between customary courts and formal courts is a very important step to ensure the decisions of customary courts do not contravene human rights norms. However, one need to be conscious of these courts are not captured by the state and used for political goals. The institutionalization and formalization of customary courts should not make them part of the state structure and they need to be able to maintain their autonomy from the state.

Both the law establishing sharia courts and Oromia Regional Customary courts allow the applicability of the Islamic laws and customary laws respectively for the substantive parts of the case before it while obliging the courts to apply the civil procedure laws promulgated by the state to the procedural matters.[630] Thus, there is a controversy as to reviewability of the decision of the sharia courts and customary courts based on the substantive law (sharia laws or customary laws) applied in a case. Mohammed Abdo states that "if parties to a dispute voluntarily take their case to a sharia court, the outcome should be exempted from constitutional standards [and reviews]" and further argues that "…subjecting [the] final decision of sharia courts to the supremacy clause and the human rights norms of the constitution goes against the very essence of legal pluralism advocated by the Constitution."[631] However, other scholars argue to the contrary. According to Girmachew

[628] A person who is aggrieved by the decision of the customary court have the right to appeal to formal courts if his/her grievance relate to one of the following grounds: a) Applying customary law which undermines the right to equality of disputing parties; (b) Overlooking the rights to be heard or important evidence presented by a disputing party; (c) Applying customary law or practice which violates human rights and basic freedoms recognized under the Constitution and international human rights instruments ratified by our country". See Article 33 (2(a-c)) of Proclamation No. 240/2021.

[629] Sisay Kinfe Gebrewold, Design of Integration of Customary Justice System with the Formal System and Women's Empowerment in Oromia, Ethiopia, Unpublished, 2024, (filed with the author)

[630] Federal Courts of Sharia Consolidation Proclamation No 188/1999, Article 6(2). Girmachew Alemu Aneme, The Coupling of State and Sharia Justice Systems in a Secular State: The Case of Ethiopia, *SFB- Governance Working Paper Series*, No. 75, 2018, p. 17.

[631] Mohammed Abdo, Legal Pluralism, Sharia Courts and Constitutional Issues in Ethiopia, 2011, *Mizan Law Review*, Vol. 5 (1), p. 100. See also Girmachew Alemu Aneme, *id.*, p. 19. Recent decision of the Cassation division of FSC shows that once a women relinquishes her right to go to formal court for divorce case, then she will also not be allowed

> Even though it is true that the Federal Constitution protects normative and judicial pluralism, such protection is not a *carte blanche*, especially vis-à-vis the recognition and protection of human rights under the constitution. In fact, the Federal Constitution clearly proclaims that the obligation of the state relates to 'the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution'. Moreover, the Federal Constitution imposes a specific duty on all legislative, executive, and judicial organs across the country to respect and enforce the provisions of the bill of rights under the constitution. Thus, the normative and judicial plurality recognized under the Federal Constitution is subject to the supremacy clause of the constitution and the protection of those rights recognized under the constitution. Constitutional review, in this sense, is used to 'ensure the compatibility of ' the Sharia justice system 'with a decent standard of human rights protection and due process"[632]

The practice before the CCI/HoF shows that the decisions of Sharia Courts has been reviewed for constitutionality in cases when the parties to the case did not give full consent as discussed above.[633] However, recent decision of CCI in the case between W/ro Sara G/Sellassie vs. Ato Ahmed Karu concerning child custody issue has departed from this and reviewed the constitutionality of substantive part of the decisions of the Sharia courts. This demonstrates a change in approach by the CCI/HoF which has been focusing only on ensuring consent of parties to take cases before Sharia Court. Whether the same approach will be applied by CCI/HoF for customary court decisions is a terrain that has not be yet tried as of the writing of this dissertation.

In the Sidaama regional state which has not yet adopted a similar Proclamation as of Oromia recognizing customary justice system has opened the door for users of justice system to strategically apply forum shopping by going back and forth between the formal justice system and the customary justice system.[634]

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to bring the division of marital property before formal court as such cases is considered to the consequence of the divorce and should be dealt at the sharia level (see file no.175719 of the Cassation Division of the FSC). However, this has a negative implication on women since in another study in Afar, it has been demonstrating that women prefer to go to sharia courts for divorce cases believing that the court may save the marriage. But they opt to go to formal court for marital property division to get an equal share of marital property. This practice of forum shopping has been taken to safeguard women's preference.

[632] Girmachew Alemu Aneme, supra note 630, p. 19-20.

[633] *Supra note* 619.

[634] Interview with elders and judges on May 06 and 10, 2022. The same is true in Amhara regional state. See Desalegn Amsalu, "Use and abuse of 'the right to consent' Forum shopping between shimgilinna and state courts among the

5.4.2. Power Division to Legislate on Rural Land

The FDRE constitution gives the power to legislate on land utilization and conservation to the federal government while it authorizes the regional state to administer the land that belongs to the region.[635] Thus, the administration of rural land is decentralized based on the FDRE constitution which gives the power to administer land to regional states. In this relation, whether the entitlement also can be translated to the power to adopt legislations on rural land has been one of the controversial issues. The Amhara regional state was the first regional state to adopt rural land proclamation in 1996 as proclamation No. 16/1996 amended as 17/1996. This Proclamation was enacted before the federal government adopts a proclamation of land use administration in 1997as Proclamation No. 89/1997. In this connection, a case was brought before CCI challenging the constitutionality of the 1996 Amhara Rural Land Proclamation on Land Allocation and Redistribution. CCI held the proclamation is constitutional on the ground that states have residual power to enact such a law and the federal rural land proclamation which was adopted in 1997 has bestowed them with power to adopt such law in the case of *Biyadglegn Meles, et al Vs the ANRS*that was brought before CCI in 1997.[636]The case was initiated by opposing the land redistribution that was carried out in the Amhara regional state. The applicants of the case argued that the land redistribution is contrary to the division of power between the federal and regional government and the regional government does not have the power to this effect based on the constitution which gave the power to enact legislation on allocate of land to the federal government. The CCI did not find the case admissible and held that Amhara regional state acted within its constitutional power and there is no need for constitutional interpretation. This decision indicates that regional states have the power to adopt laws on administration of land, land allocation and redistributionbased on the retroactive application of the Federal Rural Land Administration Proclamation of 1997.[637] However, the CCI reliance on the 1997 federal rural land administration and use Proclamation, which confirms the power of the states to adopt legislation on land administration, is not the right approach as it implies the federal government/legislation is the source of the states' power to adopt legislations on the administration of rural land. This diminishes states' power and put them under the whim of the federal government that bestowed them with the

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Amhara of Ankober, north central Ethiopia" in Susanne Epple, Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020.

[635] Article 51 (5) and 52 (2 (c) of the Constitution of the federal democratic republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta, 1st year No. 1, Arts. 51

[636]Biyadglegn Meles et al. v. the Amhara Regional State, petition, Miazia 30, 1989 E.C. (unpublished) cited in Assefa Fiseha, (2017), Constitutional Adjudication through Second Chamber in Ethiopia, *Ethnopolitics* Vol. 16, No. 3, p. 299.

[637] Gedion T. Hessebon and Abduletif K. Idris, 'The Supreme Court of Ethiopia: Federalism's Bystander' in Nicholas Aroney and John Kincaid (eds.), *Federal Countries: Federalists or Unitarists?,* University of Toronto Press, 2017, p. 186. Habib Jemal, A Critical Assessment on Provisions of The Federal Constitution of Ethiopia with Regard to Federal-Regional Governments Relationship on Land Law, Oromia Law Journal, Vol. 9, No. 1, 2020, p. 65-66.

power to legislate on land administration which may be revoked at any given time. Scholars argued that their power should be seen to emanate from the Constitution directly rather than from a federal legislation.[638] On the other hand, it can be argued that regional states do not have the power to enact laws on administration of land based on article 52(2(d)) of the Constitution which enshrined the power of regional states is "… to administer land and other natural resources in accordance with Federal laws" . They suggest that the term "... in accordance with federal laws" implies that regions possess solely administrative authority, and that this administration should be in accordance with federal laws. Thus, unless the federal government delegates its power to enact land laws to the regional government as per Article 50(9) of the same constitution, regional governments cannot enact laws on land administration. However, this second argument is not convincing when read with article 52 (1) which reserves all power not given to federal government to state. The constitution reserved the power to enact "….laws for the utilization and conservation of land" to the federal government.[639] This implies that the power to enact laws on administration of land is the residual power of regional states. Thus, the cumulative reading of Articles 52 (1) and 55 (5) implies that the Federal law on land serves as a framework legislation and regions are expected to enact legislations on the administration of land based on this legislation.[640]

The federal government under the current federalism system is given the power to legislate on land utilization and conservation because of the framers of the constitution believe that this will bring uniformity in the regulation of land tenure at national level.[641] The federal government in particular should determine the right to access to land to vulnerable groups of the society including women.[642] This entails that the constitutional have in mind uniform protection to women's land rights at national level. However, it should also be noted that the constitution envisaged decentralizing land legislation with the view to give attention to local context, needs and concerns in land administration in addition its being an expression of self-determination. Furthermore, it allows for the state to have proximity in the execution of land governance closer to the community. An exemplary case that needs decentralized approach is the mechanism of land dispute resolution

[638] Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu, 'Power of Land Administration under the FDRE Constitution', *Journal of Ethiopian Law*, Vol. 31,2019, p. 95.
[639] Article 51 (5) of the FDRE Constitution.
[640] Gedion T. Hessebon and Abduletif K. Idris, *supra note* 637, p. 176. See also Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu, *supra note* 638, p. 89.
[641] The Constitutional Minutes, Deliberation on Article 40, House of peoples Representatives Library, Addis Ababa cited in Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu, *supra note 638*, p. 97.
[642] Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu, *id.*, p. 97

which can be designed based on the context of regional states without compromising due process of law.[643]

This issue has again appeared controversial in the process of the parliamentary debate and discussion on the draft revised federal land administration proclamation recently. The reporter newspaper has reported that Legal and Justice Committee of the HoPR has objected that fact that the revised Proclamation included a provision allowing the regional states to legislate on rural land in their respective regions.[644] Be that as it may, the federal and regional governments have adopted their own respective land laws.

With this in the backdrop, both the federal and regional states' Rural Land Administration Laws are discussed below which have provisions regarding women's equal access to such critical resources.

5.4.3. Rural Women's Land Rights under the Federal Legislation

The federal government enacted the first proclamation of land use and administration in 1997. This Proclamation was later replaced by the 2005 Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation (No. 456/2005). The Proclamation introduced a new system of rural land administration and use based on the different agro-ecological zones. The Proclamation legislates on how rural land can be transferred, and used, how rural land disputes can be resolved and defines the responsibilities of various organs in the administration and use of rural land. It aims to secure land tenure and ensure equality among rural land users. The law declares that any Ethiopian above 18 years and want to engage in farming can access rural land.[645] This is irrespective of gender and it entitles the person use rights over the rural land for life.[646] Such rights are also transferable to a family member through gift and inheritance.[647] The law also provides that the rural land should be measured, registered and certified by the responsible government authority.[648] It also guarantees that certificate to be issued jointly in the name of a husband and wife and any other joint holder.[649] The law allows for the lease of rural land by landholders provided that they have enough land for their own livelihood. The lease period is left for the determination

[643] Habtamu Sitotaw, Muradu Abdo and AchamyelehGashu, *id*., p. 99
[644]Reporter published on Dec. 17, 2023 "በገጠር መሬት አስተዳደር ዙሪያ የሚውጡ ህጎች ለፌዴራል መንግስት ብቻ እንዲተው ተጠየቀ" available on https://www.ethiopianreporter.com/125006/ (accessed on 2 January 2024).
[645]Article 5 (1(b)) of 2005 Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005.
[646]Article 7 (1) of Proclamation No. 456/2005.
[647]Article 5 (2) of Proclamation No. 456/2005.
[648]Article 6 (1) (2) of Proclamation No. 456/2005.
[649]Article 6 (4) of Proclamation No. 456/2005.

regional rural land administration laws based on their local conditions.[650]The law also provides the minimum land size a person can hold.

As discuss above, the proclamation bestows state regional councils with the power to enact regional rural land administration and use proclamation and implement the 2005 proclamation in accordance with article 52 (2(d)) of the FDRE Constitution.

The Proclamation is criticized for its inadequacy in providing guidance for a comprehensive and integrated land use planning.[651]The law does not allow rural land to be used as collateral for loans. The rationale behind this has been to prevent rural population from losing their land upon default to repay loans. However, in practice, credit has been provided by taking the use rights of land as evidence showing the potential of the lender to repay.

In relation to women's land rights, a woman who wants to engage in farming can access and use rural land pursuant to article 5(1(c)) of proclamation 456/2005. It also upholds that rural land that is held jointly by a husband and wife should be registered in the name of both.[652]

To be able to adopt a gender responsive legislation, it is important the legislation envisage bringing gender equality to be its objectives either in its preamble or in its substantive parts. However, the law does not have specific objective on gender equality. It also failed to provide quota for women's participation in LAC.

Currently, Proclamation 456/2005 is under revision and the approval of the draft law is pending before the House of Peoples Representatives. The draft revised land proclamation envisages for rural land to be used as collateral for the rural population to access loans from banks. It also removes restriction on rental from rural land in Ethiopia. This is considered as a good opportunity to promote women's land rights.

It has also been problematic to divide rural land equally to the spouses upon divorce when the size of the land that is divided between the two spouses falls below the minimum size of land one can have. The draft revised Federal Land Administration and Use Proclamation has exonerated the

[650] Article 8 (1) of Proclamation No. 456/2005.
[651] Gina Alvarado, Kieran C., Jacobs K., Beduhn J, Benjamin Linkow, and Tasha Heidenrich, *Ethiopia Strengthening Land Tenure and Administration Program Follow-on Report: An Impact Evaluation of Second-level Land Certification*, USAID, 2022, p. 25.
[652] Article 6 (4) of Proclamation No. 456/2005

minimum size of land in case of divorce.[653] The revised Proclamation has also provided a rule for division of land in polygamous marriage. Accordingly, when a husband marries a second wife, he has to give half share of the land to the first wife. Thus, the second or more wives will only share from the husband's share. This was envisaged with a believe that it will discourage polygamous marriage and protect the property rights of women in polygamous marriage. This has also been controversial since the law does not envisage the procedure to divide the land in such a way. Experts raised that this will create a problem during implementation as the family law only allows division of marital property to be carried out by courts.

However, the parliament raised concerns that the revised proclamation on administration and use of rural land is not drafted with adequate consultation of the rural population.[654] A gender responsive legislative drafting should envisage the participation of women and CSOs organisations that work on rural women in the drafting process of the legislation. According to an interview with an informant,[655]who has participated in the drafting process of the legislation the draft legislation was drafted by establishing a taskforce composed of various experts and representatives of governmental, non-governmental and UN agencies.

In addition to land law, family laws at the federal and regional level are very important in relation to land. The Federal Revised Family Law (FRFL) was adopted at the federal level, to be applied in Addis Ababa and Dire Dawa, and to serve as a model law for regional states.[656] Most regional states with the exception of Afar and Somali adopted a family law of their own by replicating most parts of the FRFL.[657] However, this does not mean that the regional family laws are replica of the FRFL. For instance, SNNP family law has different provisions on betrothal, marriage celebrated outside the SNNP, consanguinity and affinity, assessment of compensation following dissolution of marriage, proof of marriage, conditions to claim maintenance as well as salary and pension.[658]

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[653]Interview with informant 38, Land Use and Administration Expert at Ministry of Agriculture conducted on 23 October 2023.

[654] Reporter published on Nov. 19, 2023 "የገጠር መሬት አጠቃቀም ረቂቅ አዋጅ አርሶ አደሮች ሳይመክሩበት እንዳይጸድቅ ተጠየቀ" available on https://www.ethiopianreporter.com/124134/ (accessed on 2 January 2024).

[655] Interview with Informant 37, Project officer seconded to MoA by UN Women conducted on Oct. 21, 2023.

[656]መሓሪ ረዳኢ፣የተሻሻለውንየቤተሰብሕግለመገንዘብየሚረዱአንዳንድነጥቦች፣ቅጽ 1 ፣ 1995 ዓ.ም፤[Mehari Redae, *Some Points in Understanding the Revised Family Code*, Vol. 1, 1995 EC, Amharic Version], p. 6.

[657]Several efforts have been exerted at the regional and federal level for the adoption of family law in Afar and Somali regional State since 2000. The biggest challenge and resistance came from religious and communal leaders. To address this challenge, awareness creation on women and children rights and trainings were given targeting elders and religious leaders in collaboration with various NGOs and UN agencies from 2000 to 2008 E.C. The religious leaders have identified the area of disagreement between cultural and religious norms and the draft regional family law. They have been mostly resistant to accept the prohibition of bigamous marriage, equal rights of adopted children to inheritance, 18 as marriageable age, period of widowhood and the regulation of irregular union.

[658] Nigussie Afesha, Major Differences between the Revised 'Federal' and SNNP Regional State Family Codes, *Mizan Law Review*, Vol. 11, No. 2, 2017, p. 410.

According to Ann Laquer Estin, it is vital to employ "a multilayered approach to family regulation [which] builds on the notion that many families have a complex identity and experience, shaped and defined by many different cultural, legal, and political ties".[659] The family laws ensure equal division of property during divorce.

The other relevant law in relation to women's land rights is the law on inheritance**.** The law recognizes testate and intestate successions under the Civil Code. It allows family members to be heirs irrespective of their gender in intestate succession. The law provides that the property of a diseased devolves to his/her descendants. If he/she does not have descendants, it goes to ascendants and the law clearly stipulates who has the right to inherit hierarchically. The FDRE Constitution similarly guarantees equal inheritance rights of men and women.

5.4.4. Rural Women's Land Rights under Regional Land Administration and Use Legislations

Regional states have enacted their rural land proclamations and regulations in conformity with the Federal Proclamation in many aspects. Tigray and Amhara regional States took the lead in formulating regional land administration and use legislation. Subsequently, Oromia, Southern Nations, Nationalities, and Peoples' Region (SNNPR), Afar and Beneshangul-Gumuz have also enacted their rural land proclamations and regulations.[660] Though these laws are fundamentally similar, there are instance where they depart from each other. Accordingly, farmers who are above the age of 18 and interested to engage in agricultural activities are entitled to the right to access and use agricultural land regardless of sex. Furthermore, women are one of the vulnerable groups who are given priority during distribution of land.[661] Some of these laws protect female heads of household by ensuring their rights to obtain land certificate in their own name.[662] Few of these laws, furthermore, uphold that rural land that is held jointly by a husband and wife should be registered in

[659] Ann Laquer Estin, Unofficial Family Law, 94 *IOWA L. REV*. 449 (2009), p. 452 cited in Mulugeta Getu Sisay, 'Departure of Ethiopian Family Laws: The Need to Redefine the Place of Societal Norms in Family Matters', *Haramaya Law Review*, Vol. 4 (1), 2015, p. 90.

[660]These proclamations are Federal Rural Land Administration and Use Proclamation No. 456/2005, Tigray regional state Rural Land Administration and Use Proclamation No. 239/2014; Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017, Oromia Regional States Proclamation No. 248/2023, Sidaama Regional State Proclamation No. 27/2023, Benishangul Gumuz Regional State 's Rural Land Administration and Utilization Proclamation No. 152/2018, Afar National Regional State Rural Land Administration and Use Proclamation No. 49/2009 and Regulations No 4/2011,Somali region Rural Land Administration and Use Proclamation No 128/2013 and SNNP regional States Proc. No. 110/2007 (since SNNP regional state does not anymore exist, this proclamation will be in operation until it is replaced by legislations to be adopted by the newly established regional states i.e. Southwest Ethiopia Peoples' State, South Ethiopia Peoples' State, Central Ethiopia State)

[661]Article 5(1(c)) of Proclamation No. 456/2005, Article 5 (2) (4) of proclamation No. 27/2023, Article 5 (1) (7) of Proclamation No. 152/2018, Article 5 (2) (6) of Proclamation No. 252/2017, Article 5 (2) (3) of Proclamation No. 110/2007

[662]Article 8 (8) of Proclamation 27/2023, Article 5 (6) of proclamation No. 110/2007.

the name of both.[663] Some of these laws provide that jointly certified rural land can only be leased or exchanged or donated upon the consent of both the husband and wife.[664] If the consent of one of these parties is missing, the lease or exchange contract is made null and void. Some of these laws also protect women whose husband is away to use the rural lands and obtain land certificates in their own name.[665]

However, they have different provisions on whether a woman is entitled to share equal division of rural land that is acquired before married. As marriages in rural Ethiopia are virilocal/patrilocal, the Rural Land and Administration Regulation of SNNP entitled a husband and wife to jointly use a land they possess before their marriage.[666]A certificate with a joint land holding rights is issued for the land they hold before marriage.[667]It also entitled them to jointly use a land they inherited.[668]However, in the Amhara regional state's law, land acquired before marriage is considered as personal property unless the spouses agree to make it a common property.[669] It rather allows a landless woman in conjugal relationship to acquire land on her own behalf.[670] This manifest variation in the subsidiary laws of regions and the subsequent section will discuss its implication on women's constitutional rights.

The other gap in the law is that some of the regional laws entitle inheritance rights to land to family members.[671] This seeming gender neutral or gender-blind provision has disadvantage women. Family members are defined in the legislations as those who permanently live with the head of the household sharing the income of the landholder.[672] This had an implication of excluding daughters who moves to their husband's place from inheriting the use right of land. The recently adopted revised regional states land laws have taken a different approach and provides that land can be inherited testate and intestate without any condition. Accordingly, the Amhara regional state law provided that the landholder can bequeath his/her land to whomever he/she wants provided that

[663]Article 6 (4) of proclamation 456/2005, Article 8 (5) of Proclamation No. 27/2023
[664]Article 10 (3) and 12 (5) of Proclamation 27/2023, Article 8 (2) of SNNP Rural Land Use and Administration Proclamation No. 110/2007 and Article 8 (1(a)) of Rural Land Administration and use regulation No. 66/2007.
[665]Article 8 (8) of Proclamation 27/2023, Article 5 (7) and 6 (6) of Proc. No. 110/2007.
[666] Article 5 (2(A)) of Regulation No. 66/2007.
[667] Article 6 (4 (b)) of regulation No. 66/2007.
[668] Article 5 (2 (B)) of Regulation No. 66/2007.
[669]Article 35 (4) of Amhara National Regional State. Revised rural land administration and use proclamation No. 252/2017.
[670] Id. Article 10 (3).
[671]Article 2 (5) and 8 (5) of Proclamation No. 456/2005, Article 8 (5) of Proclamation No. 110/2007 and Article 2 (5) and 17 (5) of Proclamation 152/2018.
[672]Article 2 (5) of Proclamation No. 456/2005, Article 2 (5) of Proclamation No. 152/2018 and Article 2 (7) of Proclamation No. 110/2007.

he/she does not disinherit his/her own children.[673]Similarly, the Sidaama regional state allows landholders to transfer their land through inheritance.[674]This is one of the legal gaps which trigger constitutional case which was brought to CCI/HoF as discussed under chapter seven.

The other controversial issue is the practice of joint titling during polygamous marriage. The prevalence rate of polygamous marriages at the national level is 11% having the highest prevalence in rural areas.[675] The constitution guarantees equal rights of spouses during marriage under article 35 (1). Thus, the practice of violates constitutionally protected rights of women. However, it is also important to protect property rights of women in polygamous marriages without giving recognition to the marriage. Thus, the certificate program in Oromia and SNNP has jointly registered wives with their husband in polygamous marriage. However, when disputes arise on the property division during divorce, it has been one of the controversial issues that are taken to courts and CCI/HoF as discussed under chapter eight.

Though the existing subsidiary laws have not incorporated much from customary laws, there is an exception in case of rural land administrative and use proclamations. Some of the regional rural land legislations authorize a local land administrative and use committee (LAC) to resolve land disputes before a case is taken to court.[676] Some other make it optional for the case to be resolved by arbitrators selected by the parties to the dispute before a case is taken to court.[677]According to article 12 (1) of Rural Land Use and Administration Proclamation No. 110/2007 of SNNPR, whenever parties to land disputes cannot resolve the dispute amicably, they can take their case to Kebele level Land Administration and Use Committee (LAC). LAC should facilitate the dispute to be resolved by local elders through negotiation and arbitration. It is only when the elders cannot resolve the case that the case will be submitted to Woreda court.[678] This can be taken as a legal hybridity which allows an accommodation of the affiliation of individuals to two or more

[673] Article 17 (3) of the Amhara National Regional State Revised Rural Land Administration and Use Proclamation No. 252/2017.
[674]Article 11 of Sidaama Regional State Land Use and Administration Proclamation no.27/2023.
[675] The prevalence rate in rural area is 12% while it is 5% in urban areas. Central Statistical Agency (CSA) [Ethiopia] and ICF. 2016. Ethiopia Demographic and Health Survey 2016. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF. p. 66.
[676] Federal Democratic Republic of Ethiopia. Rural land administration and land use proclamation No. 456/2005. Fed. Neg. Gaz. Year 11 No. 44. 2005. Article 12; Southern Nations, Nationalities and Peoples Regional State. Rural land administration and utilization proclamation No. 110/2007. Debub Neg. Gaz. Year 13 No. 10. 2007. Article 12; Afar National Regional State. Rural land administration and use proclamation No. 49/2009. 2009. Article 15; Article 34; Ethiopian Somali Regional State. Rural land administration and use proclamation No. 128/2013. Dhool Gaz. 2013. Article 7 and 14; Amhara National Regional State. Revised rural land administration and use proclamation No. 252/2017. 2017. Article 52(1); Sidaama Regional State Land Use and Administration Proclamation no.27/2023. Article 32Proclamation No. 152/2018.
[677]Article 52 (1) of Proclamation No. 252/2017 and article 37 of Proclamation No. 152/2018.
[678] Article 12 (2) of Proc. 130/2007.

institutions or legal systems as elders can play their roles in the customary system and at the same time become members of LAC (a state institution) to adjudicate land disputes.[679] It is a form of deference by the law to give recognition to customary system. Taking the cases to LAC is not provided as an alternative to courts in some of these land laws. As it is now, the parties to land disputes are required to take their case first to LAC. This approach contradicts the Constitutional provision which requires for parties to give their consent when they take cases to alternative dispute resolution mechanisms.[680]

While the alternative dispute settlement is encouraged for land related disputes between peasants, judiciary mechanism is preferred to resolve dispute in case of the state and the peasant, such as in case of expropriation,.[681] As LAC is composed of elders, there is likelihood that local norms are applied on women's land rights issues when elders handle such cases. The Amhara State law states that any grievance about the decision of the land administration authority can be review in the appropriate court of law.[682] But a similar provision is lacking in other regional states proclamations on land use and administration. Some of the regional states proclamations provided quota for women participation in Rural Land Administration and Use Committee (LAC) while some other proclamation lacked a similar provision.[683]

In Ethiopia, the major channel for most women to gain access and use rights to land and productive resources is through marriage and the family, and within the context of inheritance. This means that many types of laws are relevant to the protection of women's right to access, administer and use land and other resources which includes regional and federal family laws which address issues of marital property, inheritance and divorce, and property law. These laws guarantee women's equal rights during and upon dissolution of marriage. The civil code and land administrative and use

[679] P.S. Berman, "Towards a Jurisprudence of Hybridity", *Utah Law Rev*., Vol. 1, 2010, p. 11.
[680] Article 34 (5) of the FDRE Constitution.
[681] The Federal Supreme Court Cassation Division's decision in the case of *Wonji Sugar Factory vs Ato Bacha Alemu* confirms that when a case involves and investor and a peasant, such case can go to courts directly without resorting to alternative dispute resolution mechanism as first resort. See *Wonji Sugar Factory vs Ato Bacha Alemu*, file No.102406 (18 November 2016) the Federal Supreme Court Cassation Decisions, Vol.21 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, January 2018) cited Brightman Gebremichael Ganta, The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants and Pastoralists, Unpublished PhD dissertation, 2018, p. 318.Land Administrative and Use Committee has the mandate to allocate and distribute of land holdings and settle land related border disputes between neighbors.
[682] Article 52(6) of Amhara National Regional StateRevised Rural Land Administration and Use Proclamation No. 252/2017.
[683] Article 5 (4) of Proclamation 239/2014 of Tigraye Regional States Proclamation requires a minimum of two members of LAC out of five to be women. However, some proclamations such as the SNNP rural land administration and utilization proclamation do not provide for quota.

proclamation also guarantees equal rights of women to inheritance.[684] Thus, all such laws should be critically evaluated to determine their effect in granting women access to resources.

5.5. Institutional Framework for Rural Land Administration in Ethiopia

The institutional framework for land administration is decentralized at the federal and regional levels. It has its own structure that goes from the region up to the Woreda level structures. This has created regional disparities in land administration institutions. The federal framework legislation provides that regions to establish institutions at all levels to implement rural land administration and use system in their respective regions.[685] Most of the regional states have established their own land administration institution taking into account their own context. Some of these institutions are established in their own focusing on land administration per se while some other have taken the approach of combining it with other institutions. For instance, Amhara and Oromia regional states have a Rural Land Administration and Use authority while Sidaama has Sidaama Regional State Agriculture and natural Resources Development Bureau.

At the Federal level, the Ministry of Agriculture (MoA) is mandated to oversee rural land administration. There are three structures within MoA: Rural land Administration and USE Directorate responsible for rural lands administration and use, Agricultural Investment Land Administration Agency which administers land of more than 5,000 hectares through lease arrangements and urban land administration Directorate.[686] Rural land Administration and USE Directorate was organized within the Ministry since 2009 to coordinate and support land administration all over the country. It follows-up the implementation the rural land administration and uses proclamation No. 456/2005; coordinate and support the regional rural land administration institutions; provide on capacity development of the regional institutions; facilitate information exchange between regions; create linkage between the land related work at the federal and regional levels and collect inputs for policy harmonization on rural land administration in Ethiopia.[687] The institutional arrangement for rural land administration at Directorate level is criticized taking into account rural land is vital source of livelihood to majority of the population in Ethiopia. In other

[684] The SNNP allows land to be transferred through inheritance under article 8 (5) of Proc. No. 110/2007.
[685] Article 17 (1) of Proclamation No. 456/2005.
[686] Getachew Diriba, 'The Evolving Question of Land in Ethiopia: Tenure Preferences, Property Rights and Land Governance, A Contribution to the Homegrown Economic Policy Reform to Accelerate Food System Transformation in Ethiopia", *Policy Working paper 03/2022*, Ethiopia Economics Association (EEA), 2022, p. 11.
[687] Temesgen Solomon Wabelo. Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries. Beijing Law Review, vol. 11, 2020, p. 72.

countries such as Ghana, Kenya, and Uganda, rural land governance is carried out at Ministerial level with decentralized structure.[688]

The land administration system has also envisaged dual system for rural and urban land administration. However, recent moves in Amhara and Oromia demonstrate that they have started the process of merging these institutions. This helps to synchronize rural and urban land registration system.[689]

Ethiopia has rolled out a national rural land administration information system (NRLAIS) under the MoA since 2010. This was financially supported Finnish government-financed project Responsible and Innovative Land Administration in Ethiopia (REILA) between 2015 and 2017. NRLAIS aim to standardize data generation, management and utilization by providing secured, transparent, quality, and continuous land records[690]

The rural land use and administration institutions face a number of challenges. Though the regional Bureaus have adequate and qualified human resources, the federal level institute lacks parallel technical capacity because of the high turnover of staff. Furthermore, budget has been one of the constraints.[691] Furthermore, inadequate infrastructure and technical capacity for surveying and mapping is identified as the other constraints. A standardized land registration and parcel coding has not been adequately rolled out and national digitalized rural land information system is lacking.[692] Recently, the MoA has introduced and piloted tablet-based mobile mass registration system (MASSREG software) to enhance accuracy, efficiency and data security.[693] However, its implementation is going to be seen. The urban and rural land administration system needs to be integrated and a better coordination should be worked out.

The process of land registration and certificate were administered through regional level land administration systems that is decentralized from the regional level up to woreda/district and kebele/village levels. At the regional level, the Sidaama Land and Agricultural Development Bureau oversees the land registration and certification. It enacts state-level directives. The district and kebele levels land administration and use Committees (LACs) undertake and manage the land

[688] Getachew Diriba, *supra note* 686, p. 14.
[689] Mintewab Bezabih and Degye Goshu, *supra note* 598, p. 37.
[690] Shewakena Aytenfisu Abab, Feyera Senbeta Wakjira and Tamirat Tefera Negash, *Determinants of the Land Registration Information System Operational Success: Empirical Evidence from Ethiopia, Land, Vol. 10, 2021, p. 5.*
[691] Mintewab Bezabih and Degye Goshu, *supra note* 598, p. 38.
[692] Getachew Diriba, *supra note* 686, p. 12.
[693] Land Portal, Progressing Digitalization in Land Administration in Ethiopia (8 Dec. 2023) https://landportal.org/news/2023/12/progressing-digitalization-land-administration-ethiopia (accessed on 1 January 2024).

certification and registration system. It undertakes the day-to-day administration, registration land and is involved in dispute settlement.[694] According to some study, the devolution of land administration power to the lowest administrative structure has strengthened state capacity. It has also enabled the lowest administrative units, Woreda and kebele, to exercise control over the enforcement of state laws and policies. This has the effect of not only consolidating preexisting state authority over land but also reconfiguring how land rights are negotiated at the local level.[695] This is further explored under chapter eight which examines how rural women's land rights are claimed and negotiated under a plural justice system.

Land disputes are handled by kebele land administration and use Committees. Before the Committees were established, such disputes use fall under the social courts that are established at the kebele level to handle pity offences, family disputes and civil suits involving not more than 1500 birr. However, because of widespread corruption and incompetence of social courts initiated their replacement with LACs which are structure from regional level up to kebele level.[696]The committees involve village elders in the demarcation, adjudication, and settlement of land related disputes. These committees play an instrumental role in society as they apply a combination of customary rules and the state law in the settlement of land disputes. The members of LACs are elected by the community. However, there is no criteria for membership.

The protection of women's land rights requires coordination with other institutions and stakeholders to tackle the various barriers to protect women's land rights. Therefore, the section below discusses the role of women's machineries in the protection of gender equality in general and women's land rights in particular.

5.5.1. Role of Women's Machineries in the Protection of Rural Women's Land Rights

Before delving into the role gender department in ensuring women's land rights, it is important to provide overview of the development of women's structure and describe the changes over time and the triggering factor for such changes. According to the Beijing Platform for action of 1996, national gender machineries are important structures to coordinate the designing, implementation,

[694] Mekonen et al., 2019; Persha et al., 2017 in Monterroso I, Enokenwa O and Paez-Valencia AM, Women's Land Rights in Ethiopia: Socio-legal Review. Securing Women's Resource's Rights Through Gender Transformative Approaches *Project Brief*. Bogor, Indonesia and Nairobi, Kenya: CIFOR-ICRAF and International Fund for Agricultural Development (IFAD)., 2021, p. 7

[695] David Chinigo, The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu, *Review of African Political Economy*, Vol. 42, No. 144, p. 185.

[696]Achamyeleh Gashu Adam, 'Decentralised Rural Land Administration in Ethiopia: The Case of Amhara Region', *Journal of Land and Rural Studies*, Vol. 6 (1), SAGE Publication, 2017, p. 36.

monitoring and evaluation of gender sensitive laws, programs, projects and activities. They are important actors to mobilize resource and support and create linkage between government and CSOs.

The gender discourse is mainly driven by the government in Ethiopia and the government has shown commitment to tackle gender issues by establishing women's structures within government that goes from the top to the grass root level. The women's structure within government has gone through many changes from time to time.

The government put into place Women's department for the first time in 1991 by establishing Women's Affairs Office (WAO) under the Prime Minister Office. The office was entrusted with coordinating and facilitating programmes to enable women benefit and contribute to the country's development. This was supported with the National Police on Ethiopian Women that was adopted to ensure women's participation in the formulation and implementation of government policies, laws, programmes, projects and plans, which benefits women as well as envisaged to establishment of gender structures. The policy facilitated the establishment of women's departments in various Ministries, Commissions and other government organs. These departments oversaw the implementation of the women's policy and ensured that the policies and activities of the specific government organ is harmonized with the National Women's Policy. However, these structures were not effective for various reasons which include lack of decision-making power, inadequate budget and human resources, lack of clarity of their mandates and weak collaboration with government departments, communities, and NGOs.[697] These reasons have brought the initiative to structure women's departments at the Ministerial level. Thus, WAO was upgraded to the Ministry of Women's Affairs (MoWA) in 2005 by Proclamation No. 471/2005 which also envisaged the establishment of women's departments at every line Ministry. The Ministry was responsible for the protection of women's rights, to ensure laws, polices, projects mainstream gender and to follow up on the implementation of international commitments. Though the Proclamation had not established a formal link between the Ministry and women's department at line ministries, these organs have continued to collaborate and exchange of information by using the platform that was created previous by WAO to coordinate their work. Unlike WAO, the Ministry also become part of the Cabinet which facilitated their participation in the highest decision-making body.[698] The Ministry was reestablished as Ministry of Women, Children and Youth having a corresponding structure at line Ministries in 2010 by Proclamation No. 691/2010. It was overburdened with various priorities

[697] Emebet Mulugeta, *Report on Selected Practices on Gender Mainstreaming – Ethiopia*, UN-ECA, 2010, p. 6.
[698] Emebet Mulugeta, *id.*, p. 7.

concerning women, children and youth. It has been witnessed that concerns of women and children sometime comes into conflict with each other- for instance from children's rights perspective, protection of the family is emphasized while from women's rights perspective a women should have freedom to stay in marriage or not. These conflicting views are also reflected in government action. It is also witnessed the issues of women and children sometimes compete for resource, political commitment and attention. Thus, having single Ministry for the issues of women, children and youth has resulted fragmentation in the works of the Ministry and departments at line ministries.

The Ministry developed the National Gender Mainstreaming Guideline in 2010 which guides how to integrate gender in the polices, actions and activities of various government organs. It aims to make the work of various ministries gender sensitive and gender aware in program design, implementation and monitoring and evaluation. Furthermore, the Ministry supported the undertaking of gender audits to assess the level of gender integration in the various government organs.[699]

Again, women's structure is reestablished as Ministry of Women and Social Affairs in 2021 under Proclamation No. 1263/2021. In line with the Ethiopian government's commitment to mainstream gender, a law (proc. 1263/2021) requires all government institutions to give due attention to women's issues in all policies, development programs, and projects and ensure policies, laws, development programs and projects they formulate benefit women. Furthermore, Ministry of Finance and Economic Development (MoFED) has took the initiative to ensure gender responsive budgeting in allocating and approving budget for various work.[700] The Ministry has also established various forums with CSOs to work on specific gender related issues. There is also an annual Gender Forum that brings together all of women's machineries to exchange information, best practices, and challenges. It brings together women's machineries, developmental partners and other actors.[701]

The Ministry of Agriculture (MoA) has been mainstreaming gender at various programmatic and institutional levels. It has dedicated structure to facilitate the implementation of the gender and women empowerment efforts and institutionalize gender mainstreaming. It has adopted gender mainstreaming guideline, conducted gender audits and established inter-departmental gender focal points. However, the Ministry has been facing challenges to generate and utilize gender disaggregated data, to allocate adequate budget for gender related work and to track progress in

[699] UN Women, *Preliminary Gender Profile of Ethiopia*, 2014, p. 21.
[700] Article 19 (11) of Proclamation No. 1263/2021.
[701] UN Women, *supra note* 699, p. 22.

gender mainstreaming work.[702] Furthermore, there is limited expertise and capacity in mainstreaming gender in planning, monitoring and evaluation. The participation of rural women in the work of the Ministry is very minimal. High staff turnover and gender expertise is also the other challenge.[703]

The gender machineries at the MoWSA and at MoA has played a role in ensuring women land rights through awareness creation on women's land rights, coordinating various gender mainstreaming works to make laws and programs are gender sensitive and facilitating institutional coordination. However, these works is not transferred to regional, Woreda and kebele level structures. This relates to the lack of human and financial resources. Donors focuses on supporting the federal institutions rather than going to local level institutions.

5.5.2. Role of National Human Rights Institutions on Rural Women's Land Rights

The 1995 FDRE Constitution stipulated the establishment of the Ethiopian Human Rights Commission (EHRC) and the Ethiopian Institution of Ombudsman (EIO) by the House of peoples' Representatives (HoPR).[704]The establishment of NHRI by the HoPR ascertain the national institution's continuity and that its existence is not challenged by or is in the hands of the executive. Both institutions were established under the FDRE Constitution well after the adoption of the Paris Principles in 2000.[705]

In 2000, Proclamation no. 210 (Establishing EHRC) and no. 211 (establishing EIO) was adopted by the HoPR. EHRC Proclamation is amended in July, 2020 while EIO Proclamation is repealed and reestablished in 2019 through Proc. no. 1142/2019.The founding Proclamations of EHRC and EIO considered the international movement and accepted standards as both laws were adopted after the adoption of the Paris Principles on NHRI.

The EHRC founding law states that the objective of the Commission is to educate the public about human rights; to see that human rights are respected, protected and enforced; and to ensure that necessary measures are taken when rights are violated.[706]

According to article 6 of Proc. 210/2000, the EHRC is vested with the powers to:

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[702] UN Women, *supra note 699.*
[703] Kristie Drucza, *supra note 586,* p. 7.
[704] Article 55 (10) (11) of the FDRE Constitution.
[705] Abraham Ayalew, 'Compliance of National Human Rights Institutions (NHRIs) in Ethiopia with the Paris Principles', *Ethiopian Human Rights Law Series,* Vol. 5, 2012.
[706] Article 5 of Proc. No. 210/2000.

- Ensure that human rights and freedoms are respected by citizens, organs of state, political organizations and other associations;
- Ensure that laws, regulations and directives as well as government decisions do not contravene human rights;
- Educate the public about human rights;
- Investigate human rights violations on its own initiative or upon complaint;
- Make recommendations for the revision of existing laws, enactment of new laws and formulation of policies;
- Provide consultancy services on human rights; forward its opinion on human rights reports to be submitted to international organs;
- Translate into local vernaculars and disseminate international human rights treaties ratified by Ethiopia; and perform such other activities as may be necessary to attain its objectives.

In addition to the above, the amendment proclamation of EHRC provides that the Commission has the power to monitor human rights during election and state of emergency and to make unannounced visit to detention centers.

The EIO amendment Proclamation provides that the institute strives to bring good governance, efficiency and transparency based on the rule of law by ensuring people's rights.[707]

The EIO is vested with the power to:

- Supervise regulations, directives, decisions and practices of the executive don't contravene the FDRE constitution and the law;
- Investigate complaints on maladministration by its own initiation or submitted to it and provide appropriate remedies;
- Undertake studies and give recommendations to resolve issues of maladministration;
- Make recommendations for the revision of laws, practices and directives and enactment of new laws to bring good governance;
- Advice the government and create awareness on issue of good governance and on administrative justice and
- Supervise part three of freedom of mass media and access to information law. It is required to adopt a guideline to enable interested parties to obtain information from public bodies. It monitors the implementation of Access to Information Law,

[707] Article 6 of Proc. no. 1142/2019.

receiving reports from public bodies, and submitting report to the House of Peoples' Representatives.[708]

EHRC and EIO are required to receive all complaints of human rights violations and maladministration, except for cases brought to the HoPR, House of Federation (HoF) and courts of law at any level.[709] Article 29 of the EHRC Proc. and art. 34 of the EIO Proc. address the potential mandate overlap. Both institutions have undertaken a number of activities after their establishment. They have structured their departments since establishment. Branch offices were opened to increase accessibilities.[710]

Both institutions have undergone reform after the coming into power of Dr. Abey in 2018. Various measures were taken to overhaul the effectiveness of these institutions. The following are the major changes:

- Amendment of their founding laws: The HoPR has repealed the founding law of EIO and adopted an amendment proclamation in 2019. The new Proclamation (Proc. no. 1142/2019) has replaced proc. 211/2000. Likewise, HoPR has also amended some of the provisions of proc. 210/2000 (see the table 2 below for the major changes).[711]
- Assertion of their independence: This was done by the appointment of Commissioners for the two institutions who are not member of political party.
- Strengthening their capacity.
- Strengthening of partnership with CSOs: Both institutions have initiated partnerships with CSOs. CSOs Forums were established to strengthen partnerships.
- Resource mobilization: EHRC has mobilized a resource that enables it to employee qualified staffs and undertake its activities. Given the fact that the Commission was under resourced, this resulted for proper functioning without resource constraints.
- Improved relationship with HoPR and other government organs and
- Increased acceptance/implementation of its findings.[712]

In relation to their work on rural women's land rights, the interviews held at their branch offices in Hawassa revealed that there is very limited work undertaken. Most of the work of EHRC and EIO

[708] Article 7 of Proc. no. 1142/2019.
[709] Art. 7 of Proc. 210/2000 and art. 9 of Proc. no. 1142/2019.
[710] Both institutions have established eight branch offices based on the approval of HoPR. EHRC has branch offices in Assosa, Bahirdar, Gambella, Hawassa, Jigjiga, Jima, Mekelle and Semera.
[711] While the amendment proclamation of EHRC founding proclamation was done through the Legal Advisory Council established under the Attorney General as an independent body with active participation of EHRC, the founding proclamation of EIO was made by the institute itself.
[712] Interview with Director of Monitoring and Research Directorate at EHRC on Sep. 16, 2020 and with the Director of investigation Directorate of EIO on Sep. 10, 2020.

focused on receiving complaints and creating awareness of gender issues in general.[713] However, the proportion of rural land related complaints are very limited. Most of the cases complaints brought to EIO relates to maladministration and compensations issues related to urban land expropriation. One of the reasons for these is lack of awareness of rural women as to the mandate of these institutions. The other relates to lack of access to these institutions as the branch offices operate in urban areas which are far from rural areas.[714] The review of their strategic documents also demonstrate that rural women's land rights issues is not given due attention it deserves.[715]

5.5.3. The Role of Civil Society Organisations (CSOs) in the Protection of Rural Women's Land Rights

The term civil society has reemerged in 1980s and 1990s from the origins of liberal democracy in 18th and 19th. However, its content and how it is used has changed. Previously, it was socially and territorially bounded but now it is transnational and emphasis on participation. It represents a demand for radical expansion of democracy across national and social boundaries.[716]

The original meaning of civil society was linked with the concept of civility when it emerged in the 17th and 18th upon the breakdown of the ties based on blood, kinship and religion. With time-space distinction as called by Giddens, abstract forms of social interaction arose which supported the personal face-to-face relations of local communities. The growth of state and rule of law eliminated violate and private methods of dispute settlement and created conditions for new forms of social interaction.[717]

Civil society is based on respect for individual autonomy, security and trust among people. It requires regularity of behavior, rules of conduct, respect for law and control of violence. Civil society is like polite society in which strangers act in a civilized way towards each other with mutual respect, tolerance and confidence.[718] Utilitarian conception of individual behavior which believes individuals act out of self-interest than conscience cannot explain civil society.[719]

Hegle puts as precondition the existence of strong state to realize civil society. Earnest Gellner stresses national identity as a glue of modern society. He argues the existence of 'modularity'

[713]Interview with Informant 28 (Director of Investigation Directorate of EIO, Hawassa Branch) & 29 (Human Rights Education Officer and Women and Children Coordinator of EHRC, Hawassa Branch) on 12 May 2022 at Hawassa.
[714]Ibid
[715] Ibid. The strategic documents and reports of both EIO and EHRC do not have any discussion on women's land rights. See EHRC, የሴቶች እና የሕፃናት መብቶች ሁኔታ ዓመታዊ ሪፖርት, Sep. 2023; EHRC, EHRC Strategic Plan (2021-25).
[716] Mary Kaldor, 'The Idea of Global Civil Society' *International Affairs 79*, no. 3 (2003), p. 583-593.
[717] Ibid.
[718] Ibid.
[719] Ibid.

makes civil society possible when there is countervailing and plural political associations and economic institutions which are not stifling. For him, the strength of ethnic identity is important. Thus, Civil society is not necessary feature of the contemporary world in contrast to national identity.[720]

Civil society organizations provide for the creation of plurality of citizens' organisations through which individuals can express their concerns and put pressure on the state.[721]

Modern CSOs working on women emerged in Ethiopia during the imperial period. These organizations first appeared to provide support for women. The first organization was the Ethiopian Women's Welfare Association which was established in 1935.[722] The other organization established was the Armed Forces' Wives Association which aimed to assist widows and children of the army. The Ethiopian Young Women's Christian Association was also established at the same time. These organizations had specific aims and did not represent the majority of the population. They were terminated by the Derg regime by nationalizing their assets.[723] The Derg regime has established the Revolutionary Ethiopian Women's Association (REWA) having five million members. It was engaged in developmental projects that includes handicrafts, retail stores, grain mills, and the expansion of kindergartens.[724] However, it was used as an instrument of political mobilization by the regime at the later stage. As discussed above, rural women land rights were also the focus of the women's association within PA.

The EPDRF constitution facilitated a conductive environment for NGOs to operate until 2005. This has enhanced women's participation in the political, economic and social sphere. It has also resulted in a number of gender sensitive legislative reforms led by some of the CSOs such as the reform in the criminal law and family law that was driven by NGOs such as EWLA, NEWA. However, in 2009, a draconian law was introduced which prohibited CSOs working on human rights, and women's and children's rights from getting more than 10% funding from foreign sources.[725] This law caused most CSOs to shift their focus of work and descale their work which reduced their capacity. This law has been revised in 2019 which has lifted the restriction to receive funding from foreign sources.[726] Though the capacity of CSOs have been reduced by the previous law, they are

[720] Ibid.
[721] Ibid.
[722] Emebet Mulugeta, *supra note* 697, p. 73.
[723] Emebet Mulugeta, *id*.,
[724] Burgess Gemma, 'A Hidden History: Women's Activism in Ethiopia', *Journal of International Women's Studies*, Vol. 14, No.3, 2013, p. 99-100.
[725] Proclamation No. 621/2009 to provide for the registration of charities and societies.
[726] Ethiopia Civil Societies Proclamation Proc. No. 1113-2019

now being revigorated and providing various services to vulnerable groups including legal aid services, advocacy of rights and research. CSOs in Ethiopia have been working on women's empowerment, women's rights by challenging policies, laws, structures and patriarchal system.

According to the CSOs operating in Hawassa, they provide legal aid to cases related to marital property division which involves rural land. The experts have revealed that women face various challenges in pursuing justice. Women do not even know their property including landholding.[727]Rural Women are hesitant to enforce their rights most of the time because of the various barriers they face. They expect the men to give them the share of their property by their will. They do not want to bring cases because of the cultural, social, economic and institutional barriers they face as discussed under chapter seven.

The legal aid service that is provided by CSOs free of charge involves writing court applications, training the applicant on how to litigate before courts so that they can pursue court cases by their own and follow-up their cases and provide support throughout the legal process.[728]

CSOs can play not only 'naming and shaming' roles but also 'naming and learning' roles in a constructive way to bring and influence policy changes. The role EWLA played in advocating for change of gender discriminatory law of the previous penal law and family law can be mentioned.

However, CSOs working on women's rights in general face various challenges. A recently held conference organized by CSOs in 2023 identified the following main challenges for women's rights CSOs in Ethiopia.[729]

- Lack of common women's agenda among CSOs
- Project based initiatives and donor driven agenda
- Limited collective actions that go beyond commemoration of women's day
- Lack of far-sighted advocacy strategies
- Short term goals that tackles short lived singular issues without a clear goal.
- Lack of periodic evaluations of the work of CSOs.
- Disconnect between local and international level women's movements. Ethiopian CSOs have a very limited linkage with transnational CSOs.
- Lack of specialization by organizations.

[727] Interview with informant 26, at EWLA Hawassa Branch conducted on 12 May 2022.
[728] *Ibid*. Interview with informant 2 at Mizan Youth Lawyers Center on 04 May 2022.
[729] Presentaion of W/ro Saba G/Medhin, NEWA's Executive Directress and participants contributions in the Conference on Women's Movement in Ethiopia organized by NEWA and Ethiopian Women with Disabilities National Association (EWDNA) on 21 November 2023.

- Dominance of elite based movements.
- Lack of flexibility to understand the current dynamism in the social, economic and political sphere.
- Fragmentation in women's movements.
- Limited intergenerational work among experienced and recent CSOs and gender professionals.
- Capacity gaps
- Lack of long-term plans and goals. Issues are set based on current situations and status. Thus, the women's movement ended being issue driven rather than being designed to tackle structural issues.

Thus, there is a need for context-based women's rights advocacy in rural areas. Furthermore, women's rights organizations in Ethiopia need to strategize on their interventions and create platforms to collaborate and coordinate their work. Though there are a number of women's CSOs working on various issues, their contribution to women's rights issues should be evaluated.

Chapter Summary

The chapter has tried to address the historical, political, and legal context to the women's land rights in Ethiopia. Contextual and historical analysis is important to understand the status of rural women's land rights and devise mechanisms to address the existing problem. With this objective, the chapter analyzed the types of tenure system that existed in Ethiopia and its implications for the policy and legal measures that has been taken consequently.

Ethiopia had various forms of land tenure systems during the various regimes as discussed at the beginning of this chapter. These land tenure systems have been subjected to various reforms through the long history of Ethiopia. Concomitantly, various land legislations were adopted at various periods.

From the analysis of the history of women's land rights, it came out those rural women's land rights issues in the south and norther Ethiopia should be seen differently. In the South, women were not only able to access land in their own, but they were disenfranchised because of the feudal system that created a landlord-tenant relationship. In addition to that the cultural practices that do not allow women to inherit and plow land have an additional negative consequence on women. While in the north, women were able to inherit land, however, the cultural view that excluded them from participating the ploughing land was the main feature of women's land rights. These historical

differences are discussed since they have political, economic, policy and legal implications on the type of measures that should be taken to correct these inequalities.

Furthermore, the chapter demonstrated that the legal framework on women's land rights is not gender responsive and does not take into account the historical marginalization of women from accessing land. Any endeavor to reform the legal framework should try to address this existing gap in the law. This can be done by adopting legislative review process that is supported with the reality on the ground and allowing rural women and organizations that represent these women to participate in the legislation drafting process. As discussed, though the current draft legislation has tried to address the gender element through expert support, however, it is short of wide range of consultation with rural women.

The role of various institutions in the protection of rural women's land rights are also analyzed under this chapter. Though women's issues are institutionalized by the government by establishing women's departments in line ministries including at the MoA, there is more to be done in terms of enhancing the capacity of this department and establishing accountability mechanisms. Furthermore, national human rights institutions and civil society organizations need to mainstream rural women's land rights issues in their programs, projects and activities.

Thus, rural women's land rights issues are still a political and legal challenge that is key to be addressed. Though various questions have been raised and addressed previously, the dynamics in relation to land require more to be done. The next chapter discusses the effects of formalization of rural women's land rights building on these historical and legal contextual factors that existed pre- and post-formalization of land rights in Ethiopia.

Chapter Six: Evidence on the Effects of Formalization of Rural Women's Land Rights in Ethiopia

Introduction

The previous chapter has situated women's land rights in the historical, political and legal context. By doing so, it demonstrated that women have been excluded from enjoying their rights to access, use and administer land rights in Ethiopia. It has also showed that there is variation in the tenure system in the North and South part of Ethiopia which affected men and women differently. This chapter, by continuing the discussion on women's land rights after the EPDRF came to power, it analyses the effects of land formalization in Ethiopia.

Furthermore, the chapter attempts to elucidate the extent to which *de Soto*'s arguments on the benefits and pitfalls of formalization of land rights which are discussed under chapter two materialized in the Ethiopian case by reviewing more than eighty studies various empirical literature from developmental studies, economics and gender studies on land registration and certification in Ethiopia. A systematic review of this various empirical studies on women's land rights in Ethiopia is conducted to explore the rationale, process, outcomes and impact of the joint land registration and certification in Ethiopia.

These studies have demonstrated that rural land registration and certification program which started after the FDRE Constitution was adopted has attempted to ensure women's land rights are protected by introducing a joint land registration and certification in the name of a husband and wife. The program which is piloted in four regional states at first has now expanded all over the country. The program in its more than twenty years of implementation has been praised for securing land tenure and protecting the rights of women.

In addition to that, various studies have shown the linkage between formalization and productivity, investment, land disputes, women's empowerment, women's awareness of their rights and participation in decision making processes and the elimination of VAW in Ethiopia. The existing evidence shows a strong relationship between land certification and increase in productivity, investment, land tenure, and women's empowerment at the household level. However, there is limited evidence that demonstrated the linkage between women's land rights and VAW. The effects of the formalization of land in the plural justice system have also not been explored. This thesis explores its effects in the next two chapters.

The review of the various studies to explore the linkage between formalization and its outputs has demonstrated that it is mostly difficult to establish the direct causal relationship between the effects of women's land certification and the various changes brought about by the land certification program. However, the changes that are witnessed can be considered as the impact of the land certification with the caveat that other contextual factors such as change in women's position in the society, change in the market system, globalization etc. still could also be considered as additional contributing factors. In this relation, Tom Lavers has attempted to examine the link between land registration and gender equality based on field research conducted from 2009-2010 in two villages, i.e. Geblen located in Tigraye and Turufe Kechema in West Arssi, Oromiya. His case studies demonstrated that though women's land rights have been enhanced after the introduction of joint titling, establishing a causal link between titling and enhanced women's rights is complex and varies from place to place. He pointed that some of the improvement witnessed in women's land rights has happened not only because of land registration and certification but also the state effort to transform informal institutions and power relations. He further reveals that change in the laws that brought about joint registration in the name of wife and husband, and protection of women's property rights within marriage and upon termination of marriage (family law) should be complimented by change in the informal institutions and power relations in the society.

This chapter starts by discussing the history of land certification in Ethiopia which is followed by a discussion on the process of land registration and certification in Ethiopia. The later section discusses the objectives of the land formalization process in Ethiopia, and the two land registration programs known as first level land certification (FLLC) and second level land certification (SLLC). It then proceeds to discuss the impact of land formalization in Ethiopia by reviewing various empirical studies that showed the link between land formalization and various outcomes such as tenure security, productivity, investment, land disputes, women's empowerment, their awareness of their rights to land and participation in decision making, and elimination of violence against women. The last section elucidates the legal, socio-cultural and institutional barriers women face in the land registration and certification program in Ethiopia.

6.1. History of Land Certification in Ethiopia

It is documented that land registration without a certificate in Ethiopia dates backs to 1909.[730] Then, the 1960 Civil Code of Ethiopia envisages for the registration of immovable property from Article 1553-1646. It suspends the application of these provisions under article 3363 (1) until an order is published for its effect in the *Negatit Gazeta*. The Code stipulates for the application of customary

[730]Renee Giovarelliand Hirut Girma, *supra note 22*.

rules to regulate matters of immovable property until an implementing law or order is issues.[731] Because of the lack of an implementation law or order, these provisions of the Civil Code were not implemented for several years.

In 1998, this changed with the introduction of the first-level land registration and certification (FLLC) in Tigray regional state. The land registration and certification program were not unique for Ethiopia. The land registration and certification program covered 80% of Tigray regional state in 1999, before the Ethio-Eritrea war broke out in 2000. At this time, the registration and certification were carried out with government budget by adopting a low-cost and participatory approach. It was manual based registration using only papers. The measurement was done using local materials such as rope and with the help of neighbors. The borders were demarcated and the neighboring parcels were registered as demarcation of parcels of each household.[732] At a later stage, the program is expanded and piloted in Amhara regional state in 2002/03, and in Oromia and SNNP in 2004.[733] The joint registration in the name of a husband and wife started at this time in 2003.[734] The initiative started with a view to secure land tenure of the rural farmer who has been affected by land re-allocations in various periods as discussed under chapter five of this dissertation. The land reallocation or distribution measures that was undertaken during the Derg period has resulted in fragmentation of land in rural areas. It involved nationalization of land and its redistribution which has increased tenure insecurity. Though the redistribution of land rights were undertaken with the socialist view to make access to land egalitarian, it had the effect of disrupting the existing social and institutional structures to access land such as the landlord-tenant relationship especially in the Southern part of Ethiopia.[735]

The land certification program is grounded on the FDRE constitution's provisions on land rights. As discussed in the previous chapter, the FDRE constitution lays out that land belongs to nations, nationalities and peoples and guarantees peasants use rights. It ensures peasants rights to freely access land. Furthermore, the constitution adopted a decentralized system of land administration by empowering regional states with the power to administer land. Based on these constitutional provisions, subsidiary laws on land administration and use have been adopted by the federal and regional governments. Though these laws are adopted after land registration and certification

[731] Articles 3364-3367 of the Civil Code.
[732] Stein T. Holden, 'The Gender Dimensions of Land Tenure Reforms in Ethiopia 1995-2020' in Uchendu Eugene Chigbu (ed.), *Land Governance and Gender: The Tenure-Gender Nexus in Land Management and Land Policy*, 2022, p. 47.
[733] Belachew Mekuria Fikre, *Rural land Rights in Ethiopia: Law and Policy Analysis*, Unpublished PhD theses, 2014, p. 156.
[734] Hirut Girma and Renee Giovarelli, *supra note* 22, p. 2.
[735] Alvarado, G., Kieran, C., Jacobs K., Beduhn, J., Heidenrich, T. and Linkow, B., *supra note* 651, 2022, p. 24.

program is rolled out in 1998, they ensure joint registration of husband and wife. Though most of these laws have general provisions on land registration and certification, some of them such as Oromia National Regional States, SNNP and Sidaama Regional States land administration and use proclamations contain detail provisions on rural land measurement, surveying, registration and certification. The land registration and certification are not implemented on communal land rights except in some places during the SLLC.

6.2. Process of Land Registration and Certification

6.2.1. Objectives of Land Formalization in Ethiopia

Ethiopian land registration and certification process has sought to "provide secure rights of tenure and protect the rights of vulnerable groups such as women, reduce land disputes and litigation, facilitate land use planning and management of community and state lands, and increase smallholders' investment in, and output from their plots."[736]

These objectives of land registration go in line with the benefits of land formalization presented by De Soto and discussed under chapter two of this dissertation. As indicated in the objective of the formalization of land rights in Ethiopia, tenure security is one of the fundamental aspects in rural land administration systems. It involves the measurement, registration, verification and issuance of certification for land holder.[737] This process ascertains who holds land, the size of the land and location of the land on paper. This process was undertaken in urban settings in the past. It is now demanded not only in urban areas but also in rural and peri-urban areas.

In Ethiopia, land is under statutory tenure as it belongs to the state. Thus, the land certification and registration process is very fundamental for women's land rights to be represented and recognized.[738] The process of land certification and registration involves joint land titling in the name of a husband and wife.

The land certification and registration process are implemented in two phases. The first level registration involved the identification, adjudication, registration of land holding rights, issuing of certificates at Woreda level and the computerization of land registration records at the local (Kebele) level. It was carried out in Tigray region in 1998, followed by Amhara (2003), Oromia and SNNP regions in 2004.[739]This level of registration used local materials to measure and demarcate

[736] Rahmato, p. 51 cited in Belachew Mekuria Fikre, *supra note 733*, p. 158.
[737]Article 6 of Proc. No. 110/2007.
[738] Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 9.
[739] Hailemariam Ayalew, Yeshwas Admasu and Jordan Chamberlin, Is Land Certification Pro-poor? Evidence from Ethiopia, *Land Use Policy*, Vol. 107, 2021.

land and admired for its low cost.[740] The certificate issued during this phase did not show detailed spatial information of plots. It rather provided the size of the land, its use and the level of fertility. It was difficult to update information on the land as it was not digitalized. The second level of registration was implemented with the aim to address the gaps observed in the first level of registration and involved the digitalization of the registration by surveying of land parcels using GPS.[741] The details of these levels of land certification is discussed in the sections below.

6.2.2. First Level Land Certification (FLLC)

The FLLC program which started in Tigray in 1998 lasted until 2004 registering landholdings of rural small holders in Amhara, Oromia and SNNP. More than 12 million households or 20 million parcels are registered during this period in the four regions.[742] The registration took place at the household level by issuing household level certificates. Registry contains parcels that are registered under households and list of plots, its size, location, land fertility, and names of neighbors' land holders.[743]

It is known to be less costly and rapid registration covering a large number of households in shortest time.[744] The registration scheme is known for its reputation of large scale and low-cost program at the international level.[745] It also used a decentralized approach by engaging elders and local land administration and uses committees (LACs).[746] It is also praised for adopting for local contexts and for its participatory and decentralized approaches. In case of Oromia and SNNP, the certification program has registered and certified wives in a polygamous marriage as joint holders with their husbands though the law do not recognize polygamous marriage.

[740] Stein T. Holden, *supra note* 732, p. 47
[741] Chiara Romano, *supra note 616,* p. 7.
[742] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 15. Gina Alvarado, Benjamin Linkow, and Tasha Heidenrich, Ethiopia Strengthening Land Tenure and Administration Program: An Impact Evaluation of Land Certification in Four Regions in Ethiopia, Pre-Analysis Plan, Landesa USAID, 2020, p. 1. See also Abebaw and Tigistu's study which puts the certified land during the FLLC to over 15 million. Abebaw Abebe Belay and Tigistu G/meskelAbza, Protecting the Land Rights of Women through an Inclusive Land Registration System: The Case of Ethiopia, African Journal on Land Policy and Geospatial Sciences ISSN: 2657-2664, Vol.3, Special.2 (March 2020).
[743] Stein T. Holden, *supra note* 732, p. 47.
[744] The certificate costed 5 birr in Oromia, 2 birr in SNNP and was free in Amhara regional state. In total, it costed about US $3.5 per household or less than US $1 per parcel. See Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh Kassaw Agegnehu and Gernot Stoeglehner. *Supra note* 578, 12, 93, p. 5
[745] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 16.
[746] Abebaw Abebe Belay and Tigistu G/meskelAbza, Protecting the Land Rights of Women through an Inclusive Land Registration System: The Case of Ethiopia, African Journal on Land Policy and Geospatial Sciences ISSN: 2657-2664, Vol.3, Special.2 (March 2020), p. 86.

The first level of registration and certification of landholding rights was undertaken at a household level, resulting in household level certificates not parcel level certificates.[747] The lack of parcel level certificates has been criticized since the rights of each adult members of the household at parcel level is not determined. This is found to be problematic since there may be adults entitled to landholding rights of different parcels of land within a single household. For instant, an adult who is entitled to a portion of inherited parcel of land and living in the same household with the landholder may not get a land title for his/her portion of land in the certificate issued at the household level.[748] Similarly, in case of a polygamous marriage, the wives did not get a certificate to the parcel of land rather one of them is registered jointly with their husband at household level which excluded subsequent wives.[749] However, the later interventions in the SNNP tried to address this problem by registering the first wife jointly with the husband and issuing separate certificates in the name of each subsequent wives without including the name of their husband's. However, this was challenged by polygamous husbands and the subsequent practice shows that the husband is certified either jointly with the wives in a single certificate or separate certificate is issued with each wife having his name first followed by the name of the wife of each household.[750] In order to discourage polygamous marriage, a rule is introduced for subsequent wives to be certified with husband's half share of the land while the other half going to the first wife.[751] This means that husband should give half of the land to his first wife and he can share the remaining half share of the land with his subsequent wives. Furthermore, the lack of registration of marriages and divorces in vital registration system has affected women's land rights.

Household level certification has also resulted in variation in the certificate process across regions. In Tigraye regional state, at the beginning (until 2003) only the name of male head of household registered on the certificate which was undertaken using government budget. This resulted most of the registered lands to end up being in the name of male household's heads.[752] With an increase in gender awareness and donor support, joint registration in the name of the wife and husband of the household rolled out in the four regions in 2003.[753] In Oromia, the name of both spouses was registered with the husband's photo affixed on the certificate while in Amhara the photos of both spouses and their names are included on the certificate. In the SNNP, only names of both spouses

[747] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh KassawAgegnehu and Gernot Stoeglehner,*supra note* 578, p. 3.
[748] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 16.
[749] Renee Giovarelli and Hirut Girma, *supra note* 22, p. 3.
[750] Renee Giovarelliand Hirut Girma, *supra note* 22, p. 5.
[751] Stein T. Holden, *supra note* 732, p. 48
[752] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 16.
[753] Stein T. Holden, *supra note* 732, p. 48. See also Renee Giovarelliand Hirut Girma, *supra note* 22, p. 5.

are included in the certificate.[754] Female heads of household were registered in their own name. Among the registered households, 2,002,956 (21%) were registered and certified in the name of female heads of households, 7,488,078 (79%) registered in the name of male heads of household or jointly in the name of male and female household heads as shown in the table below.

Table: FLLC by regions

Regions	**FLLC certified in the name of MHH and jointly**[755]	**FLLC certified in the name of FHM**	**Total**
Amhara	2,191,047	1,133,953	3,325,000
Oromia	2,598,027	493,138	3,091,165
SNNPR	2,100,400	286,419	2,386,819
Tigray	598,604	89,446	688,050
Total	**7,488,078**	**2, 002,956**	**9,491, 034**

Source: MoA, Rural Land Administration and Use Directorate, 2019[756]; MHH- Male-headed households, FHH- female-headed households

As shown in the table above, the largest certificates are issued as joint registration and certification in the name of male household heads. Registration in the name of female household heads constituted only 21%. One of the explanations for this is that most of the lands that is held by husband and wife are registered in the name of male heads of households, husbands considered as heads of the households. This was criticized for resulting in weaker land rights for women in male-headed households. [757] Furthermore, some studies found that female headed households have been 23% less certified than male-headed households. The size of land certified for female headed households were also less compared to male headed households.[758] One study showed that female headed households held 1.7 hectares while male headed households held 2.2 hectares.[759]

[754] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 16.
[755] Since there was not digitized land information system during the FLLC, it has created a problem to dissect the data showing land certified only in the name of MHH and jointly.
[756] Abebaw and Tigistu's study which puts the certified land during the FLLC to over 15 million. Abebaw Abebe Belay and Tigistu G/meskelAbza, supra note 746, p. 31.
[757]Stein T. Holden, *supra note* 732, p. 47. See also Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 16.
[758] Stein T. Holden, *supra note 732*, p. 47.
[759]Kumar and Quisumbing, 2010 cited in Renee Giovarelli and Hirut Girma, *supra note* 22, p. 5.

It is very important that land registry is updated in systemic, credible and reliable manner reflecting changes in the holding rights either through transfer or rent. However, variation has been observed in the procedure of updating among regions. Some of the procedures have been unclear in some regions. Furthermore, the lack of referencing to the code of the certificate book upon entering any change to land holding rights compromised women's land rights.[760] As discussed in the last chapter, this gap has put women in disadvantage position in claiming their rights before a court of law.

Albeit the FLLC program is credited for its coverage of 90% of rural households by 2013, lack of plot level mapping which prevented the development of cadastral maps, inaccuracy of demarcation, and manual land registries has been its shortcomings.[761]

Pic. 3: First Level Land Certificate/book

Source: Photo taken by the author

6.2.3. Second Level Land Certification (SLLC)

The SLLC was introduced to address some of the problems observed during the FLLC with the support of development partners. It aims "to improve tenure security, maintain and update records,

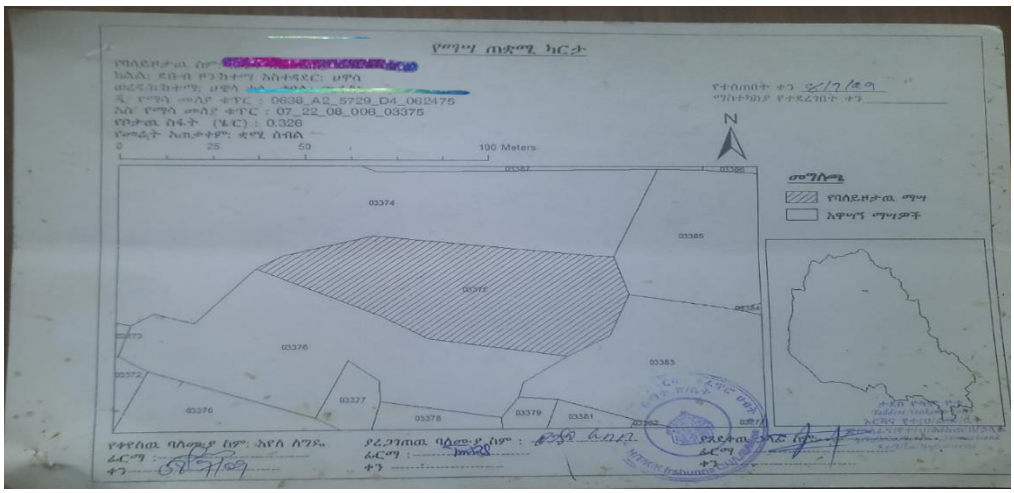
[760] Hirut Girma and Renee Giovarelli, *id.*, p. 6.
[761] Gina Alvarado, Benjamin Linkow, and Tasha Heidenrich, Ethiopia Strengthening Land Tenure and Administration Program: An Impact Evaluation of Land Certification in Four Regions in Ethiopia, Pre-Analysis Plan, Landesa USAID, 2020, p. 1.

and enhance land management."[762] It established cadastral land registration system which facilities "sustainable land use planning and infrastructural development of the rural areas."[763]

In this regard, the SLLC involves mapping of individual parcels using a spatial coordinate and GPS. It further digitalized the land administration and management system. It sought to establish land information system and an integrated land use management and planning activities.[764]

The SLLC was launched in 2013/14 or 2014/15 in four regions. The certificates include Aerial photograph, region name, woreda, owner's name, size, day of issue, parcel code, photograph of owners (for Oromia, in particular) (See picture 4). The SLLC also mapped communal lands and religious institutions. The SLLC is funded by government and development partners such as DFID, USAID and Finnish government.[765] The SLLC has also been expanded to other regions such as Benishangul and Gambella regions with the support of RILAS project by the Finnish government.[766]

Pic. 4: Second level land certificate



Source: Photo taken by the author

The SLLC process involved five major steps:

1) Creation of public awareness and communication on SLLC procedures;

[762] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 16.
[763] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh Kassaw Agegnehu and Gernot Stoeglehner, *supra note* 578, p. 8.
[764] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh Kassaw Agegnehu and Gernot Stoeglehner, *Supra note* 578, p. 3 and 6.
[765] Mintewab Bezabihand Degye Goshu, *supra note* 598, p. 44.
[766] Mintewab Bezabih and Degye Goshu, id., p. 45.

2) field demarcation, surveying, mapping, adjudication and the assessment of landholders' legal rights;
3) data entry and digitization;
4) Public Display of the map for any forthcoming objections, and corrections; and
5) register of land rights.
6) Issuance of certificate that indicate the parcel boundaries, occupancy, and land rights to landholders.[767]

Federal Rural Land Administration and Use Directorate (RLAUD) under the Ministry of Agriculture oversee the whole process with the support of Ethiopian Geospatial Information Agency and Information Network Security Agency (INSA) which provide high quality digital maps or orthophotos. The corresponding regional organs on land management also oversee the implementation process of SLLR.[768]

The process of SLLC is implemented at Woreda and Kebele level by Woreda Land Administration and Use offices and kebele Land Administration Use Committees (LAC).[769] At Woreda level, there are four teams i.e. woreda steering committee, the land administration committee, the public awareness group, and the GIS surveyor. The Woreda Steering Committee is composed of multiple stakeholders such as woreda administration, women's affairs, courts, justice, and woreda land administration office to oversee the process of SLLC. LAC is composed of adjacent owners, woreda coordinator and the community elders.[770]

The public awareness on the SLLC was carried out using mass media, brochures and potters. The public display of the certificate for any objections and issuance of the certificate has also created an opportunity to create awareness on the certificates and the rights of the landholders such as that the certificate can be used to access credit (the revised draft land proclamation includes a provision that allows rural landholders to use the land certificate as a collateral to access credit from financial institutions). The process of demarcation has also envisaged mechanisms of land disputes adjudication through LAC. If the disputes are not resolved by LAC, it is settled by courts. The digitalization process helps to record various transactions on the land such as inheritance, credit, land rental, gift and any form of transfer in the Rural Land Administration System (RLAS).[771] The

[767] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note* 35, p. 17. See also MintewabBezabih and Degye Goshu, *supra note* 598, p. 45.
[768] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note* 35, p. 17.
[769] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *id.*, p. 17.
[770] Mintewab Bezabih, and Degye Goshu, *supra note* 598, p. 44
[771] Mintewab Bezabih, and Degye Goshu, id., p. 45. See also Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note* 35, p. 17.

process of land certification is considered as the most transparent, democratic and community centered. However, it is also very vulnerable for political manipulation as some members of LACs have double roles as member the ruling party and LACs. This sometime create confusion of roles and they tend to use their positions for political ends. Because of the hierarchical nature of the EPDRF, it was witness that political interests interfering in the work of LAC.[772] The SLLC is financed by the government and development partners, one certificate estimated to cost 8 dollars.[773]

One of the unique features of SLLC is the participation of women in the different phases of the process.[774] Some of the projects that were supported by donors have identified inadequate participation of women in the FLLC. Thus, they have tried to ensure women's participation. In case of LIFT project supported DFID, women participated in the identification of the parcel, in resolving land disputes, as whistle blowers when wife or co-wives is not registered during the public display of certificate.[775] Furthermore, government offices such as Woreda land administration office, Women and Children Affairs Office (WCAO), Labour and Social Affairs, Justice Office, Courts, Grievance Hearing Office, Women's Associations, and the Good Governance Task Force (GGTF), Social Development Officers (SDOs) has been active in protection women's land rights.

According to key informant, in the SLLC, certificate is issued to 30 million parcels out of 50 million parcels.[776] Among this, 80% of it is registered either in the name of FHH or jointly.[777] It has brought equitable distribution of the certificate in the name of men and women. However, its impact at the household level decision making process demands further investigation.[778]

However, there are challenges and sporadic cases observed in relation to irregularities in SLLR. For instance, there are cases where land is registered in the name of a person who passed away. Though standardization has been achieved in the certification process of SLLR, variation still exists in its implementation based on local conditions and contexts.[779]

The table below compares the FLLC and SLLC in terms of level of certification, coverage, methods, cost, dispute settlement, proof of demarcation, women's inclusion, benefits and pitfalls.

[772] Belachew Mekuria, *Supra note* 733, p. 165.
[773] MintewabBezabihand Degye Goshu, *supra note* 598, p. 45.
[774] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note* 35, p. 18.
[775] Ibid.
[776] Interview with informant 38, Land Use and Administration Expert at Ministry of Agriculture conducted on 23 October 2023.
[777] Abebaw Abebe Belay and Tigistu G/meskelAbza,. *supra note* 746.
[778] Stein Terje Holden, *supra note* 732, p. 149.
[779] Stein Terje Holden, *ibid*.

Table 6: Comparison between FLLC and SLLC

	First level land certification	Second level land certification
Level of certification	Household	plot
Coverage	Over 12 million households[780]	15 million parcels out of 50 million demarcated as of 2022[781]
Methods	Uses local materials such as role	Uses GPS
Cost	Cost effective (2-4 birr)- 3.5 dollars	a bit costly (8 dollars)
Administration and dispute settlement	Decentralized by local level committees	decentralised
Proof of demarcation	natural boundaries to demarcate boundaries (debtor)	Parcel level mapping and digitalisation
Women's inclusion in the certificate	Name of wife as joint holder is included except in Tigraye where the household head who is male except in female-headed households is registered alone.	Name of wife included
Benefits	- improved livelihood options (higher income) - improved decisions making (power relation at household and community level) - community participation - increased land market participation	-Legal framework and land administration institutions established Decentralized powers -Low cost and rapid registration process -Participatory and pro-poor approach -Cadastral land registration system -Improved tenure security of landholders -Improved women's land rights, access to land and wellbeing[782]
Pitfalls	-the available evidence does not demonstrate reduction of land related dispute. -"the program's impact was hampered by the absence of plot-level mapping and insufficient boundary information, which prevented the development of accurate cadastral maps and precluded needed improvements to land use management and administration systems and to computerized land registries	- Little attention to land use planning - Weak linkages with other development organizations/ experts - Legal gaps[783] - Plurality of plot registered in the name of a single landholder but located in various places. This has led to complicated registration process and difficulty to consolidate such lands through exchange with similar adjacent lands.

Source: Author's own construction

6.3. Impact of Land Registration and Certification

The following sections discusses the link between land certification and various outcomes such as productivity, investment, tenure security, land disputes, women's empowerment, women's

[780] Gina Alvarado, Benjamin Linkow, and Tasha Heidenrich, *supra note* 746, p. 1.
[781] See also Abebaw and Tigistu's study which puts the certified land during the FLLC to over 15 million. Abebaw Abebe Belay and Tigistu G/meskelAbza, *supra note* 746, p. 31. The data obtained in an interview on Oct. 2023 shows that 30 million parcels out of 50 million are the registered and certified in SLLC program.
[782] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh KassawAgegnehu and Gernot Stoeglehner, *supra note* 578, p. 5.
[783] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh KassawAgegnehu and Gernot Stoeglehner, *supra note* 578, p. 5.

participation and awareness etc. based on the review of the available literatures which has been published in the last two decades in Ethiopia.

6.3.1. Linkage between Land Formalization and Productivity/Investment

In relation to the link between land registration and productivity, Holden found that land productivity is 45% higher on plots with certificate when compared with land lacking certificate in Tigraye region.[784]Similar pattern is also observed in Amhara region.[785] Other studies demonstrated that female-headed landlords were able to rent out land and sharecrop after certification. This has increased the value of rented land by female landlords and resulted in welfare improvements.[786] However, female headed households had modest benefits in terms of productivity in spite of the assumption that gender gap in productivity has improved with FLLC.[787] Holden and Bezabih found that sharecropped land by female headed household yielded less product. This was related to inefficiency of tenants, whom might be male in-law tenants in most cases.[788] Moreover, the cultural barriers which restrict women from plowing has forced female headed households to seek the assistance of male relatives or male-in-laws to plough their land.[789]In such instances, they get a low result on their land since they do not exhibit effective command over the labor of their blood related person or in-laws.[790]In addition to this labor constraints, limited access to productive resources such as fertilizers, oxen, extension advice, credit by female farmers are the major barriers that limit their productivity.[791] In relation to productive resources, in some cultures women are not allowed to own productive resources related to agriculture. A study conducted in Borana reveals that women prohibited from owning resources such as oxen before marriage.[792] A study in Tigray demonstrates that women are not allowed to participate in decisions regarding the sale of oxen or to

[784] S. Holden, K. Deininger and H. Ghebru, 'Impacts of Low-Cost Land Certification on Investment and Productivity', *American Journal of Agricultural Economics*, 91(2), 2009, p.370.
[785] K. Deininger, D. Ali and T. Alemu, 'Impacts of Land Certification on Tenure Security Investment, and Land Market Participation', *Land Economics*, 87, 2011, p. 312–334; S. Holden, K. Deininger, and H. Ghebru, ibid..
[786] S. Holden, K. Deininger and H. Ghebru, *supra note* 784, p. 370; K. Deininger, D. Ali and T. Alemu, *supra note* 785, p. 312–334; S. Holden and H. Ghebru (2013), "Welfare Impacts of Land Certification in Tigray, Ethiopia" in S. Holden, K. Otsuka, and K. Deininger (eds.) *Land Tenure Reform in Asia and Africa: Assessing Impacts on Poverty and Natural Resource Management*, Palgrave Macmillan,London, p. 137; S. Holden, K. Deininger, and H. Ghebru (2011), *supra note* 784, p. 31-47; S. Bezu and S. Holden (2014), *supra note 22*., p. 195.
[787] Mintewab Bezabih and Stein Holden, 'The Role of Land Certification in Reducing Gender Gaps in Productivity in Rural Ethiopia' in *Environment for Development, Discussion Paper Series*, 2010, 29.
[788] M. Bezabeh, S. Holden and A. Mannberg, *Supra note* 36, p.18 and 20. See also Bezabeh and Hoden, *id*, p, 10-23.
[789] Neha Kumar and Agnes R. Quisumbing, Policy Reform towards Gender Equality in Ethiopia: Little by Little the Egg Begins to Walk, *International Food Policy Research Institute, USA*, p. 416.
[790] Mintewab Bezabih and Stein Holden,*supra note* 787.
[791] Mintewab Bezabih and Stein Holden, *id*.
[792] Alessandra Galie et al, *Exploring Gender Perceptions of Resources Ownership and their Implications for Food Security among Rural Livestock Owners in Tanzania, Ethiopia and Nicaragua, Agriculture and Food Security*, 2015, p. 7.

take credit for farming etc.[793]Studies reveal that women have less decision-making power regarding livestock and other major productive resources. Men control the political aspect of livestock husbandry and management practices whereas women are responsible for almost all the labour intensive re/productive activities across livestock species. Women's decision-making power is limited only to use and disposal of milk, butter, chickens, and eggs because these resources are considered manageable within the household compound which is considered as "the appropriate place for women".[794] Furthermore, a woman decision to participate at the local market is not supported by the community and buyers are hesitant to deal with women.[795] Thus, most FHH are left with the option of renting out their land and in which case the tenant may not be productive.

Furthermore, women's role in the society as mothers and home take care affected them with time poverty which give them less time to spend on agriculture. The unpaid labor spent by women in the home affects their productivity.[796] According to the World bank gender data portal, women spend 19.3% of their time on unpaid work while men spend only 6.6 of their time on the same in 2013.[797] The EDHS of 2016 also confirm the same result.

Furthermore, women have less access to credit and agricultural extension services. gender-based restricted mobility constrains women from accessing extension and market services. In Ethiopia, despite increase in number of rural financial service providers, the use of credit is low with 15 percent female landholders and 21 percent male holders reporting to benefit from it from 2010/11 to 2012/13.[798] The gender gap in access to credit is related to women's lack of collaterals (title deeds, other assets), lack of awareness, lack of trust from the community, credit accrue from the previous credit taken and lack of credit service.[799] Furthermore, lack of well-functioning credit markets with reliable and accessible banking system, and lack of law that permit the use of title deeds as collateral banking systems has reduce the likelihood of the use of title deeds to obtain credit. Currently, there is no law at federal level allowing the use of title deeds as collateral for credit (the draft revised land law envisaged title deeds to be accepted as collateral). Furthermore, recently adopted Proclamation of the Sidaama regional State[800] and Amhara Regional State[801] allows the

[793] Mebrat, 2005 as cited in Enyew Adgo et al, *supra note* 32, p. 18.
[794] Alessandra Galie et al, *supra note* 792, p. 10.
[795]Alessandra Galie et al, *supra note* 792.
[796] UN Women, *supra note* 699, p. 43.
[797] The World bank, Gender data portal – Ethiopia, available on https://genderdata.worldbank.org/countries/ethiopia/ (accessed on 26 November 2023)
[798]Leulsegged Kasa et al, Patterns of Agricultural Production Among Male and Female Holders: Evidence from Agricultural Sample Surveys in Ethiopia, 2015, p. 10.
[799]Leulsegged Kasa et al, *id*., p. 11.
[800] Article 7 (3) of Sidaama Regional State's Rural Land Administration and Use Proclamation No. 27/2023.
[801] Article 19 (1) of Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017.

landholders to use his/her land title deed as collateral to get credit from recognized financial institution), informal financial institutions have been giving loans taking land title deeds as informal collateral. These informal financial institutions include local financial institutions and institutions that apply social accountability. The title deeds in such a case are considered as proof for repayment and that the lender is going to use the loan for the purpose of increasing his/her productivity.[802]

A study on the effects of SLLC revealed that SLLC had a positive role on households' participation in the land rental market, investment and sustainable land management practices such as planting trees. However, the reverse is observed for female headed households. The explanation for this is related to the labor-intensive nature of these activities and the labor constraints in FHH.[803]

6.3.2. **Linkage between Land Formalization and Land Disputes**

In relation to the impact of certification on land dispute, most studies shows that the decrease in land dispute.[804] A study in Tigraye showed that local land dispute in relation to border has decrease as a result of certification. Among the surveyed land dispute mediators, 68% believes in the reduction of land dispute while 12% believed in its escalation. The increase in dispute is related to the lack of accurate demarcations and measurement of land and community border.[805] Similar pattern was also observed in Oromia and SNNP Regional States.[806] Others have discussed how land certification contributed towards decreasing land related disputes.[807] According to Dessalegn Rahmato, land disputes decreased at social courts since the forum for resolving land disputes shifted from courts to local level Land Administration Committees. He argues that fact that local materials are used the measure and demarcate land during the FLLC has results in inaccuracies which has increase the bone of contention. The lack of update of certificates recordings based on subsequent transactions is also another factor that leads to land disputes.[808] These problems are expected to be improved in the SLLR which uses cadasters to plot land and has established a better land information system.

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[802] Lauren Persha, Adi Greif and Heather Huntington, Assessing the Impact of Second-Level Land Certification in Ethiopia Paper prepared for presentation at the "*2017 World Bank Conference on Land and Poverty*" The World Bank—Washington DC, March 20-24, 2017, p. 6.

[803] Ghebru, H., & Girmachew, F., Direct and Spillover Effects of Land Rights Formalization in Africa. A Case Study of the Second-Level Land Certification (SLLC) in Ethiopia,*IFPRI Discussion Paper 01968*., 2020, p. 19.

[804]*Ibid*. See also D. Rahmato, *Supra note* 12, p. 84; S. Holden, K. Deininger and H. Ghebru, *Impact of Land Registration and Certification on Land Border Conflicts in Ethiopia*, 2010.

[805] S. Holden, K. Deininger and H. Ghebru, *Supra note 784*.

[806] S. Holden and T. Tefera, *From Being Property of Men to Becoming Equal Owners? Early Impacts of Land Registration and Certification in Southern Ethiopia*, UNHABITAT, 2008.

[807] D. Rahmato, *supra note* 12, p. 17.

[808] D. Rahmato,*id*., p. 17.

6.3.3. **Linkage between Land Formalization and Tenure Security**

The earlier stages of certification demonstrated that land registration has not improved much of the land tenure.[809] However, at a later stage, most studies showed a strong link between certification and land tenure both for male headed households and female headed households.[810] According to Holden et al. land tenure is more secured through the certification program. As a result, land tenure of female headed households is enhanced which is demonstrated in their increased ability to rent out their land.[811]Dessalegn in his research in Dessie Zuria and Wollaita believed that the land law has been instrumental for tenure security. However, it was found that lack of rights awareness and legal literacy has affected the rights of peasants.[812]

SLLC is also appreciated for ensuring land tenure security, enhancing credit access, and systematizing revenue generation.[813] A study by Ghebru and Girmachew conducted using data collected in 2013, 2015 and 2018 from 3092 households reveals the impact of the SLLC. The study compares the impact of SLLC across 2013 (before the SLLC was launched), 2015 (immediately after SLLC is launched) and 2018 (after the implementation of SLLC).[814] The finding of the study reveals that the impact of SLLC program on perceived tenure security. Perceived tenure security is measured by looking into source of tenure risks which can be private (related to inheritance, divorce, boundary disputed) or collective (related to expropriation of land by government or eviction by private investors). The findings show "no statistically significant effect on household perceived tenure security" regardless of the source of tenure risk i.e. private and/or collective tenure risk during SLLC. The explanation for this is that the FLLC has already achieved a lot in improving perceived tenure security as has been documented in various studies.[815]

However, gender disaggregated result shows that SLLC has improved perceived tenure security for married women compared with their male partners. In particular, it has reduced the private risks of tenure insecurity of female heads of households who are either single, divorced or widows. Conversely, it has negatively affected men's perceived tenure risk in the private realm since the joint certificate is issued in the name of husband and wife not in the name of the head of the

[809] S. Ege, 'Land Tenure Insecurity in Post-Certification Amahara, Ethiopia', *Land Use Policy*, 64 (2017), p. 56.
[810] S. Holden, K. Deininger and H. Ghebru, *Supra note* 784, 2009, p. 360 & 362; K. Deininger et al., 'Impacts of Land Certification on Tenure Security, Investment, and Land Market Participation: Evidence From Ethiopia', *Land Economics*, 87, 2011, p. 323–26.
[811] K. Deininger et al., Ibid.
[812] D. Rahmato, *Supra note* 12, p.84, 52
[813] MintewabBezabihand Degye Goshu, *supra note* 598, p. 45.
[814] Ghebru, H., & Girmachew, F.,*supra note* 803., p. iii.
[815] Ghebru, H., & Girmachew, F. *id.,* p. 16. The studies that demonstrated the success of FLLC in securing tenure includes Holden et al, 2009; Holden et al 2011; Ghebru and Holden 2009; Ali et al., 2007

household.[816] Furthermore, SLLC has improved the land rental market with landholders of SLLC becoming landlord by renting out their certified lands.

6.3.4. **Linkage between Land Formalization and Women's Empowerment**

In literature, women's empowerment refers to the ability to make life choices, and control resources. The "ability approach" to empowerment proposed by Kabeer (1999) incorporates three interrelated components: resources, agency and achievement.[817] Resources refer to not only to material resources but also human and social resources that enhance the ability to make choices. Agency refers to two concepts "power to" and "power over". "Power to" is the ability to define one's own life choices. "Power over" is the negative sense of agency which mean the ability to take over the agency of others through violence, threat or coercion. Resources together with agency constitute capability. According to Sen (1985), capabilities refer to "the potential that people have for living the lives they want, of achieving valued ways of `being and doing'."[818]

In the context of land rights, women's empowerment means their increased bargaining power within their household. According to cooperative bargaining models, joint land certification is a means to empower women. A unilateral household model assumes the household is one and the same and treat it as a black box incapable of individualism. It fails to consider intra-household resource allocation processes. This model leaves women without any asset during divorce. However, separate spheres bargaining models take into account this factor and argues that control over one's own asset and efforts is an important factor for power balance within a household. Thus, joint certification gives women power to command over land and its products.[819]

Most studies have demonstrated an improvement in women's empowerment through the joint land titling program in Ethiopia. Melesse, Dabissa and Bulte found strong relation between women's empowerment and land registration in Amhara regional state. The study found an increase in women's participation in community activities, in rights awareness and willingness to protect their land rights.[820] Women's freedom of physical mobility, autonomy and institutional inclusion has also been improved though the certification process.[821] A similar study in the Southern Ethiopia has also

[816] Ghebru, H., & Girmachew, F. *supra note* 803, p. 16-17.
[817] Naila Kabeer, 'Resources, Agency, Achievements: Reflections on Measurement of Women's Empowerment', *Development and change* 30, no. 3, 1999, p. 437-38.
[818] Naila Kabeer, id., p. 438.
[819]Mequanint B. Melesse, Adane Dabissa& Erwin Bulte,'Joint Land Certification Programmes and Women's Empowerment: Evidence from Ethiopia', *The Journal of Development Studies*, 54:10, 2018, p. 1759.
[820] M. Melesse, A. Dabissa and E. Bulte, *id*., p. 22-23.
[821]*Id*., p. 22.

established an improvement in women's rights awareness and intra-household bargaining power.[822] Kumar and Quisumbing established that land registration has contributed for equal share of property including land during divorce. Their research findings show that perception in relation to equal share of land has improved since the certification program has started.[823] In relation to women's empowerment in decision making, Holden and Bezu found that wives became more involved in decisions related to farm management, crop choice and land rental decisions.[824] However, such effects varied from place to place depending on patriarchal system. The land registration was also found to benefit wives in polygamous marriage in the SNNP Regional State.[825] The study by Holden and Bezu (2014) has shown an increase in wives claims of land rights from 41% in 2007 to 72% in 2012.[826] Hoden and Ghebru (2013) demonstrated that land certificate has improved the consumption welfare and food security of FHH and their children. This shows that women's access to land and other resources are mostly translated into the wellbeing of the next generation because of their primary role in the household and to their family. Thus, it has intergenerational effects.

Furthermore, studies have shown that joint land certification has brought some changes in the gender division of labour. It has improved women's involvement in tree and vegetable planting. It has also improved women's access to credits.[827]

A study by Melese et al. (2018) found that though there is improvement in women's empowerment in relation to six sub-indices in certified households, there is no significant change in the household decision making process. The study demonstrated that uncertified women are more likely to be illiterate and live in distant places from their parents compared to certified woman.

The above evidence show that land certification has improved women's empowerment from time to time. However, the scale of change varies from place to place and depends on the entrenched social and cultural norms that affect the private and public (communal) sphere.[828]

[822] S. Holden and S. Bezu, *Supra note 38*, p. 1.
[823]N. Kumar, and A. Quisumbing, *supra note* 789, p. 420.
[824] S. Holden and S. Bezu, 'Joint Land Certification and Intra-Household Decision-Making: Towards Empowerment of Wives?' *CLTS Working Paper No. 13/2013*, Centre for Land Tenure Studies, Norwegian University of Life Sciences, Aas, Norway, 2013; S. Holden and S. Bezu, *Supra note* 38.
[825] H. Girma and R. Giovarelli, *Supra note* 22, p. 6.
[826] S. Holden and S. Bezu, *Supra note* 38.
[827] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh Kassaw Agegnehu and Gernot Stoeglehner, *supra note* 578, p. 7.
[828] Stein T. Holden, *supra note 732*, p. 48.

Furthermore, some studies caution that land certification has no redistribution consequences. It only registers and certifies the existing land rights jointly in the name of a husband and wife. This may reinforce and confirm exclusion.[829] This is supported by the findings of Ghebru and Girmachew (2020). Accordingly, they looked into the effects of SLLC on bundle of rights to land to women and youth (i.e. these rights include the right to bequeath, manage products of parcel or right to make business decisions) within the age bracket of 25-34. The finding shows that SLLC has a negative effect of women's and youth right to access and control land. Land formalization may have a negative effect if it is not designed in a gender responsive manner. The SLLC only certified married women and female headed households. Female headed households have benefited from the positive impact of land formalization.[830] However, single and young women did not acquire access and control right to land through the formalization process. Thus, single, divorced or widowed women at the time of land certification process still remain to be landless since they do not have any means to access land either through marriage or inheritance (since inheritance is patrilineal in most part of the country). Even for married women, the smaller the land that is held by the husband, the lesser size of land the women can get during divorce.

6.3.5. Linkage between Land Formalization and Rural Women's Participation in Decision Making Process

Democratic land governance goes beyond 'land governance' that focuses on technical and administrative efficiency but incorporate democratic elements. It can be realized through empowered participation or political empowerment. It envisages not only working for but working with social constituencies such as rural vulnerable groups, state agencies and international organizations. Thus, it is important to recognize the importance of meaningful participation and political agency of the rural population in land governance.[831]

Women's participation is one of the mechanisms to ensure the democratic nature of the land certification process. Women participation constitutes intra-household participation in decision making and inter-household participation at community level.

The evidence demonstrates that when women participated as LAC members, it encourages female headed households to register their land. It also promotes women's land rights during the registration process.[832] However, it is found that women's participation in LACs was very low.

[829] Belachew Mekuria Fikre, *supra note* 733, p, 159.
[830] Ghebru, H., & Girmachew, F. *supra note* 803, p. 17.
[831] Jennifer C. Franco, *supra note* 113, p. 25.
[832] Kumar and Quisumbing, 2010 cited in Renee Giovarelli and Hirut Girma, *supra note* 22, p. 6.

Though the law requires at least one women to be represented in LAC membership of 5-7, women were not encouraged to join the committees as the membership requires travelling from plot to plot which was thought to be inconvenient for women by some officials and local leaders.[833] Though this seems to be to protect women on the surface, it had the effect of an indirect discrimination with the pre text of protection.

Women's intra-household participation includes their participation in decisions related to types of crops to plant, land use and management, income generation from sale of products, etc. Various evidence demonstrated that women's intra-household bargaining power has improved after the joint land titling which thereto increased their participation in the household.[834]According to most of these studies, the certification has increased women participation in decisions in regard to investment on the land such as tree planting and production. A study in Oromia and SNNP Regional States demonstrate that 27-46% of women participated in decisions in relation to land investment and production while 23-37% of women become involved in decisions on the use of farm income.[835] This has resulted in power shift and transformation of intra-household dynamics.[836]

6.3.6. **Linkage between Land Formalization and Rural Women's Awareness of their Rights**

One of the consequences of formalization of women's land rights through joint land registration and titling is an increase in women's awareness of their rights to use, administer and control land.[837] This awareness and recognition of their rights is very useful to improve their bargaining power at the household level and participate in decisions related to land and its products.[838] Some prior studies have demonstrated that the joint land certification and registration has improved equitable division of property during divorce and increased rural women's income during land rental.[839]

Women's awareness of the certification process depends on the information that is provided to them on the process, benefits and rights that emanate from formalization. This will help them to demand and claim their rights. However, earlier studies showed that there is a discrepancy between men and

[833] Kanji et al. 2005 cited in Renee Giovarelli and Hirut Girma, *id.*, p. 6.
[834] Stein T. Holden and Sosina Bezu, *supra note* 38, p. 1. See also Monterroso I, Enokenwa O and Paez-Valencia AM,*supra note* 694, p. 11.
[835] S. Holden and T. Tefera, *supra note 806*, p. 56.
[836] Monterroso I, Enokenwa O and Paez-Valencia AM,*supra note* 694, p. 11.
[837] Monterroso I, Enokenwa O and Paez-Valencia AM, *id*, p. 11.
[838] D. Rahmato, *supra note* 12, p. 82 and 85. See also Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh Kassaw Agegnehu and Gernot Stoeglehner, *supra note* 578, p. 8.
[839] E. Adgo, *et al.., supra note* 32, p. 43-44; R. Giovarelli and H. Girma, *supra note* 22, p. 6; UN Women, *supra note* 32, p. 4; S. Bezu and S. Holden,*supra note* 22, p. 195; S. Holden, K. Dininger and H. Ghebru (2011), *supra note* 784, p. 31-47, Holden, S. and Teferra, T. (2008), *supra note 45*.

women awareness of the process of certification.[840] Information about the process and the laws governing it were not disseminated in equitable manner to men and women. This difference also disadvantaged the poor households compared to well-to-do households.[841] Recent studies reveals that women's awareness of their rights and confidence to participate in land issues has improved. According to one study, 92% of the participants in the study have said to have an improved participation in socio-political and economical issues after land certification process.[842] Similarly, Holden and Bezu (2014) found evidence of improvement in women's awareness of their rights and participation in intra-village social process after the certification. In particular, the SLLC is appreciated for improving legal literacy of women in relation to their land rights and services. The households with land certificates were more aware of their rights. However, sex disaggregated data demonstrated that women are less aware of legal information compared to men. This emanated from the discrepancy between men and women in accessing information; men having more access to information than women.[843]

6.3.7. Linkage of Formalization of Land Rights with Elimination of Violence Against Women's Land Rights/Domestic Violence

Violence against women's land rights is one of the types of violence that occurs in different forms. This kind of violence is defined as "covert or overt forms of aggression to deny access to and control of land and land-related rights." It takes different forms, i.e. physical violence, emotional violence, psychological violence, cultural violence, verbal abuse, resource abuse, and neglect. These forms of violence occur in the context of border encroachment, inheritance, transactional/unauthorized transfer of land, and illegal occupation.[844] Accordingly, land violence is produced and reproduces as a continuum passing through different stages from simple disputes over land escalating to conflict and violence. The violence might be committed by family or non-family members.[845]

Violence might also happen in the context of formalization of women's land rights. Unless joint titling of land in the name of a husband and wife are accompanied by other measures such as awareness creation before it is implemented, it may result threatening of husband's power within

[840] Kumar and Quisumbing, 2010 and Holden and Tefera, 2008 cited in Renee Giovarelli and Hirut Girma, *supra note* 22, p. 6.
[841] Deininger et al 2007 cited in Hirut Girma and Renee Giovarelli, *id.*, p. 6.
[842] Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh KassawAgegnehu and Gernot Stoeglehner, *supra note* 578, p. 8.
[843] Ghebru, H., & Girmachew, F., *supra note* 803, p. 20.
[844] Espinosa and Aberra 2016 cited in Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 12.
[845] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *id.*, p. 12.

the household which might escalate to violence or exacerbate the existing violence.[846] Diminished economic power of women within household perpetuated violence against women especially intimate partner violence and causes women's economic marginalization.[847] In addition Studies have demonstrated that women are forced to stay in abusive marital relation in order to protect their property interests when the law does not guarantee equal division of marital property upon divorce. Furthermore, women in abusive relationships have weak bargaining power to safeguard their economic interests within the family.[848]According to power theory of violence, violence against women is engrained in the social norms that govern gender relations and allows women's submission or men's control over women's behavior and power in the private and public sphere.[849] Violence is pervasive across all nations because it is rooted in patriarchy which is a systematic domination of women by men and "entrenched in social and cultural norms, institutionalized in the law and political structures and embedded in local and global economies."[850] Accordingly, violence is an expression of women's subordination and it is a cause and consequence gender inequality.[851] Violence is applied 'as a way of controlling another or frightening her or destroying her self-concept'. It makes a woman to be uncertain of herself and her judgment.[852] The abuser may use various forms of violence such as coercion, isolation and economic abuse to gain control over how the abused act, think and feel. Through time, the victim falls under the control of the abuser in order to survive and avoid abuse.[853]

Land related violence does not only occur because of inequal gender relations but also occurs among family members because of competing interest to the land for instance in case of inheritance. An increase in rural populations, the need for investment and productivity, urban expansion, land

[846] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *id.*, p. 12.
[847] Meskerem Geset Techane, Economic Equality and Female Marginalization in the SDGs Era: reflections on Economic Rights of Women in Africa, *Peace Human Rights Governance*, Vol. 1, iss. 3, 2017, p. 355.
[848] Federation of Women Lawyers (FIDA-Kenya) and the International Women's Human Rights Clinic (IWHRC), Georgetown University Law Center (2008) 'Kenyan Laws and Harmful Customs Curtail Women's Equal Enjoyment of ICESCR Rights. A Supplementary Submission to the Kenyan Government's Initial Report under the ICESCR, scheduled for review by the Committee on Economic, Social, and Cultural Rights during its 41st session (Nov. 3-21, 2008), p. 22 cited in Meskerem Geset Techane, *id.*, p. 355.
[849] Lori L. Heise,*What Works to Prevent Partner Violence: An Evidence Overview*, 2012, p. 12.
[850] In-depth Study on all Forms of Violence against Women: Report of the Secretary- General, *A/61/122/Add.1*, 28.
[851] In-depth Study on all Forms of Violence against Women: Report of the Secretary- General, *A/61/122/Add.1, 29*.
[852]NiCarthy, G. (1986). Getting free: A handbook for women in abusive relationships. Seattle, WA: The Seal Press, 293 as cited in Lucille Pope and Kathleen Ferraro, The Duluth Power and Control.
[853] Bostock DJ, Auster S, Bradshaw RD, Brewster A, Chapin M, Williams C, Family Violence, *American Academy of family Physicians Home Study Self-Assessment Program* (Serial No. 274); 2002 as cited in Maren E. Hyde-Nolan and Tracy Juliao, *Theoretical Basis for Family Violence*, p. 9.

governance maladministration, climate change followed up by displacements, land acquisition by investors etc are also factors that cause land related conflicts, disputes and violence.[854]

Land related violence against women can be considered as economic violence. Economic violence is a form of violence against women which is defined as "any act or behavior which causes economic harm to an individual".[855] Though international instruments such as CEDAW do not explicitly provide for economic violence, Maputo Protocol provides that violence against women includes economic violence not only physical, verbal or sexual violence.[856] However, the provisions of CEDAW that prohibits discrimination, and provide for equality in administration of marital property and equal inheritance rights of women[857] are useful provisions that can be applied to protect women from any economical abuse.

According to Workwoha, Female-headed households have been mostly experiencing border encroachment, illegal occupation and forgery of land certificates. The LIFT project took this into account while adjudicating and demarcation process of land during the SLLC.[858] Accordingly, the criminal law provisions (article 407-408, 453, 685- 689, 712) on land related crimes has not been implemented. Most of land related violence such as border encroachment, illegal land occupation, use of false witnesses and forged evidence are treated as civil matters without any criminal responsibly imposed on offenders.[859] Furthermore, women are manipulated during sharecropping and land rental through deceptions and onerous contracts.[860] This happens because of lack of awareness on the formality requirements under the law in concluding these types of contracts which includes a written form of contract and registration before the appropriate government agency (i.e. document authentication and registration service). Most of such contracts entered by women are verbal which is susceptible for non-performance and falsification. They are also not legally enforceable.

According to the strategy implemented under LIFT project, awareness creation on women's land rights and ensuring inclusiveness of the SLLC is the measures taken to mitigate land rights violations.[861] However, women still face gender-based land rights violence because the land

[854] Espinosa and Aberra 2016 cited in Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18,p. 13.
[855] European Institute for Gender Equality (2017), Glossary of Definitions of Rape, Femicide and Intimate Partner Violence.
[856] Article 1 (J) of Maputo Protocol.
[857] Article 1, and 16 of CEDAW.
[858] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 13.
[859] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolain, *supra note* 35, p. 42.
[860] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, P. 14
[861] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 38.

certification process only ensures women's registration as holders of land rights. It does not by itself address structural gender related norms that lead to violence.[862]

6.4.Barriers and Constrains to the Recognition of Women's Land Rights in Ethiopia

The barriers to realize women's land rights can be categorized as legal barriers, socio-cultural barriers and institutional barriers. They are discussed below in detail based on the available empirical evidence on the issues.

6.4.1. Legal Barriers or Barriers in the Implementation of Laws

The regulatory framework provides for wives in polygamous marriage to be jointly registered during land certification and registration process. However, family law of both the federal and regional governments only recognized monogamous marriages except in case of Harari Family Law. This contradictory provision has created problems in the enforcement of these rights by the justice system (see the discussion under chapter seven). Lack of clarity of women's land rights in polygamous marriages has created inconsistent decisions by courts as discussed under chapter seven. Furthermore, norms that provide that landholding size should be determined based on the household's ability to use the land has negatively affected women.[863]

Communal lands, land of pastoral communities, forestry and pastural lands are not registered for lack of clarity in policies and guidelines.

6.4.2. Socio-Cultural Barriers

Some evidence demonstrates that women's participation in the process of SLLC has not been effective for various socio-economic factors. These factors relate with social norms which considers land issues to be men's business. This has diminished women's confidence to participate in land related issues. Most women also believed that they lack knowledge of the boundaries of their land. There is limited knowledge among women on the linkage of land certification to women's empowerment.[864]

In addition, women's access to various means of communications on women's land rights has been limited. It is only limited forms of communications that reach women because of their limited access to public space owing to social and cultural factors. Most of the rural women spend most of their time and energy in the household looking after their children or elderly family members and

[862] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 40.
[863] Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 15.
[864] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 24.

the household chores which are not assisted with new technologies. This does not give them time to engage in public activities and public gathering where such kind of information is shared. The limited access to information related to purpose and process of land certification program coupled with other socio-cultural factors affected their engagement in the land certification program. The lack of access to information on the purpose and process of land certification has resulted in knowledge gaps in the procedures of land rights claims. It also opened a door for other actors such as land rentees, former husbands or landholders of adjacent lands to take advantage of women's lack of knowledge of the certification process by taking their share of land.[865]

Furthermore, women's absence during the certification program has resulted them to loss their share of land towards other family member or ex-husbands who were present during demarcation of the land.[866]

The land registration and certification process has faced various constraints during implementation. One of these constraints is lack of gender considerations during the registration process. In cases of a joint registration of husband and wife, it is undertaken without involving the wife/wives themselves. Husband's undertake the registration when their wife are not present or they intentionally exclude them.[867] In most cases, it is the husband who takes the lead in registering the land and the certificates ends up being under the possession of the husband. This has affected women's awareness of their rights and to gain from the benefits of the certificate. Furthermore, elite capture of the process of land registration and certification and corruption limit the ability of women to gain recognition of rights or impair their ability to benefit from rights acquired. A huge gap is observed in creating awareness among rural women of the benefits of land certificate.

Women's participation in LACs which requires moving from place to place has been limited because of the social expectation that women's mobility is limited to the household.

6.4.3. Institutional Barriers

The institutional structures are important to promote and protect women's land rights. These structures should be accessible and well placed to address land related grievances. For this to happen, each institution should have a clear mandate and responsibility to ensure women's land rights are promoted and protected.

[865] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 16.
[866] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 16.
[867] Workwoha Mekonen, Ziade Hailu, John Leckie, and Gladys Savolainen, *supra note 35*, p. 19.

The lack of clear mandate among the various levels of government institutions has affected coordination, monitoring and enforcement of the women's land rights. There is no clear mandate on the duty to update entries in the land registry among the kebele, woreda and regional level land administration organs whenever there is any transaction on the land such as land rental or inheritance.[868] As the transaction on the land is undertaken by the husband without the knowledge of the wife itaffects the interest of wives. If the registry is updated, there could be a means to ensure that both the wife and husband have agreed to the transaction before it is updated in the registry. These irregularities in the representation and recognition of women's land rights have affected the benefits women could have accrued from the land certification and registration process and most importantly it has affected women's access to justice. The lack of update in the registry has created problems during court litigation of cases of inheritance.[869]

Moreover, the institutional structures should be staffed with personnel who understand the need to give specially attention to women's rights and needs during land registration process and in addressing grievances that emanate from land disputes during land certification process. This can be realized when staff have the capacity to address the challenges women face and an enabling environment is created that is gender responsive and sensitive. Lack of trained personnel on gender and social inclusion in the land registration team that adjudicate and demarcate land is another barrier to make the land certification process gender inclusive.[870] Various studies found that most of staffs are not gender aware and are compliances in the violations of rights. The LIFT project has included a Social and Development Officer (SDO) to address this challenge. The SDO creates awareness on the rights of women and other vulnerable groups in the land registration process.[871]

The reliance of the certificate program on donor funding has also been another barrier which has resulted slow implementation of the program and understaffing in SLLC in remote and conflict affected areas.[872]The following table demonstrates the amount of funds obtained from donors and the programs that have been rolled out by donors supporting the land certification program.

Table 7: Programs on Land certification and administration

Land Administration program	**Program Period**	**Regions covered**	**Budget (USD Million)**	**Donor**	**Number of certificates**
Ethiopia Land	2005-2008	Amhara,	>5.5	USAID	>375,000

[868] Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 13
[869] Ege, 2017 cited in Monterroso I, Enokenwa O and Paez-Valencia AM,*id.*, p. 13.
[870] Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 13.
[871] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 17.
[872] Ghebru, 2019; USAID, 2019 cited in Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 13

Tenure Administration Program (ELTAP)		Oromia, SNNP, and Tigray			parcels
Ethiopia Land Administration Program (ELAP)	2008-2013	Amhara, Oromia, SNNP, and Tigray	5	USAID	>175,000 parcels
Responsible and Innovative Land Administration (REILA)	2011-2017	Benishangul-Gumuz and Amhara, With additional trial woredas in Tigray, Oromia, and SNNP regions	>12.5	Finland	>150,000 parcels (Data from May 2017)
Sustainable Land Management Program II (SLMP II)	2014-2018	Amhara, Oromia, Tigray, SNNP, and Gambella	>9	World Bank	>375,000 Households >20,000 communal lands (Data from Sept, 2018)
Land Investment for Transformation (LIFT)	2013-2020	Amhara, Oromia, SNNP, and Tigray	>72	DFID	(>9,250,000 parcels

Source: Ghebru, H., & Girmachew, F. (2020)[873]

Though donors have committed substantial financial and technical support for the land registration and certification program as shown above, these commitments have not yet resulted in women's land rights being fully protected and respected. The approach to gender equality of international financial institutions and development partners, which favor liberal economies and land commodification, aims to improve women's access to land through joint land certification. However, joint land registration is meaningless without any change in the gendered social structure and gender relations which excludes women from controlling or transferring land. Any transformation to commodification of land through land registration and certification without addressing the existing gender inequalities will only cement the inequality and keeps women the poorest of the poor.

The other barrier is government offices and community structures, such as justice offices (office of the prosecutors), courts, women and children affairs, police, land administration and use offices, grievance hearing offices, and women associations have been active in creating awareness.

[873] Ghebru, H., & Girmachew, F. *supra note* 803, p. 6. See also Monterroso I, Enokenwa O and Paez-Valencia AM,*supra note* 694, p. 10.

However, their efforts are not coordinated and accessible to all. [874] Moreover, the formal justice system is not fully accessible to enforce rural women's land rights (see chapter seven for more detail). The technical legal language that is used in courts to claim rights requires rural women to be assisted by legal experts who are well acquainted of the legal provisions and procedures to litigate the case before courts. This demand availing a good financial source or accessing free legal services from lawyers and institutions that provide *pro bono* services. Thus, the accessibility issues have created barriers for women to access justice.[875] The contradictory social and customary norms on women's rights their ability to take part in the land certification process are the constraints for women's land rights.[876]

The other challenge is that after the FLLC, there were a number of transactions that are not registered in the land registration system by land registration office because of lack of systematic land information system.[877] These resulted in competing claims which lack evidence and has increase disputes over land during the SLLC.[878]

The other challenge is setting up of accountability mechanism in the land administration system that goes from the top-level offices at regional level to lower administration at Kebele level. Prevention and identification of women's land rights should be followed with an accountability to correct the violation of rights. Weak administration and governance system that opened opportunity for corruption, forgery, false testimony and counterfeit of documents has been a challenge to enforce women' land rights. There is a need for protection mechanism for whistle blowers of such acts. [879]

Table 8: Summary of legal, institutional and social barriers

Barriers	**Explanations**
Overlapping and contradictory legal systems	Ambiguity in the enforcement of statutory laws leads to existing customary arrangements constraining or overruling formal arrangements
	Norms determining the size of landholdings based on a household's ability to use the land result in woman-headed households receiving smaller landholdings
	Alienation rights differ according to regions, religions and cultures, resulting in contradictions in the application of laws related to divorce, marriage and inheritance
Legal barriers emerging from implementation	Time lag between the enactment of new regulations and their implementation at the district and village level.
	Lack of capabilities of government agents and existing biases of institutional services in

[874] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 19. Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 13.
[875] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *id*., p. 17.
[876]Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 13.
[877] Interview with informant 07, Land Administration and use Directorate Director, Sidaama Regional State Agriculture and Natural Resources Development Bureau on May 09, 2022.
[878] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 17.
[879] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 27.

gaps, lack of awareness, and uneven enforcement	the land sector, which is dominated by men
	Lack of mechanisms to coordinate and collaborate across involved government institutions, limiting the possibility for exchanging best practices.
	High dependence on external funding and limited financial resources to implement land regulations may result in understaffing
	Lack of provisions that clearly define roles, institutional structures and procedures to implement, monitor and enforce the recording process
	Lack of registration of non-agricultural lands, including forest commons and pasture lands.
	Ambiguous policies or guidelines for formalizing land rights in pastoral communities
	Lack of clarity of the nature of rights of women in polygamous situations
Social norms about land, related to practices of recognition and exercise of rights	Norms restricting women's mobility limit their ability to participate in certification processes, to access information and to participate in LACs
	Fewer women than men are included in the registration process as land administrators. What is more, even when women have been granted certification, many of these titles are not properly registered. This lack of proper documentation frequently fails to protect vulnerable groups
	Illiteracy, elite capture and corruption may limit the ability of women to gain recognition of rights or impair their ability to benefit from rights acquired

Source: adapted from Enokenwa et al. 2021[880]

Chapter Summary

The review of literature on the formalization of women's land rights and its outcomes shows that there is fairly a good amount of literature that investigated the gender dimension of the land registration process in Ethiopia. A good amount of literature demonstrates the association between formalization vs. productivity/tenure security. However, there are some inconsistency and contradictory data in some of this evidence. The literature strongly demonstrated that women's decision-making power at the household level has improved. The findings of the studies reviews show that application of various approaches and modalities of enhancing rural women's land rights in polygamous marriages. It is important not to generalize the linkages between women's land rights and land certification to mean that certificate is the only and sole reason for the positive changes that are achieved. Other factors such as increase in women's education, communication, globalization, women's awareness of their rights etc can be considered as factors that has brought the changes.

There is limited evidence on impact of women's land rights formalization on violence against women. This might be related to the fact that it is very difficult to establish the link unlike the other cases which are direct consequence of land certification since reduction or increase in VAW may relate to other factors outside of land certification such as change in social norms, law enforcement mechanisms etc. The studies reviewed have not addressed the link between women's land rights

[880] Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 14.

and climate shocks, communal land systems, and technology adoption. Furthermore, most of the studies do not use intersectional lens to differentiate between married women, divorced, widowed and single women.

Furthermore, the reviewed literatures did not comprehensively address women's land rights from a human rights perspective. These studies have not addressed how women's land rights are translated in practice resulting its protection and enforcement women's land rights by the formal and informal justice system. They have not also addressed the influence of land certification on formal and customary adjudicatory bodies. The roles of various actors such as the state, community leaders, donors, women's associations, political parties, and civil society organizations in ensuring women's land rights are not also adequately investigated. The link between land formalization and women's access to justice is the issue that has not been adequately addressed in the existing literature. This dissertation will make its original contribution on these issues in the chapters that follow.

Chapter Seven: Rural Women's Access to Justice to Land related Disputes in the Formal Justice System

Introduction

As discussed under chapter four, the adoption of the UDHR in 1948 was important in ensuring the respect of the rights of all in every corner of the world. The human rights regime created afterwards has set minimum normative standards. However, these standards are not always applied which created the gap between the law and the reality. The Chapter also noted that the international human rights regime depends on the domestic systems for its realization. International human rights conventions can become justiciable upon ratification as is the case in monist countries or need to be adopted and translated by the legislator in a complimentary legislation to become justiciable and applicable in the domestic jurisdiction as argued by dualist countries. Upon ratification of international instruments, states are expected to implement these instruments by taking legislative, administrative, judiciary and other measures at the domestic level.

Accordingly, binding international instruments can bring change if they can be implemented at the domestic levels. The creation of domestic laws that translate the international norms into reality by making them accessible to victims at the local level is an important step for the full realization of human rights. There is a need to close the gap between the aspiration of these instruments and the reality of the ground by implementing these commitments. Through the past century can be referred as an age of rights by witnessing the number of commitments in various Conventions, their realization is not yet achieved.

The FDRE Constitution under its chapter three makes a generous recognition of human rights including women's rights. Human rights are entitlements because one is human. They are moral claims which got legal recognition after 1945. Practical measures should be taken to make legal and judicial sense of human rights which includes constitutional guarantee, legislative protection, judiciary application and executive implementation. These measures entail the process of concretization of the sanctity of human rights. Accordingly, human rights implementation should go beyond human rights fundamentalism or cynicism which refers to viewing human rights as religious dogma or as rhetoric and political despair respectively.[881]

[881] Tsegaye Regessa, 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia', *Mizan Law Review*, Vol. 3 (2), 2009.

This dissertation has shown the legislative measures taken by the government to protect women's land rights under chapter five. It is discussed that the decentralized laws on land rights have recognized formal equality of rural women in accessing, using and controlling land. However, there are several gaps in the law which has failed to recognize rural women substantive rights to land.

This chapter elucidates women's access to justice to land related claims before the formal justice system and the constitutional adjudicatory mechanism. For judicial applicability of human rights to be possible, jurisdictional and procedural matters, substantive content of the rights and their remedial matters need to be settled and elucidated. Courts are empowered to protect the human right provided in the constitution without resorting to interpretation or looking into constitutionality of a certain law before it. Whenever there is a need to interpret the constitution or to decide on the constitutionality of a particular law, the court refers the case to HoF. Thus, though Courts are mandated to apply the human rights provisions of the Constitution, the right to interpret the constitution is reserved to the House of Federation (HoF) with the advisory support of the Council of Constitutional Inquiry (CCI).

This chapter is dedicated to discussing women's access to justice before the formal courts and constitutional adjudicatory bodies in Ethiopia. It investigates the implications of decisions of the Courts and HoF on land issues by systematically selecting some decisions to show trends, contradictions and complementarity with the laws governing rural women's land rights.

The courts in the Sidaama Regional State have been entertaining rural women's land rights in various cases brought before courts including family cases, inheritance cases and land encroachments. The chapter examines the gender implication of the decisions of courts and how courts at different levels addressed land related gender issues in the process of resolving land related disputes. Based on the analysis of court decisions, this chapter demonstrates that rural women's land rights are affected by gender-blind laws and gendered social norms even when they are taken to courts. This has deprived courts' decisions social enforceability.

The chapter also analyzed the trends in the decisions of the CCI/HoF. Land related constitutional cases are one of the highest number of cases brought before these organs. The main triggering factors for high flow of constitutional cases relates to the gaps in the law, lack of awareness and gaps in the implementation of land formalization. The chapter demonstrates the inconsistency in some of the decisions of CCI/HoF though there are promising decisions that has been rendered by applying a gender sensitive constitutional interpretation by these organs.

The chapter is organized as follows. The first section elaborates the meaning and scope of access to Justice which is followed by a discussion on the normative framework on access to justice. The third section explores the judicial responses to women's land rights by examining court cases decided in the Sidaama Regional State and the Cassation Division of the FSC. The fourth section further explores the protection of rural women's land right through the constitutional adjudication. It further examines trends and triggering factors for constitutional adjudication. Promising constitutional decisions are also discussed. The last section of the chapter addresses the barriers to access to justice to rural women's land rights in Ethiopia.

7.1. Meaning and Scope of Access to Justice

Access to justice is fundamental for justice to prevail. There is no single definition of access to justice.[882] Its meaning differs from context to context. The concept has been evolving overtime.[883] In its narrow sense or in its thin notion, access to justice refers to access to courts. The notion of access to judicial institutions was first developed by Prof. Mauro Cappeletti back in 1970s. The notion has passed through three waves in late 1970s. The first wave aimed to make legal services accessible to the poor. It resulted in an improved provision of legal aid services to the indigent. The second phase brought about public interest litigations with the aim to protect certain interests such as the environment and consumers. This has improved civil litigations and brought changes in procedural principles such as standing, *res iudicata*, and the role of judges.[884] The third wave has brought the broader notion of access to justice by introducing new justice institutions/"dispute-processing institutions" as an alternative forms of justice to the formal justice system.[885] This wave is an all-encompassing in that it sought to create dispute resolution mechanisms that engage both the formal and informal justice institutions and processes.[886] Thus, this resulted the meaning of justice to evolve by going beyond the justice that is dispensed by the formal judicial institutions and mechanisms. It expands justice to be delivered not only by legal experts but community representatives who have an indigenous knowledge on dispute resolution mechanisms.

In a nutshell, in its broader or thick sense, access to justice is defined as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in

[882] Estelle Hurter, 'Access to Justice: To Dream the Impossible Dream?, *The Comparative and International Law' Journal of Southern Africa*, Vol. 44, No. 3, 2011, p. 413.
[883] Estelle Hurter, id., p. 408.
[884] In case of public interest litigation, collective interest is litigated, and all of the members of the affected community should not be in court. Furthermore, in civil matters, the outcome of the litigation depends on the litigants especially in adversarial systems. However, in public interest litigation the judge/s are expected to play an active role.
[885] Mauro Cappeletti, Introduction in *Access to Justice and the Welfare State*, 1981,p. 4. See also Cappelletti Mauro and Garth Bryant, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective', *Buffalo Law Review*, Vol 27, 1977-1978, p. 181.
[886] Estelle Hurter, *supra note* 882, p. 410-411.

compliance with human rights standards."[887]This meaning of access to justice demonstrates that it is not only about access to judiciary institutions, but it is a human right to be respected and protected by the state.[888]The human rights approach to access to justice goes beyond making the courts accessible to people. It requires the adjudication of cases to be based on the principles of justice and fairness.[889] It is in this light that the CEDAW Committee stated that "access to justice is understood not just as the mere access to the dispute resolution bodies but more broadly i.e. in terms of guaranteeing that the legal system deliver legal and judicial outcomes that are just individually and to society as a whole".[890]

Justice, which is the main pillar in the term "access to justice", is also one of the buzz words. Though justice can be equated to "fair, open, dignified, careful and serious processes", it goes beyond procedural safeguards. It includes both substantive and procedural elements, which are interdependent. While the procedural safeguards include the right to be heard before an imperial court, equality of arm of the parties etc, the substantive element also determines the outcome of the litigation. The outcome of the litigation should not only be limited to the settlement of the dispute, but it should also result financial or criminal liability or the prevention or cessation of an offensive act by the other party.[891] Thus, access to justice does not only refer to access to the institution but it requires fairness in the litigation process and outcomes.

According to UNDP, the components of access to justice includes normative legal protection, legal awareness, efficient, accessible, and easy to understand court systems, legal assistance and enforcement of decisions and an oversight system (through CSOs or NHRI).[892]

Though the above measures are important legal measures that can be taken by courts and other actors in the justice system, the improvement of access to justice requires other non-legal measures. It requires measures that bring social inclusion. This expands the meaning of access to justice "to include access to mechanisms that facilitate social inclusion".[893] This means to expand access to justice, it is necessary to remove various social, economic, and political barriers. These barriers may relate to financial barriers, educational barriers, barriers related to ones' gender and other social

[887]Alain Aime Ndedi, and Mau Kingsly, *The Role of the Rule of Law in a Developmental State in the African Context*, 2017.
[888] Francioni Access to justice as a human right (2007) Vol XVI/4 1; Grossman and Sarat, 'Access to justice and the limits of law' in GambattaMay Foster (ed.),*Governing through courts*, 1981, p. 77.
[889]Estelle Hurter, *supra note* 882,p. 413.
[890]CEDAW Recommendation on women's access to justice, 2015.
[891]Estelle Hurter, *supra note* 882, p. 414.
[892] UNDP, *Access to Justice: Practice Note*, 2004, p. 7.
[893]Estelle Hurter, *supra note* 882, p. 408.

status. These barriers cannot be solved only though litigation. Thus, litigation has no power to address these barriers unless it is supported with actions from various organs and systems such as the political, legislative, and executive organs and non-governmental organs.[894]

Women's access to justice is affected by the existing normative and institutional frameworks in addition to structural and systemic social and political barriers. These barriers include physical barriers, digital divide between the urban and rural places, cost of legal services, lack of social network, infrastructural and transportation barriers, lack of legal awareness etc.[895] Though legal formalism has intended to bring justice through the uniform application of laws, it has also unintended consequences. The incompatibility between the ideals of justice through the formal justice system and the social realities on the ground has resulted in unequal access to justice to the various groups of the society including women. Inequality in wealth, opportunities, social and political status has been main factors to the limited access to justice by women. The formalization of the legal system has sometimes resulted in protecting the rights of those who are socially and economically better off.[896] It is important for support structures for legal mobilization are in place for women to access justice. These structures include "right advocacy organisations, right advocacy lawyers and source of financing".[897]

With this in the backdrop, the next sections will try to elucidate women's access to justice in the formal legal system to land related cases. Before delving into women's access to justice, a discussion is made on the normative framework on access to justice and rural women's land rights.

7.2. Normative Framework on Access to Justice in Ethiopia

Ethiopia has made ratified international commitments and conventions part of its laws. Access to justice is guaranteed under a number of international instruments.[898] The components of access to justice include fair trial, and equality before the law. The right to fair trial encompasses "the 'right to a court' as well as a broad range of due process protections, including the presumption of innocence, speedy trial, the right to counsel and access to an interpreter".[899]

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[894] Estelle Hurter, *Id.*, p. 416.
[895] OECD, 'Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All', *Issues 2016 Brief*, 2016, p. 8.
[896] Jerold S Auerbach, *Justice Without law?*, Vol. 762. Oxford University Press, USA, 1984, p. 143-44.
[897] Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*(Chicago, IL: University of Chicago Press), 1998, p. 2-5.
[898] Articles 7 and 8 of the UDHR and Article 14 of the ICCPR, Article 5 (a) of CERD, Article 15 of CEDAW, Article 12 & 13 of CRPD, and Article 7 of ACHPR,
[899] Anchinesh Shiferaw and Ghetnet Mitiku, 'Assessment of Legal Aid in Ethiopia: A Research Report' in Fasika Hailu and Kokebe Wolde (eds.), *Assessment of Legal Aid in Ethiopia: A Research Report and Proceeding of the National Workshop of Legal Aid Providers*, 2013, Center for Human Rights, Addis Ababa University, p. 28.

The UDHR states that: "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."[900] It also stipulates that every person is entitled to the rights recognized within the Declaration, without distinction of any kind' and guarantees all persons equality before the law as well as equal protection of the law.[901] The ICCPR provides for the same right in more detail by requiring each State Party to the Covenant:

> a. To ensure that any person whose rights or freedoms […]are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> c. To ensure that the competent authorities shall enforce such remedies when granted. The ICESCR does not contain a similar provision explicitly obliging State Parties to 'develop the possibilities of judicial remedy'. Nevertheless, a State Party seeking to justify its failure to provide any domestic legal remedies for violation of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' within the terms of Article 2/1 of the ICESCR or that, in view of the other means used, they are unnecessary.

The International Covenant on Civil and Political Rights (ICCPR), states that everyone is entitled to a fair and public hearing within a reasonable time by an independent, impartial and lawfully established tribunal in the hearing of civil actions and criminal charges.[902] Under the ICCPR, an unrepresented accused is entitled to have legal assistance assigned, in any case where the interests of justice so require, without payment if an accused has insufficient means to pay for legal representation.[903] It also imposes a duty on states to respect and ensure the recognized rights to all persons without distinction and stipulates the legal prohibition of and effective protection against discrimination on any ground.[904]

[900] Article 8 of UDHR.
[901] Article 2 and 7 of UDHR.
[902] Article 14/1 of ICCPR.
[903] Article 14 (3(d)) of ICCPR.
[904] Article 2 of ICCPR.

The Human Rights Committee, in its General Comment 13, states that "Counsel provided by the competent authorities on the basis of this provision must be effective in the representation of the accused."[905] The Human Rights Committee has underlined the status of non-discrimination, as well as equality before the law and equal protection of the law without any discrimination. The African (Banjul) Charter on Human and Peoples Rights (African Charter) entitles every individual to have her or his case heard, and to be tried within a reasonable time by an impartial court or tribunal.[906] Equality before the law and equal protection of the law has also been stipulated in the African Charter.[907] The Maputo Protocol also requires all rarifying state to ensure women's access to justice including legal aid.[908]

Similarly, the FDRE Constitution recognized the right to access to court for justiciable matters.[909] It allows association representing the collective or individual interest of its members; or any group or person who is a member of, or represents a group with similar interests to bring a case before a court of law.[910] There have been two views on these provisions of the constitution. Some scholars argued that these provisions of the constitution require interested parties to a case to show personal vested interest in a case to have standing before a judiciary bodies.[911] Thus, constitutional issues can only be adjudicated when the parties themselves are affected by the violation of the constitutional rights.[912] Other scholars argue that it allows for public interest litigation which permits any individual or association to bring a cases in the interest of the public.[913] Accordingly, article 37 (2(b)) should be taken as a standalone provision allowing public interest litigation.[914] Recently adopted Proclamation on federal courts resolves this controversy by allowing public interest litigation for human rights cases under article 11 (3) by providing that any person with vested

[905]United Nations Human Rights Committee, General Comment No. 13: Administration of Justice, Thirty-first session, 1984.
[906] African Charter on Human and Peoples' Rights, Adopted in1981, Article 7/1/c.
[907]Id., Article 3.
[908] Article 8 of the Maputo Protocol.
[909] Article 37 (1) of the FDRE Constitution.
[910] Article 37 (2) of the FDRE Constitution.
[911] See, for example, Mizanie Abate Tadesse, 'Rethinking Litigation Grounded Enforcement of Constitutional Rights in Ethiopia', *Journal of Ethiopian Law*, Vol. XXXII, p. 154. See also Sisay Alemahu Yeshanew, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia, *African Human Rights Law Journal*, Vol. 8 (2), 2008, p. 291; Adem Kassie Abebe, Towards More Liberal Standing Rules to Enforce Constitutional Rights in Ethiopia, *African Human Rights Law Journal*, vol. 10, 2010, p. 409.
[912] Mizanie Abate Tadesse, id., p. 154.
[913] Fasil Nahum, Constitution for a Nation of Nations: The Ethiopian Prospect, 59 (The Red Sea Press, Inc. 1997), p. 150; Yenehun Birlie, 'Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features',*Mizan Law Review*,Vol. 11(2), 2017, p. 321-322; Yoseph Mulugeta Dadwaza, Public Interest Litigation as Practiced by South African Human Rights NGOs: Any Lessons for Ethiopia?, unpublished LLM thesis, University of Pretoria, (2005), p. 40-42, (accessed on September 23, 2021); and Getahun Kassa, 'Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System', 20 *Africa Focus*75, 86 (2007) cited in Mizanie Abate Tadesse, supra note 911, p. 155.
[914] Mizanie Abate Tadesse, supra note 911, p. 155.

interest or sufficient reason can bring a cases to protect his own or others rights.[915] Unlike in the case of the judiciary, constitutional matters can be brought by any individual or group as has been practiced. [916]

It further provides for the speedy trial and legal aid support to be given for court cases involving women victims of GBV.[917] Regional constitutions similarly guarantee women's rights to land and access to court in case of violation of their rights. For instance, Article 34 (7) of the Sidaama Regional State's Constitution guarantees women's equal rights with men to use, transfer, administer and control land. It also reaffirms their equal rights to inheritance. The right to access to justice is granted in similar manner as of the FDRE Constitution under Article 36 of the Sidaama Regional State's Constitution.

7.3. Judicial Responses to Women's Land Rights

Judicial protection of property rights in general and women's land rights in particular is determined by "the extent to which individuals[women] and legal persons are ensured access, proper interpretation, efficient adjudication and appropriate judgment to their claims, counterclaims and defenses whenever disputes are adjudicated in courts of law. This envisages competence, integrity, efficiency, judicial independence, predictability and consistency in judicial decisions."[918]

Judicial protection of women's land rights is important. Courts can play an important role through their decisions in ensuring rural women's land rights are protected from individuals' encroachment, state interferences and family violations. In Ethiopia, dual court structure is envisaged at the federal and regional levels by the FDRE Constitutions. Federal courts are organised as First Instant Court, High Court and Supreme Court (with Cassation Division). At the regional level, Woreda Court, Zonal Court and Regional Supreme Courts (with regional Cassation Division) are structured based on the respective regional laws.[919]

[915] Article 11 (3) of Federal Courts Proclamation No. 1234/2021.
[916] The case in point is *Kedija* case. It was brough by EWLA on behalf of Kedija. A political party has also brough a case before CCI (see *Coalition for Unity and Democracy (CUD) vs. Prime Minister Meles Zenawi Asres*, Fed. First Instance Ct., Lideta Div., File No. 54024 (Decision of 3 June 2005) (26 Ginbot 1997 E.C.).
[917] Article 19 (1(g)) of proclamation No. 1234/2021. While the English version provides that "professional support to causes of victim women" while the Amharic version provides 'victims of GBV'.
[918] Hailu Burayu, Elias N. Stebek & Muradu Abdo, 'Judicial Protection of Private Property Rights in Ethiopia: Selected Themes', *Mizan Law Review*,vol. 7, No.2, December 2013.
[919] Article 2 (3) of Federal Courts Proclamation No. 1234/2021.

7.3.1. Women Land Rights Issues before Ethiopian Courts

Systematic recoding of court cases by type of the cases is absent at all court levels. However, court cases can randomly be selected through searching the courts' record office. Except for the decisions of the Federal Cassation Division of Federal Supreme Court, decisions are not published. When the decisions of the Cassation Division of the FSC are published, they are published in the order of decision. They are not categorized thematically. There have been attempts by CSOs (for instance by NEWA) to identify cases concerning women.[920] But the compilation is published years back and it is difficult to find cases decided recently and categorized thematically.

Thus, the author of this dissertation tried to review cases that are identified randomly. These cases are random thus it is not possible to show trends with statistical evidence. This section tries to analyze the cases that are reviewed and how the courts have entertained/decided the case by trying to find common trends in the randomly selected cases. Thus, the analysis does not necessarily show representative trend. It rather indicates some of court decisions and their considerations in deciding the cases. The case analysis is further supported by qualitative analysis of the data obtained through interviewing judges, court personnels and legal experts at different levels of Courts at Sidaama Regional State.

Inheritance cases

Inheritance is one of the means for people to acquire assets including access to land. It allows wealth to be transferred from generation to generation within a society. The protection of inheritance rights ensures economic security. However, the practice of inheritance is affected by customary rules and practices in rural areas. According to many studies, women's marginalization from land rights by customary rules and practices has affected women's rights to access, acquire and control rural land.[921]

One of the cases that is mostly brought by women before the Sidaama courts are land inheritance cases.[922] These cases are brought because of the lack of remedy for land inheritance cases before the customary justice system. According to many of the informants, since the customary justice system does not allow women to inherit land, they bring land inheritance cases before courts. The courts

[920] የኢትዮጵያ ፌዴራላዊ ዲሞክርሲያዊ ሪፕብሊክጠቅላይፍርድቤትእናየኢትዮጵያ ሴቶች ማህበራት ቅንጅት፤ የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ከሴቶች መብትና ጥቅም እንዲሁም ሴቶች በተከራካሪነት ተሳታፊ የሆኑበት የህግ ትርጉም የተሰጠባቸው የተመረጡ ውሳኔዎች. (FSC and NEWA, Decisions of the Cassation Division of the FSC Concerning Women's Interst and Litigants.)

[921] Meskerem Geset Techane, 'Economic Equality and Female Marginalization in the SDGs Era: Reflections on Economic Rights of Women in Africa', *Peace Human Rights Governance*, 1(3), 2017, p. 341.

[922] Interview with judges of the Civil Bench of the Hawassa Area High Court conducted on 06 May 2022.

adjudicate cases applying the constitutional guarantee for women to inherit land and the Civil Code provisions on inheritance.

However, a daughter who bring inheritance case against her brother for the inheritance of her diseased father face challenges from her close family members including her mother. In most cases, mother wants her sons to inherit the land believing he would make a better use of the rural land by plowing it. Thus, daughters will face hostility from their own family and such cases end up to be the deplorable ones since they are not against a strangers but it is against own family. In most cases, it ends up breaking family tie when the case is won.

In addition, the fact that women are not allowed to plow land by the customary practices has effects in the decisions of court. For instance, in a case decided by Hawella Tulla First Instant Court,[923] the case was brought by the daughter of the deceased father claiming she should be entitled to inherit her father's land. However, her uncle has been using the land since the time of the Derg regime. Therefore, the court decided that the land belongs to her uncle since he has been using it for a long time and she cannot claim it as the period of limitation to bring a case has passed. This shows that the fact that women do not take control of land because of the customary norms is leading them to loss their right to inherit land.

Matrimonial cases

Most of land related litigations arise in litigation related to divorce and marital property division. Most women informants have pointed that divorce is something they do not want to pursue ever when they have been victimized by their husband. They point that it is against their culture to get divorce.

There are three approaches to marital property which includes "full separation of property" or "partial or limited community of property" or "full community of property". In countries with "full community of property", assets acquired before and after the marriage is considered as common property of the spouses while in "full separation of property", all property acquired before and after marriage remains separate properties of the spouse who acquired it. "Partial community of property" takes the middle ground and makes the property acquired after marriage as common property while those assets that are acquired before marriage as personal property of each spouse. Though the family law of Ethiopia adopted the partial community of property approach, its application to rural land has been controversial.[924] One of the reasons is that most women do not

[923] *W/ro Manur Tukuru vs. Amalo Sakuma*, File No. 06436, decided by Hawella Tulla First Instance Court.
[924] UN Women and United Nations Office for Human Rights, supra note 473, p. 34.

have any means to access land and there is no way that they can acquire a land as personal property. Thus, if this rule applies, it is usually men who bought the land that get the land as personal property during divorce. However, land is not the same property as other property for two reasons. First, land is owned by the state and individuals have use rights. Second, land does not stay the same throughout time. Spouses put their efforts and make the land either productive or less productive. These efforts of a spouse would result the land to be modified and acquire the status of common property through time based on the family law. Courts have been grappling with this issue and as discussed in the section below there has been a number of constitutional cases on the matter. This issue requires courts to apply a gender sensitive approach in their application of the law and constitutional provisions on women's equal rights.

Courts, based on the law that require rural land cases to be first submitted and decided by Land Administration and Use Committee, refer back cases when they are not first taken to LAC. From the cases reviewed,[925] it is evidenced that the court refers cases to LAC when the cases are matrimonial cases which involve the division of land. This also relate to the fact that the settlement of private matters is considered to be out of the reach of courts and should be dealt by elders. As discussed in chapter five, this deprives the complainant access to court. In most instances, LAC is composed of elders and women may not opt to go there for various reason. In such instance, courts should be the first instance to entertain the cases if the woman objects her cases from being taken to LAC or elders.

One of the reasons for the federal family law to abolition the Council of Family Arbitrators and make it optional and subject to court supervision was to address arbitrariness and thereof violation of women's rights.[926] In similar fashion, the resort to LAC should have been optional for the parties to the dispute. This is also what has been explicitly provided in the FDRE Constitution which provided that personal and family disputes can be adjudicated by customary or religious institutions

[925] For instance, in the case of Genet Egiso vs. Ato Tego and Hafto Birru (File No. 01197)Hawella Tulla F/I/Court, Dato &Chefe Area Chilot (bench), the applicant claimed that the siblings of her deceased husband have forcefully took her land which was under her possession. The court (Hawella Tulla First Instance Court, Dato &Chefe Area Chilot (bench) decided to refer the case to Land Administration Committee at kebele level by arguing it should be first entertained by the Committee before it is brought to the court. Similarly, in the case of W/o Genet Egiso vs. Sha/l Tadesse Taye (File No. 01452)Hawella Tulla F/I/Court, Dato &Chefe Area Chilot (bench), and W/o AgareWariko, and others Vs. Ato Yose Shalamo, and others (File No. 01361)Hawella Tulla First Instance Court, Dato &Chefe Area Chilot (bench), the court refer the cases to the Land Administration Committee.

[926]Council of Family Arbitrators was recognized and had a power to settle much of family disputes including dispute over betrothal, dissolution of marriage by death and for any other reason, decide over provisional measures like maintenance, administration of children and common property; and also pecuniary and other effects of divorce. See Articles 667 – 669, 692- 696, 722-726 of the Civil Code.

upon the consent of the parties to the dispute.[927]. Though LAC is not a customary court in its strict sense, the fact that most of its members are elders who have roles in the customary justice system, and they tend to apply the customary rules while mediating marital problems, makes it important that women who are brought before this organ should give their consent before being subjected to its jurisdiction.

As discussed in the subsequent section, one of the legal gaps that have been challenging women has been that land is considered as personal property by some regional land laws.[928] The Cassation division of FSC has decided that the land that is given as gift for spouses when they get married as "ሳጅ መወጫ" is considered as a common property upon divorce if they have been using the land for farming.[929]

Land transfer cases

Though the Constitution clearly stipulates that rural land transfer through sale is prohibited, land transactions take place informally despite the clear prohibitions under the law. This is especially the case in peri-urban areas where there is irrigable and cash-crop land.[930] The transfer of land, in this case, takes place in the form of disguised sale, in the form of inheritance, donation, land lease and debt bondage. These pretexts are used to get the buyer a rural land certificate.[931]

In the study area, the practice of *Kontraata* is very common. The *Kontraata* is an arrangement where sharecropping results in transfer of rural land to the transferee. Accordingly,

> One first becomes a sharecropper and then in that status; the sharecropper keeps on extending loan after loan to transferor (land holder), and putting the landholder under loan bondage thereby taking over the land in the long run. This, lending money by sharecropper to the landholder to the point where the latter becomes heavily indebted and gives the former a bargaining chip to propose and enter into a contract. The sharecropper has every incentive to entice the landholder to transform their sharecropping *into kontraata*as he

[927]Article 34 (5) of the FDRE Constitution.
[928] The case in point is Article 35 (4) ofthe Revised Amhara Land Use and Administration Proclamation No. 252/2017which maintains that a land acquired before marriage remains as personal propertyunless the spouses agree to make it a common property.
[929] Federal Supreme Court cassation Decision File no. 210885.
[930] Daniel Behailu, 'Transfer of Land Rights in Ethiopia, Towards Sustainable Policy Framework', *Eleven International Publishing*, The Hague (2015). Peri-urban land is "an area with immediate vicinity to a city or town with a potential to be included to the city administration or already included but not formalized via executed city plan. These areas are areas between city administration and proper rural land and often its status is always in a *legal limbo*." Daniel Behailu Geberamanuel and Gemmeda Amelo Gurero, 'The Enigma of Informal Rural Land Deals in Ethiopia: Evidence from Peri-urban Areas of Hawassa City', *Haramaya Law Review*, vol.6, 2017, p. 45-46.
[931]Daniel Behailu, *id.*, p. 112.

> usually has permanent crops such as coffee, *khat* and sugar cane on the land. This sort of transaction is not backed by the law and can aptly be categorized as informal land deal. The deal is usually achieved in protracted debt bondage.[932]

Most of the time *Kontraata* are concluded by heads of a household without the knowledge of the wife. When the wife becomes aware of the informal sale of the land, she brings a case to invalidate the contract based on the provision of the Civil Code that nullifies illegal contract.[933] The courts had varied decisions on such matter. In some decisions, it nullified such contract and other decisions, the court decided for the tenant on the ground of good faith accusation of the land. Some courts barred such cases on the ground of period of limitation which is the ten years period of limitation for contracts provided under article 1845 of the Civil Code.[934] In the period from 2011 to 2015, such contracts were treated as ordinary contracts and held to be valid based on a circular passed by SNNPR Supreme Court. The circular assumed that "the intention of the parties at the time of the conclusion of a *kontract* was clearly to transfer ownership over land: there was no intention on the part of the parties to restitute the land at a certain point in the future. Under the Circular, land subject to *kontract* was assumed to have gone out of the hands of the [landhold] *akonatari* forever."[935]

However, this approach was reversed with the decisions of the SNNP Supreme Court which held that such contract is invalid and period of limitation does not apply to it in 2015.[936] The Cassation Division of the FSC held two positions on the same matter. The first is that when the contact explicitly transfers rural land through sale, mortgage of debt, it invalidated the contract.[937] However, if there is no illegal transfer of rural land, such contract was held valid. For instance, in the case of donation, it is held as valid contract.

The law also allows rural land rental under certain conditions. These conditions relate to the minimum land size that could be rented and the protection of the peasants from displacement. Thus, farmers can rent out rural land when they have extra land and when the land to be rented is not less

[932]Muradu Abdo, 'Kontract: A Hybrid Form of Law Among the Sidaama' in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020, p. 246. See also Daniel Behailu Geberamanuel and Gemmeda Amelo Gurero, *Supra note* 930, p. 53.
[933] Article 1808 (2) of the Civil Code provide contracting party or a third party may invalidate any unlawful contract.
[934] Muradu Abdo,*supra note* 932, p. 248.
[935] Muradu Abdo,*id.*, p. 248.
[936] SNNPRS Supreme Court Cassation Division File No. 64745, May 16, 2015 cited in Muradu Abdo, *id*., p. 249.
[937]Federal Supreme Court cassation File No. 110569, February 2016, Federal Supreme Court Cassation File No 79394, September 2012 or Federal Supreme Court Cassation File No 49200,November, 2010 cited in Muradu Abdo, *id.*, p. 249.

than the minimum holding size.[938] Most of the cases that are brought by women relates to loss of the possessory rights on rural land because of land rental agreement with the leasee. This is because most of these agreements are made informally without fulfilling the legal requirements, and it becomes very difficult for courts to enforce the rights of women claimants. There are decisions which recognized the rights of the possessor of land (leasee) on the ground that farmers should be protected from eviction. This kind of decision has damaged rural women's interest since they tend to rent out their land for the lack of supportive labour and this has resulted in either delay in getting back their land or losing it all together.

Land Rights in Polygamous Marriage

Women in polygamous marriages face very ardent legal challenge during the death of spouse or divorce. The legal loophole that does not protect the property rights of women in polygamous marriage has resulted many women to loss their rights. In this regard, courts have held varied decisions that range from those who give equal division of property among wives by giving the remaining half to the husband, those who give half of the property to the current wife and allow the other wives to get their share from the remaining share of the husband, to those who deny the women from getting a share on property for the fact that polygamous marriage is not recognized under the family code.[939]

Furthermore, female-headed households frequently face land encroachments or trespass.[940] However, most of the trespass is committed by neighbors and family members. When it is neighbors or by strangers, it is easy to produce evidence of trespassing. However, when it is a family member who has been exercising use rights on the land, it is difficult to prove trespass.

The second level land certification process also demonstrates that female-headed householders and the elderly are more vulnerable to land encroachment by male relatives and caretakers respectively who has been assisting them in cultivating the land. During the registration process, many

[938] The minimum land size for a family is 0.25 haunder Article 18 (1) of the SidaamaLand Administration and Use Proclamation No. 27/2023.

[939]Cassation Division of the FSC, File No. 24625,this decision ruled that upon the death a husband in polygamous marriage, the wives can divide the half of the property equally while the remaining half goes to his heirs. On the other hand, another decision that was given by Cassation Division of FSC (file no. 45548 and file no. 50489) ruled that if one of the wives can proof that she has made a great contribution in producing and owning the marital property, she will be entitled to half portion of the property proportional to her contribution while the other wives take their share based on their contribution from the other half share of the husband. These cases are cited in the Case of W/roHaregwoineTirunehe vs. W/roZufane Terefe, file No. 219887, Tahisas 25, 2015 (Dec. 25, 2023).

[940]W/r Abebech Hatiya vs. Ato Tamene Tessema and Yohannis, File No. 08425, a case decided by Hawella Tulla First Instance Court. The case involved a dispute between a mother and her two sons. Accordingly, the two brothers have been illegally entering into her land and forcefully took her crops against her will. The court held that the respondents were using the land for 17 years and there is no trespass. See also Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 13.

caretakers or family members attempted to register the land in their own name. However, since the process of land registration involved, public display of land registration, and adjudication of cases in case of competing claims, the landholders were able to challenge such registration either during public display of the registration or adjudication process.[941]

7.4. Constitutional Adjudication of Rural Women's Land Rights in Ethiopia

Ethiopia has established a federal system of governance since 1995 upon the adoption of the FDRE Constitution. The federal system established two tiers of government at the federal and regional level with their own legislative, executive, and judicial branches of the respective government. The Constitution determined the division of power between the different tiers of the government in addition to laying down the foundation for the protection of human rights by devoting one third of its content to human rights. The enforcement of human rights is oversight by all organs of the government.[942]

Ethiopia, under the FDRE Constitution, has opted for a constitutional interpretation to be undertaken by the second chamber of the legislative organ i.e., the House of Federation (HoF) rather that judicial review of constitutional matters by the judicial organs. This centralised form of constitutional interpretation has granted the HoF the power to decide on all constitutional disputes.[943]Accordingly, 'all constitutional disputes' includes "any constitutional issue, whether legislative, executive or judicial, as long as the final determination of the meaning of a constitutional provision is necessary."[944]The House of Federation is assisted by the Council of Constitutional Inquiry (CCI) which is composed on eleven members consisting six legal experts, the president and vice president of the Federal Supreme Court and three representatives from the HoF.[945] It reviews applications for constitutional interpretation when the constitutionality of any law or customary practice or decision of government orans or officials is in questioned and provide recommendations to be approved by the HoF.[946] Constitutional review can be initiated by government bodies, private parties or a judicial referral requesting the Council of Constitutional Inquiry (CCI) to review the constitutionality of the contested legislation, decision or conduct.[947] Furthermore, article 84 (2) of the FDRE constitution provides that when a constitutional issue arise

[941]Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 14
[942] Article 9 (2) of the FDRE Constitution.
[943] Article 83 (1) of the FDRE Constitution.
[944]Adem Kassie Abebe, The Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia, Pretoria University (unpublished PhD Dissertation), 2012, p. 75.
[945] Article 84 of the FDRE Constitution and Article 15 of Proclamation No. 798/2013 to Re-enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE.
[946] Article 3 (1) of Proclamation No. 798/2013.
[947] Takele Soboka Bulto, 'Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory', 19 *African Journal of International and Constitutional Law*, 2011, p. 104.

involving a contestation of Federal or State law before a court and the court may refer the case to the Council of Constitutional Inquiry (CCI). Thus, the constitution envisages an non-restrictive access to constitutional interpretation mechanism in Ethiopia.

The federal system envisages to ensure the rights to self-determination of nations, nationalities and peoples of Ethiopia, yet the implications it has in the protection of rural women's land rights is an interesting issue that requires a scholarly articulation. This chapter investigates the implications of the diverse rural land laws on the protection of the constitutional rights of rural women in Ethiopia by reviewing decisions of the HoF/CCI. Access to constitutional adjudication is very important part and parcel of enforcement of constitutional rights. Thus, the chapter also investigates the various barriers for women's access to constitutional adjudication mechanisms in Ethiopia.

The study relies on cases collected from CCI/HoF with an informed intention to show diversity in the reasoning of the decisions from a gender perspective. The cases that were submitted to the CCI/HoF are selected purposively for this study for three reasons. The first is that the researcher focused on analyzing the decisions of CCI/HoF since a high number of cases on rural women's land rights have been entertained by these organs.[948] The second reason is that the decisions of the HoF are very important because they have equal status with the constitution and all organs of the government are required to enforce them.[949] The third reason is that the decisions of the HoF used to have a precedent effect or binding effect on similar matters that arise in the future before lower courts and organs based on the previous Proclamation providing the power and responsibilities of the House.[950] However, the recent law (Proclamation No. 1261/2021) is silent on the binding effect of the House's decisions.

Overall, the researcher reviewed more than thirteen published and unpublished cases including those that are published on the journals of CCI and HoF. These cases are analyzed in a systematic manner to show trends in the triggering factors and grounds of constitutional interpretation of cases related to rural women's land rights.

Furthermore, interviews were also conducted with two key informants at CCI to understand the trends in cases brought before these organs for constitutional adjudication. The study also applies

[948] Among 1917 cases brought by female applicants before CCI, 1468 (76.5%) cases are brought based on the violation of Article 40 of the constitution which is concerned with property rights including cases on common property in marriage, inheritance, and rural land rights.
[949] Article 80 of Proclamation No. 1261/2021- A Proclamation to Define the Powers and Functions of the House of Federation of the Federal Democratic Republic of Ethiopia.
[950] Article 11 of Proclamation No. 251/2001- Consolidation of the House of Federation and the Definition of Its Powers and Responsibilities.

dogmatic method to analyze the laws. The analysis is informed by legal formalism and legal realism approach which examines what the law including the constitution is and what CCI do. Thus, this section looks at the law in action based on constitutional decisions not only the law on papers. Law in action reveals how the law is actually used and applied in real-life situations, rather than just what is written in books. It investigates the practical application of the law in the Ethiopian legal system.

The section below will first investigate women's access to justice for constitutional matters which is followed by constitutional enforcement of rural women's land rights which looks into constitutional interpretation mechanism, trends and triggering factors for constitutional cases on rural women's land rights and presents selected gender sensitive constitutional interpretation decisions.

7.4.1. Women's Access to Justice for Constitutional Matter

Women's access to justice should not only be referring to their access to courts, but it should also be related to their access to chain of justice system in an equal and effective manner.[951] This chain of justice starts with the constitution. A constitution is the basic and foundational document that ensures formal and substantive equality between women and men for all other laws to relay on.[952] The Constitutional recognition of equality is a source of authority for all the laws that comes after it and a basis for judiciary review of legislations and government actions.[953]

Constitutions not only lay down the principles of equality, but they also govern the relationship between formal laws and customary laws in a given jurisdiction. Constitutions which opt for the operation of plural or parallel legal systems including customary justice system need to oversee what will be the effect of these plural laws when they contradict with the law and on whom these laws be applicable. When the constitutional rights have overriding effect of non-state or customary laws, it is important that individuals have access to constitutional review mechanisms.[954]

[951] Frances Raday, Access to Justice, HRC Mandate Holder, WG Discrimination against Women in Law and Practice
[952] Formal equality refers to provision of equal opportunity for men and women to access resources and services in socio-economic and political spheres through laws and policies. substantive equality is does not only intend to bring equality of opportunity between men and women but also equality of result by correcting inequalities in the gender relation and power imbalance between men and women. These power imbalances can be corrected through affirmative actions or special measures that goes beyond policy and legal provisions and brings not only de jury equality but also de facto equality. See Alda Facio and Martha I. Morgan, Equity or Equality for Women? Understanding CEDAW's Equality Principles, *Alabama Law Review*, Vol. 60, 2009, p. 1146-1147.
[953] Ibid.
[954] Ibid

Thus, women's access to justice should be seen in broad manner to include women's access to justice at formal and informal level of national justice systems in addition to having access to constitutional adjudication/interpretation bodies.

Women's access to constitutional bodies is important since constitutions are reflections of the embodiment of equality of men and women. These constitutional guarantees can only be realized through constitutional interpretation and constitutional adjudication of women's rights.

CCI/HoF accepts issue of constitutional interpretation for both justiciable and non-justiciable matters. The justiciable matters those that are submitted to courts or administrative organs. Non-justiciable matters can be submitted by one-third vote of federal or regional state legislative organs or by the executive organs.[955] Though the constitution guarantees unrestricted access to HoF/CCI whenever there are constitutional disputes, it has been observed rural women and other vulnerable groups face challenges to access this mechanism. According to Charles Epp, "support structure for legal mobilization" is necessary to realize access to justice.[956] These support structures include NGOs and right advocate who can provide services by bringing actions on behalf of vulnerable groups or whenever there is a need for strategic litigation aiming to bring structural changes. The constitution and the subsequent laws do not prohibit public interest litigation which allows any individual or association to bring a case in the interest of the public. The experience of CCI demonstrates that this has been utilized in various cases such as in the case of Kedija where Ethiopian Women's lawyers Association (EWLA) brought a case against unconstitutionality of Sharia Court decision without an expressed consent of the applicant when a case was adjudicated before the court.

The next section delves into constitutional adjudication of women's land rights in Ethiopia, and looks into the constitutional guarantees of women's land rights under the FDRE Constitution.

7.4.2. Constitutional Enforcement of Women's Land Rights

The enforceability of rural women's land rights through a constitutional mechanism requires an enabling environment for rural women to access this mechanism. It is important to first take a look at the nature of the institutional mechanism to review land related decisions and laws. Then, trends and triggering factors for constitutional adjudication of women's land rights is discussed which

[955] Article 3 (2) of Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE, Proclamation No. 798/2013.
[956] Charles Epp, *supra note* 897, p. 3.

followed by a discussion on gender implications of constitutional adjudication based on selected cases.

7.4.2.1. Synopsis of Constitutional Adjudication Mechanism in Ethiopia

The FDRE Constitution embrace a non-judiciary constitutional review mechanism by confirming the power to interpret the constitution to the House of Federation (HoF) which is a political organ representing nations, nationalities and peoples of Ethiopia. This is preferred by the framers of the Constitution because of the ethnic federal system which puts nations, nationalities and peoples as the owners of the constitution and therefore its interpreter. In addition, the framers wanted to prevent "judicial dictatorship".[957] Lack of a well-functioning judiciary in the previous regimes trusted by the people is also the other reason to deprive the judicial from having the power to interpret the constitution.[958]

The HoF can entertain individual human rights cases involving constitutional dispute. Since the judiciary is stripped off the power to interpret the constitution, it is expected to refer a case to the HoF whenever there is a need for constitutional interpretation. This is unusual for democratic states to adopt a non-judicial constitutional review mechanism. It is only in few countries such as Bahrain, Congo, Cuba, and North Korea which have non-judicial constitutional review system.[959]

Some scholars argued that HoF is not the appropriate organ for constitutional adjudication because its lack of independence from the executive and expertise in legal matters. This has precluded the HoF from passing decision against the government in several cases.[960] Contrary to its position on politically sensitive case, the HoF is comfortable in deciding individual cases that does not involve the government.[961] It is not also able to afford protection to the minorities group because of its majoritarian make-up. The conformity of constitutional adjudication power to the HoF has deprived the judiciary the power to adjudicate such matter and exercise a check and balance role on the executive and legislative branches of the government.[962] Various writers suggested for independent,

[957] Assefa Fiseha, *supra note* 320, p. 10 & 11.
[958] Chi Mgbako *et al*., Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights, p. 268.*Fordham International Law Journal*, vol. 32, 2008, p. 268.
[959] Chi Mgbako and et al,*id.*, p. 278.
[960] See CUD case (*Coalition for Unity and Democracy vs. Prime Minister Meles Zenawi Asres*, Fed. First Instance Ct., Lideta Div., File No. 54024 (Decision of 3 June 2005) (26 Ginbot 1997 E.C.)), Melaku's case (Melaku's case, File no. 1421/07, Council of Constitutional Inquiry) and Negaso's case (The case of the former FDRE President Negasso in House of Federation, *Journal of Constitutional Decisions*, 2009 E.C. (2017), Vol. 2 (2), 2017, p. 36-41. A detailed discussion is made in Mulu, Anchinesh Shiferaw (2019), 'The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia', *Mizan Law Review*, Vol. 13, No. 3, pp. 419-441 and
[961] Chi Mgbako and et al, *supra note* 958. Anchinensh Shiferaw, Id. Mizanie Abate Tadesse, supra note 9113.
[962] Chi Mgbako and et al, *supra note* 958.

organized and efficient system of judiciary review in Ethiopia.[963] With the current flow of cases to the HoF involving the government, it is more necessary to envisage an independent judiciary review mechanism for constitutional disputes that involve human rights issues while the HoF resolve cases related to self-determination rights of nations, nationalities and peoples. This will legitimize the decision-making process and it would assist in the protection of minority groups. The technical competency of the courts in applying legal techniques makes them the best option for human rights related constitutional review.

The HoF/CCI jurisdiction is triggered in two scenarios. The first is when there is decision of government organs, statute or customary practice which are contrary to the constitution,[964] CCI review such decisions as discussed in the previous session. In this case, any person whose rights are violated by the final decision of government organ can apply to CCI for the review of the decision.[965] The other scenario is when courts entertain cases and if an issue related to the case before it needs constitutional interpretation, the court or any interested party can refer the specific issue that needs constitutional interpretation to CCI.[966] The CCI should not go into the fact of the matter but rather address the constitutional interpretation issues.

The FDRE Constitution of 1995 recognized a broad human right in line with international laws and principles. It included individual rights and collective rights of nations, nationalities and peoples. It included a comprehensive and detailed list of rights and freedoms in great departure from previous constitutions. The constitution makes ratified international human rights agreements part and parcel of the law of the land.[967] The HoF is required to interpret the constitution in conformity with ratified international instruments.[968]

The fact that the federal system prioritizes the rights of nations, nationalities and peoples including their cultural rights give the impression that it has contributed in creating conflicting rights between the rights of women and cultural rights which might contravene human rights of women.[969] The HoF which is established with the idea that state sovereignty reside in nations, nationalities and

[963] Chi Mgbako and et al, *supra note* 958. Anchinensh Shiferaw, *supra note* 960. Mizanie Abate Tadesse, *supra note* 911.
[964] Article 3 (1) of Council of Constitutional Inquiry (CCI) Proclamation No. 798/2013.
[965] Article 5 (1) of CCI Proclamation No. 798/2013.
[966] Article 4 (1) of CCI Proclamation No. 798/2013.
[967] Article 9 (4) of the FDRE Constitution.
[968] Article 14 of Proclamation No. 1261/2021.
[969] Dereje Feyissa, 'The Praxis of Combating VAW in Ethiopia: A Political Interpretation', *DIIS Working paper*, 2020:10, p. 13-14. Article 39 (2) of the constitution protects the cultural rights of nations, nationality and people of Ethiopia while article 34 (5) and 78 allows for family and personal matters to be adjudicated by customary and religious courts with the consent of the parties to the case. However, there are customary norms that go against rural women's inheritance and land rights in various part of the country.

peoples and therefore, should interpret the constitution, might have adversely affect women's rights. However, the constitution has tried to minimize this scenario by empowering CCI, composed of legal experts and court personnels i.e. the President and the Vice presidents of the Federal Supreme Court, to provide recommendation on matters of constitutional interpretation. Thus, it is important the HoF play its key roles in balancing group rights and individual rights in its constitutional adjudicatory role.

Norm contestation and resistance is manifestation in countries where identity is the basis of political organization and legitimacy. There might be competing interest to preserve cultural values on the one hand and commitment to individual human rights on the other hand. To gain popular legitimacy, officials may act in support of some illiberal cultural practices that marginalize women and other vulnerable groups.

The constitutional recognition of cultural rights has resulted in preservation of various culture, language, way of life etc. However, it has at the same time served the purpose of justifying women's marginalization in the name of preservation of culture. The Constitution clearly stipulates that any cultural practices that are contrary to the principles and provisions in the constitution are null and void.

7.4.2.2. Trends in Constitutional Cases on Women's Land Rights

Rural Women's land rights are frequently brought to CCI. Based on the data obtained from CCI, among 7665 files opened until April 2023, 1917 (25%) are opened by women applicants while 4125 (54%) and 1623 (21%) are opened by men and jointly by men and women respectively. As shown in the table below, the number of rural women's land rights cases are among the top cases brought to CCI by women applicants.

Table 9: Type of cases brought to CCI by female applicants as of April 2023

No.	Case type	Number
1.	Article 40- Property rights (including common property in marriage, inheritance, rural land rights)	1468
2.	Article 37- Access to Justice	352
3.	Article 35- Women's rights-	23
4.	Article 25- Equality before the law	26
5.	Labor rights	16
6.	Criminal cases	17
7.	Child maintenance cases	12
8.	Others	2
Total		1917

Source: CCI Case Flow Management Directorate

Most of the rural women's land rights cases brought to CCI/HOF arise in the context of marriage and concerns sharing of marital property. Most women's applicants cited article 25, 35 and 40 of the constitutional provisions for their claims. Cases related to irregular union, inheritance and polygamous marriage are also frequently brought before CCI.[970]

There is a backlog of cases. Among the 7665 cases applied to CCI, 3927 (51%) of the cases have been decided. Among the cases that have been decided, 3822 (97%) are rejected for the lack of the need for constitutional interpretation. It is 105 (2.6%) of cases that are found to be appropriate for constitutional interpretation and on which constitutional interpretation is exercised.

Table 10: Number of cases decided by CCI as of April 2023

Decided cases		**Decided cases submitted by women**	
Rejected	**Interpreted**	**Rejected**	**Interpreted**
3822 (97.4%)	105 (2.6%)	957 (95%)	50 (5%)
Total- 3927		Total- 1007	

Source: CCI Case Flow Management Directorate

Rural land cases are reducing in the past two years because of security issues which prevented applicants to pursue their cases by traveling from remote rural area to Addis Ababa.[971]In addition, COVID-19 pandemic in 2020-22 resulted in reduction of the number of cases submitted to CCI.There are various reasons for high number of rural women's land cases before CCI. Some of them relates to legal gaps while others are related to cultural norms that prevent women from accessing land and land inheritance.[972] The next section has tried to illustrate the reason behind cases brought before CCI by women.

7.4.2.3. Triggering Factors for Constitutional Adjudication of Rural Women's Land Right

The three explanations as triggering factors for constitutional adjudication of rural women's land rights can be categorized as legal gaps, implementation gaps and gaps in legal awareness.

[970] Interview with informant 38, Case Flow Management Directorate Director of the Secretariate of CCI on March 3, 2023.
[971] ibid.
[972] Interview with informant 37, Constitutional Teaching and Awareness Creation Team Leader of the Secretariate of the Council of Constitutional Inquiry on March 3, 2023.

a. Legal gaps

Some of the legal lacunas that are discussed under the previous section are some of the reasons that triggered constitutional interpretation.

The issue of "member of a family" has been one of the contentious issues. The rural land proclamations provide that "family members" are entitled to land inheritance. In these proclamations, family members are defined as those who are dependent on the landholder and permanently live with him/her.[973] This definition is contrary to the law on inheritance under the civil code which give primacy to family members during inheritance of the decease property. In the case of *Wubalem Derib Vs. Shibabaw Temesgen*, the applicant, who was the stepdaughter of the land holder, claimed inheritance of land as a member of family. However, the respondent argued that he is entitled to inherit the land since the land belonged to his grandfather. However, CCI rejected the case arguing that it is the grandson who is entitled to inherit.[974] This shows that there is no consensus on who is a family member. Though the law tried to provide the criteria of a family member as the one who is permanently living with the landholders sharing the later income, its application has been controversial. Again, in the case of *Enat Belete Vs. Mebrat Beza*[975], the applicant claimed that the respondent has taken her land she was plowing with her deceased husband while living together with her deceased mother-in-law under the same roof. The land belonged to her mother-in law who has now passed away. On the other hand, the respondent argued she and her children were registered as "family members" of the deceased on the landholding title and they are entitled to inherit the land under the land administration law. However, CCI decided in favor of the applicant on the ground that she has a constitutional right not to be evicted from her land. In addition, the evidence has shown that the respondent has her own land, and the landholding title does not list the name of the family members rather it indicates that there are four family members. Thus, it did not recognize the respondent's claim that she is entitled to inheritance rights.

In most of rural part of the country, marriage is patrilocal which implies that women move to their husband's land or to his family house when marriage is concluded. Thus, this excludes them from

[973] Article 2 (5) of Proclamation No. 456/2005 and Article 8(5) and Article 2 (7) of SNNP Rural Land Use and Administration Proclamation No. 110/2007.
[974] Forum of Federation, Land Inheritance Rights of Women and Girls in Ethiopia: A Desk Review, p. 22 and 29.
[975] *Enat Belete Vs. Mebrat Beza* in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional issues*, Vol. 1(1), case No. 1327/07, p. 17.

inheriting land from their family based on the definition of "family member" as provided in the law.[976] In this regard, CCI has made a landmark decision which is discussed in the next section.[977]

The other cases that are brought based on legal gaps related to cases involving a polygamous marriage. The division of land in case of divorce and death of a spouse in polygamous marriage has been triggering factor for some of the cases brought before CCI/HoF. In the case of *Fatuma Hamdu Vs. Hussen Tuffa et al*,[978] Fatuma has brought the case claiming that rural land and other properties belongs to her upon divorce from Hussen. Hussen has two other wives who also intervene in the case claiming their share of the land. The lower court decided the land to be equally divided among the three wives. However, a higher court decided to divide the rural land based on who was using the land. The decision has resulted the applicant to loss her share and the other spouses to get a division of their property while the marriage is intact. CCI argued this goes against article 34 and 35 of the constitution which protects family and women rights during divorce. However, HoF dismiss the cases saying it does not involve a constitutional issue. Similar challenges are observed in other cases such as *Jamaye Wonde Vs. Workinesh Itich*.[979]

The other controversial issue is whether a rural land a married couples has been using jointly but acquired before marriage should be considered as a common property during divorce. The SNNP Rural Land and Administration Regulation entitled a husband and wife to jointly use a land they possess before their marriage and a certificate is issued for them as joint land holders.[980] It also entitled them to jointly use a land they inherited.[981] This provision has been relied upon to argue that the land which was acquired before marriage by one of spouses is considered as a common property and will be subject to equal division between the spouses upon divorce. This argument is supported in the case of *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun* by Council of Constitutional Inquiry (CCI) which argues that since a woman has contributed for the development of a land during marriage, though the land was acquired by her husband before marriage, she should

[976] Abebaw Abebe Belay and Tigistu G/meskelAbza, *supra note* 746, p. 36-37.

[977] *W/roZemedeWagawe Vs. AtoHabetamuWagagwe et al*, Case No. 2562/2010, Feb. 26, 2021, FDRE Council of Constitutional Inquiry.

[978] *W/ro Fatuma Hamude vs. Ato Hussien Tuffa*, House of Federations 5th parliament 4th year 1st council meeting, case no. ፈዴም/አፍ/5/308, Nov. 10, 2019.

[979] In this case, Jemaye had been the first wife of the deceased and Workinesh came into the scene after so many years. *Jamaye Wonde Vs. Workinesh Itich* cited in Forum of Federation, Land Inheritance Rights of Women and Girls in Ethiopia: A Desk Review, p. 30.

[980] Article 5 (2(A)) and 6 (4 (b)) of Regulation No. 66/2007.

[981] Article 5 (2 (B)) of Regulation No. 66/2007. It is important to "According to the family law of the region, the property that each spouse possesses on the day of their marriage, or that an individual spouse acquires after their marriage by succession or donation, remains their personal property unless they decide otherwise. The law furthermore recognizes "community of property" regarding property acquired after marriage, and the joint administration of family property (Berg et al., 2010; Mekonen et al., 2019)."

get an equal share of the land.[982] The decision also took into account the fact that women have a very limited opportunity to acquire land as the custom dictate land to be inherited through patrilineal line and redistribution of land has not been undertaken for long. However, the decision was reversed by the House of Federations (HoF) arguing that the Amhara regional state law (as the case arose in Amhara regional state) maintains that a personal property acquired before marriage including land remains as personal property despite the fact that the husband and wife have jointly used the land. One of the reasons for the revised Amhara regional law to maintain the personal property status of land is that its previous proclamation which changed a land acquired before marriage as common property resulted in an increase in divorce as spouses start to conclude marriage in order to get access to land. To reverse this social problem, the revised Proclamation maintained the personal property status of land upon divorce. The recently adopted Proclamation of the Sidaama regional State also stipulates that land acquired before marriage is considered as common property unless the spouses conclude a special agreement to make it personal property.[983] This shows that there is a variation in the applicable laws from region to region. Though the difference in applicable laws of regional laws in relation to administration of land is permissible as the Constitution has given a residual power to regional state on this matter, such law should not contradict the constitutional rights. In this case, whether women constitutional rights to equally acquire, transfer and use land should be considered. It is also important to consider whether the law ensure not only formal quality but also women's substantive equality.[984] Substantive equality is considered if the law can be able to address the *de facto* inequality that is created because of historical and cultural factors that excluded women from accessing, administering and controlling rural land. Thus, it is important to consider the difference in the tenure system in the norther and southern part of the country and the gendered social norms that existed in the specific place.

Similarly, in the case *W/ro Halima Mohamed v. AtoAdem Abdi*,[985] HoF maintained that a husband who inherited his brother's wife after his death should not get equal division of the land which the wife jointly acquired during the previous marriage. The HoF argued that the equal division of the land which was acquired during previous marriage will deprive the woman from her right to access,

[982] W*/ro Kassaye Eshete vs. W/ro Askale Zemedkun* (guardian of Tsehaye Tameri), Meskereme 2011 E.C (2018), FDRE House of Federation 4th year ordinary Meeting, p. 3.
[983] Article 5 (7) of Proclamation No. 27/2023.
[984] Formal equality aims to create equal opportunity for both women and men without any consideration to their pre-existing situations. Such an approach to equality does not ensure equality in outcomes. Substantive equality aims to bring equality by addressing social and cultural barriers women face. Thus, it considers the condition men and women on the ground and tries to bring equality of outcomes. It aims to bring transformative change through treatment of men and women differently by taking into account their realties and interests (Reeves and Baden 2000, 10).
[985]*W/ro Halima Mohamed vs. AtoAdem Abdi*; File No. 713/04 in House of Federation, *Journal of Constitutional Decisions*, 2009 E.C., Vol. 2 (2).

administer and control land and also affects the best interest of the children from the previous marriage. However, CCI, contrary to its decision in *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun*, maintained that the land should be considered as personal property by pointing out that the husband has another land acquired through succession in his second marriage with another women.

b. Implementation gaps

Most of constitutional dispute cases are brought to CCI/HoF by applicants dissatisfied with final court decisions. It is very low number of cases that are referred by courts for constitutional interpretation while the cases are pending before them.[986] Most of the cases brought by applicants are because of errors in evidentiary evaluation by courts. Thus, among the cases brought, only around 3% has been reviewed for constitutional interpretation. The rest did not pass the test for constitutional interpretation. The reason for this is that most people do not bring cases with an understanding of the mandate of the CCI. They are not also supported with legal experts when they initiate cases.[987]

Some of the issues that are brought to CCI/HoF relates with the gaps in the implementation of the joint certification and registration of rural land which has been implemented in Ethiopia since 1998. The first level titling involved using local materials to measure and demarcate the land. The certificate did rather than indicating a map of the land, it gives the name of the neighbours. Thus, it did not demarcate the land accurately as the certificate only indicated the neighbours not the exact demarcation and map of the land. The second level land registration is believed to resolve this problem by indicating the exact size of the land and physical location of the land on the certificate using modern technologies such as GPS. In both cases, joint land certificates in the name of the husband and wife are issued.[988] The advantage of the land registration is it has helped the established of land administration structures starting from regional up to the Woreda level. The certifications helped courts to call expert testimony on disputed rural lands. The expert testimony has been useful than the certificates which are susceptible for fraud. However, the recording and recording keeping of documents is not properly done at administrative organs. According to key informants, the first level of certification gave rise to land disputes which were resolved by local

[986] The courts referred 18 out of 3927 cases reviewed by the CCI until September 2023 based on the data obtained from CCI..
[987] Interview with informant 40, Case Flow Management Directorate Director the Secretariate of the Council of Constitutional Inquiry on March 3, 2023.
[988] Mintewab Bezabih and Dagye Goshu, *supra note* 598, p. 44.

land administrative committees. However, some of these disputes have ended up before CCI/HoF after exhausting the judicial process[989].

Though a joint registration and certification of rural land in the name of husband and wife has been carried out, the registration process was more accessible for men based on their proximity to related information and their customary role in administering land. This resulted in the absence of the name of wives in the certificate or fraudulent act of registering other female relatives instead of wife. This has led for several cases to come to courts and later to CCI. However, the land registration has been successful in certifying female headed households in their own name.[990]

The other cases representing majority of the cases involving women's land rights brought before CCI concerns land transfer. Though the constitution provides land is owned by the nations, nationalities and peoples, individuals engage in transfer of land rights through sale. Most of these cases are first taken to courts. However, courts decide on the basis of the sale agreement which trigger constitutional adjudication. For instance, in the case of *Banchamlak Dersolign vs. Abebaw Molla,*[991] the parties concluded a contract of antichresis. The defendant argued that the contract should not be taken as sale of land and the court decided supporting this argument. The CCI rejected the court's decision and held that sale of land is unconstitutional based on article 40 of the FDRE Constitution.[992] Similarly, *Aliya Dawe v. Mumad Adem* case involved the sale of land which the applicant requested to be returned. The Court accepted the validity of the sale. However, the HoF nullified the sale of the land. In the case of *Hasay Doye vs. Tinsaye Kutale et.al,* the HoF nullified a court decision that validated a sale of rural land based on article 40 (3) of the FDRE Constitution. The other cases, *Kelebe Tesfa vs. Ayelegn Derbew,* and *Muyedin Yunis vs. Nazi Aliye et. al* also involved the sale of rural land which was held unconstitutional based on the provision of the Constitution prohibiting sale of land. In these cases, CCI/HoF relied on the literal application of the article 40 (3) of the FDRE constitution which provides that land is the common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of

[989]Interview with informant 39, Constitutional Teaching and Awareness Creation Team Leader of the Secretariate of the Council of Constitutional Inquiry on March 3, 2023.
[990] Ibid.
[991]*Banchamlak Dersalign vs. Abebaw Molla in* House of Federation, *Journal on Constitutional Decisions,* Vol. 3, p. 10-11. It is also found in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, Journal on Constitutional issues, Vol. 1(1), Case No. 1110/06, p. 10-13 (ኢ.ፌ.ዴ.ሪየሕገመንግሥትጉዳዮችአጣሪጉባዔጽ/ቤትየተዘጋጀየሕገመንግሥትጉዳዮችአጣሪጉባዔየውሳኔሓሳቦች፣ ሕገመንግሥታዊጆርናል፣ቅፅ 1፣ቁጥር 1፣መስከረም 2011 ዓ/ም)
[992]Forum of Federation- Desk Review on Women's Land Inheritance Rights- the Right OF Women to Access to Justice on Constitutional Adjudication in Ethiopia: With Focus on Access to Information.

exchange. In adjudicating these cases, CCI/HoF used textual interpretation of the constitution to invalidate the sale contracts.[993]

The other cases involved protection of women from eviction. The case of *Ato Ketefo Gebreeyes and W/ro Denekenesh Jima,*[994] involves the donation of a land made by the applicants. The applicants donated the land to the respondent believing that the latter will assist them in their old ages. When they concluded the contract, they believed it was a donation contract for return of respondent assistance since they did not read the contract because of their inability to read and write. CCI invalidated donation of land given by applicants who have no other means of livelihood. The CCI invalidated the agreement based on Article 40(4) of the Constitution which provides that Ethiopian peasants have the right to be protected from any eviction from their possession of rural land. In the case of *Ato Ketefo Gebreeyes and W/ro Denekenesh Jimma*, the CCI has invalidated the donation given by applicants who are dependent because of their old age. In most cases, the CCI and HoF invalidated various private dealings on land that resulted in the eviction of the original holders of the land.

The other kind of cases that are often brough to CCI relates to disputes relates to land rental by women. In such cases, the statute of limitations for such contacts are at issue. In the case of *Alemitu Gebre vs. Chane Desalegn,*[995] the applicant requested the return of her rented land to the respondent for five years. However, the respondent objected this and argued he has rented it for fifty years. The Court to which the case was taken gave the land to the respondent stating that he has been using the land for more than fifty years and presented a legal document in support of his possession. Thus, he claimed the case is barred by the period of limitation which is fifteen years under article 1168 (1) of the Civil Code. The decision was again endorsed by the Federal Supreme Court Cassation Bench. When the case is submitted to CCI, it decided the fifty years rental of the land has cause the eviction of the applicant which goes against article 40(4) of the FDRE Constitution. This case demonstrate error in the implementation of the law by courts.

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[993] Anchinesh Shiferaw Mulu, *supra note* 960, p. 432. See also Mustefa Nasser, *supra note* 316, p. 29-30. The textual interpretation model endorses that the interpretation of a constitution should focus on what the law basically asserts through the literal and technical meaning of its provisions.

[994] *AtoKitifo Gebreyes and W/roDeneknesh Jimma vs. Besufikade Ayele*, 2009 E.C (2017), File No. 1663/08 in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional Issues*, Vol. 1(1) (ኢ.ፌ.ዴ.ሪየሕገመንግሥትጉዳዮችአጣሪጉባዔጽ/ቤትየተዘጋጀየሕገመንግሥትጉዳዮችአጣሪጉባዔየውሳኔሓሳቦች፣ ሕገመንግሥታዊጆርናል፣ቅፅ 1፣ቁጥር 1፣መስከረም 2011 ዓ/ም), p. 14-16.

[995] *Alemitu Gebre vs. Chane Desalegn*, 130 File No. 913/05, Sene 26, 2007 E.C., in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional Issues*, Vol. 1(1).

c. Lack of legal awareness

Legal awareness refers to one's knowledge of his/her rights and obligations and the mechanism to claim these rights.[996] Accordingly, for a person to claim his/her rights, he or she should be aware of his/her rights and be able to recognize its infringement.

Most cases of rural land that are brought before CCI/HoF are related to disguised sale of land. These decisions have been held unconstitutional. One of the reasons for such cases is lack of awareness. There is lack of awareness of the prohibition of land sale under the constitution. A desk review on women's land inheritance rights conducted by Forum of Federations shows that among the 18 reviewed cases by women that are brought before CCI, most of the cases relates with the sale of land which is unconstitutional.[997] Accordingly, the cases arise because of lack of awareness of the prohibition of sale of land by the parties to the dispute.[998] In addition, the lack of awareness of the formality requirements i.e. land transactions should be in written form and concluded before the authorized organ has been the reasons behind for the disputes.

Furthermore, most of the rural women are not aware of their rights to inherit land, the land rights during polygamous marriages and their rights during the conclusion of various transactions such as rental contracts as demonstrated in the cases discussed in the previous section.

7.5. Promising Gender-Sensitive Constitutional interpretation by CCI

Two cases have been selected as exemplary cases in the way they approached gender issues in the constitutional adjudication of women's land rights before CCI. These cases are selected because of the jurisprudential significance they have in interpreting rural women's land rights in Ethiopia. Below is a detailed discussion of the cases which include facts, laws, arguments, decisions (*obiter dictum* and *ratio decidandi*), and remedies of the cases.

Unlike judicial decisions which only provide a brief description of facts, issues and decisions and which are not more than three pages and confined in standard format/forms for court decisions, constitutional interpretation by the HoF/CCI have a trend of discussing in length the facts, issues and its decisions. The reasonings are also relatively elaborated. Each case is discussed below to demonstrate the gender responsiveness of the reasoning and interpretation approach of CCI/HoF.

[996] T. Geraghty and D. Geraghty, 'Child Friendly Legal Aid in Africa' in UNICEF and UNDP, UNODC,*Child Friendly Legal Aid in Africa*, Executive Summary, 2011, p. 9.
[997] Forum of Federation, *supra note* 974.
[998] Forum of Federation, *supra note* 974, p. 22.

Case 1: *W/ro Mentsegeba Germaye Vs. Yehadego Neguse*[999]

This case was decided by the CCI on 29 December 2020. It was initiated at Fana Land Administration, a local land administration and use committee, in the Regional State of Tigray, South Zone, Amba Alaje Woreda based on a complaint submitted by the current respondent, Mr. Yehdego on 26 June 2017 against the current applicant, Ms. Mentsegeba's brother. In his application submitted to the local land administration committee, the respondent, claimed that his land was expropriated for public good purposes, and as a compensation he was given the land that was being ploughed by the applicant's/Ms. Mentsegeba's brother, who has refused to leave the land.

The applicant at the CCI, Ms. Mentsegeba, was subrogated in the case as she claimed that the land belongs to her although her brother is ploughing the land for her benefit. She explained that the main reason for not being able to work on the land by herself was due to the fact that she was a fistula patient, and she is following up on medical treatment in town. Her fistula illness was confirmed by medical evidence.

The local land administration and use committee that investigated the case, decided by majority that the applicant should leave the land to the respondent. The basis for their decision was that the applicant had been benefiting from the land by giving it to another person for long while she was living in town which is not permitted by the rural land use and administration proclamation of the regional state. On appeal, the woreda court dismissed the case as unappealable. Similarly, the Regional Supreme Court Cassation bench dismissed the case by citing Article 11(5 (e) of Tigraye Regional Land Administration and Use Proclamation no. 239/2006, which states that it is "only citizens with serious psychological problems and disabilities who can use their rural land while renting it out," In its analysis, the court said that the applicant's sickness does not fall within the categories covered under the provision mentioned here and endorsed the decision that was given by the local land administration and use committee. Though this decision was submitted to the Federal Supreme Court cassation bench, it dismissed the claim by stating that there is no fundamental error of law committed in the judgement of the regional court.

As a result, Ms. Mentsegeba has submitted the application to the Constitutional Enquiry Council. In her application, she stated that the land was given to her by the government as she does not have

[999] *W/roMentsegebaGermaye Vs. Yehadego Neguse*, Case No. 2363/09, December 29, 2021, FDRE Council of Constitutional Inquiry.

parents and had been using the land since childhood. Yet, she was diagnosed with fistula in 2018, which is evidenced by medical evidence attested by three Doctors and she was advised to abstain from engaging in a difficult work/physical work and walking for long. Accordingly, she claimed that the courts have not considered the severity of her illness in their judgement when they decided to evacuate her from the land. This is against the protection of the rights of women granted in Article 35 of the Constitution and sought for constitutional interpretation.

CCI has examined the case and asserted that the applicant is a fistula patient, which has been proved by medical doctors who have advised the applicant not to engage in agricultural work as it complicates her sickness. The CCI has also looked into an expert opinion from Hamlin hospital which explained that psychological and mental problem are often associated with women and mothers who are affected by fistula. In general, the Council presented in its decision that women with fistula sickness in comparison to other women are not able to work agricultural work properly as it causes severe damage to the patient. Accordingly, the Council continued, as per Article 35(7), women have equal rights with men to use, to transfer, to administer and to control land. The applicant was entitled to use rural land under Article 40 (4) of the Constitution and was deprived of this right due to her sickness. It also noted the regional land administration and use proclamation provides protection to groups of people (for example people with severe psychological and physical problem) who are affected by some problems not to be evicted from rural land which is protected by law and the constitution. The main purpose of this provision is to protect farmers from eviction while facing critical problems. At the same time, it protects rural land ownership from being exploited by people who reside in town/city and do other businesses than agriculture. Nevertheless, people who prefer to engage in agricultural work but not able to do so due to sickness or physical disability should get constitutional protection. Thus, it is against the constitutional principle and constitutional rights of women to evict rural women who prefer to engage in agricultural work with their own rural land but not able to do so due to sickness that especially affects women such as fistula. In addition, it noted that evicting the applicant from the rural land by the act of a state organ is against the constitutional principle provided for under Article 41(5) which bestows responsibility to the State to allocate resources to provide rehabilitation and assistance to the physically and mentally disabled within available means.

Thus, CCI noted that the case requires a constitutional interpretation as the judgment of the courts on this case is against Article 35(7) and 40(4) of the constitution. It decided, unanimously, that the rural land shall not be taken from the applicant, if already taken, it shall be returned by the court that has executed the eviction.

This case is a landmark decision in its articulation of the rights of rural women to land, especially by considering the special condition of women with disability. It applied an intersectional lens by considering the rights of women with disability in addition to giving due consideration to the constitutional rights of rural women to be protected from eviction. The constitutional approach applied in this case is a right-based and gender responsive. Fistula which happens to women needs a special consideration as it affects women disproportionally. The decision considers the existing context on the ground by applying a gender responsive and intersectional approach of constitutional interpretation which emphasis to the historical, political, social and economic status of rural women with disabilities. It considered the disadvantage rural women face in addition to considering disability issues seriously. This approach of constitutional interpretation goes in line with Tigist and Teguadda proposal for intersectional approach in designing a new social contract which is "an expansive and inclusive understanding of the multi-layered social and political realities that deeply affect citizenship rights."[1000] The FDRE Constitution's current emphasis on "a phase-by-phase exclusivist approach to reconcile historical grievances" by addressing ethnic identity issues has deemphasized other forms of human rights struggles including women's rights.[1001] However, the intersectional approach to constitutional designing or interpretation (as used in the case discussed) helps to consider overlapping rights by addressing structural discrimination.

Case 2: *W/ro Zemede Wagawe Vs. Ato Habetamu Wagagwe et al*[1002]

This case was decided by the Constitutional Enquiry Council on 26 February 2021 based on an application submitted on 20 September 2017 by Ms. Zemed Tsegaw. The case started in the Amhara regional state when the applicant submitted a case against the first two respondents while the other two respondents were subrogated to the case.

In the lawsuit presented at the local woreda court, the applicant submitted that she was raised as a family member by her grandparents and when she moved to another place as a result of marriage, she along with her husband used to benefit from ploughing the land of her grandparents. Following her divorce, she moved to Lalibela town and when her grandfather passed away in 2011, she claimed that she is entitled to land inheritance as a member of the family.

[1000] Tigist Shewarega Hussen and Teguadda Alebachew Sete, 'Women's Rights and Ethiopia's Future Social Contract: The Need to Adopt an Intersectional Approach' in Abadir Ibrahim and Kokebe Wolde, 2022, *Between Failure and Redemption: The Future of the Ethiopian Social Contract,* Proceedings of a Convening of Scholars on Ethiopia's Constitutional Future p. 95.
[1001] Ibid.
[1002] *W/ro Zemede Wagawe Vs. Ato Habetamu Wagagwe* et al, Case No. 2562/2010, Feb. 26, 2021, FDRE Council of Constitutional Inquiry.

The respondents (defendants in the court litigation) argued that the applicant was not a family member of the deceased. She was not registered as a family member in 1997 EC and when she moved after marriage, she was given two plots of land. Thus, they argued the case should be dismissed.

The woreda court that presided over the case decided in favor of the applicant and ordered the defendants to return the land to her by confirming that she did not have any land and is a family member of the deceased. The defendants appealed to the zonal high court and the case was dismissed.

The case was submitted to the Amhara Regional Supreme Court Cassation bench, which has overturned the decision. In its judgement the court has applied the Regional Rural Land Administration and Use Proclamation 133/06, Article 2(6) which defines "Family Member" to mean any person who permanently lives with the land holder sharing the livelihood of the later and who doesn't have his own regular income. Nevertheless, the applicant's family membership is disconnected when she married and moved while she was also given land to be self-sufficient. Thus, the court has claimed that there is "basic error of law" committed by the lower courts while adjudicating the case and decided that the applicant does not have any entitlement to inherit the land holding. The Federal Supreme Court Cassation bench also confirmed the Regional Supreme Court Cassation bench decision confirming that there is no basic error of law on the decision.

The applicant submitted an application to the CCI claiming that her family membership registration is well evidenced, and she was making a living out of the land holding after moving out due to her marriage. Furthermore, she contested that the courts did not investigate whether the land claimed to be gifted to her after marriage was actual or not. Accordingly, she contested the judgment of the courts claiming that it violates her constitutional right under Article 40 which provides the protection against eviction from the possession of rural land.

The CCI has examined the case and asserted that the decision of the courts to disallow the inheritance of the applicant from land holding is based on the interpretation of the regional law that appears to imply a woman who has left her family through marriage will never come back to join the family. Accordingly, the CCI has commented on the judgment of the regional supreme court by considering the patrilocal practice of the country stating that women would tend to move out with their husband while men would bring their wife to the family when married. There is no law that prohibits someone who left the family due to marriage or any other situation from returning to the family. Thus, the Regional Supreme Court's decision to disinherit the applicant reasoning that she is

not a family member due to the fact that she left her family when she was married contravenes the constitutional principles enshrined as the rights of women and right to marry and found a family. Thus, the CCI decided, unanimously that judgment given on the applicant that disallowed her inheritance is unconstitutional and hence null and void.

This decision again considered the contextual factors that affects women from accessing land. Such a decision can be considered as gender sensitive in its articulation. It also tackles the wrong message by the courts that if a woman is divorced, she won't be able to unit with family and be entitled to inherit land.

These two landmark decisions can be considered to showcase that the Constitutional Inquiry Council is making decisions in gender responsive manner.

7.6. Barriers to Access Justice to Rural Women's Land Rights

According to existing theories on help seeking, different factors and considerations determine a women's choice to seek justice from the formal justice systems. She takes into consideration the consequences of taking her case to a formal justice system. The factors that play out in her choice involves financial cost of justice in terms of monetary costs and social costs such as loss of privacy and social stigma for bringing a case despite the existing social norms.[1003] The availability and level of support from relatives and friends are also important factors. The emotional cost of the justice process should not also be underestimated.[1004] It is only after taking these interpersonal and socio-cultural factors into consideration that a woman will be able to seek justice.

In legal systems where various efforts are made to reduce the costs of pursuing justice through provisions of legal aid, social support programmes and making the justice system accessible to women, women choose the formal system where their rights are respected.

However, in a setting where culture and religious values are entrenched, the constraints are felt much strongly. The discussion below elaborates the major factors that puts barrier for women to access justice. These various social or institutional barriers in Ethiopia may not be unique for women but applies to men too who goes through judicial and constitutional adjudication process.

[1003] Belle Jiang, Lisa Goodman, Pratyusha Tummala-Narra and Sarah Weintraub, A Theoretical Framework for Understanding Help-Seeking Processes among Survivors of Intimate Partner Violence, *American Journal of Community Psychology*, vol. 36, Nos.1/2, 2005, p. 78.
[1004] Belle Jiang, Lisa Goodman, Pratyusha Tummala-Narra and Sarah Weintraub, *id.*, p. 80.

Some of the limiting factors for women's access to justice and constitutional interpretation mechanism is lack of awareness of how the mechanism works, financial setbacks, lack of legal aid services, language barriers, protracted time for decisions, and procedural complexity.[1005]

a. Lack of awareness

Most women are not aware of how a court proceeding goes and how they can litigate before a court of law. This has been one of the reasons women hesitate to bring cases before a court of law.[1006] Court proceedings are not also friendly to most people. The legal terminologies that are utilized before a court of law is difficult for rural women to understand. Let alone to rural women, courts are very scary places for most people.[1007]

Interactions in courts are mostly supported by legal experts who request professional fee for their services. Lack of support from legal experts because of financial setbacks has been one of the reasons for rural women's hesitant to bring any claim before a court of law. Furthermore, most of these lawyers are available in urban areas which are far away from rural women.[1008] Thus, in addressing this problem, legal aid or pro bono services by lawyers are very important.

In Sidaama, inheritance is patrilocal, and most cases are taken to customary justice system. There is no case brought before CCI on the constitutionality of decisions by customary justice system. This is attributable to rural women's lack of awareness of the constitutional review mechanism and legal framework that determine the link between regular justice system and customary systems. Though the constitution allows family and personal matters to be handled by the customary justice system, a detailed rule on recognizing these types of courts and regulating their relationship with the regular justice system including the constitutional review mechanisms has not been adopted except by the Oromia regional state.

b. Linguistic barriers to access to justice in Sidaama Regional State

The FDRE constitution recognize the right to language of every nation, nationalities and peoples of Ethiopia. While it has recognized Amharic as a federal working language (note that it is not a official language or national language), regional states can choose their own regional working language. The constitution preferred to set working language not national or official language in line with its promise to give all languages in the country equal recognition. To be more inclusive,

[1005] Forum of Federations, Policy Brief: Land Inheritance Rights of Women and Girls in Ethiopia, 2020, p. 2.
[1006] Interview with informant 26, at EWLA Hawassa Branch conducted on 12 May 2022.
[1007] Interview with Chairperson of Kebele's Women Association/Women's League, conducted on Aug. 12, 2022.
[1008] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 19.

there is an initiative at policy level to include more languages as federal working languages which opens opportunities for all to access services including court services in their preferred language. In practice, the use of translator at federal court level has reduced the challenges related to language.

In the context of Sidaama Regional State, the regional courts comprising of SNNP Supreme Court, SNNP High Court and SNNP first instance courts used to use Amharic as its working language before the Sidaama Zone became autonomous regional state. At the time, Sidaama was organised as a Zonal administration and its courts (Woreda and Zonal courts) used to adjudicate cases using the Sidaama language. This was convenient for the local people who speak and understand Sidaama. However, they used to incur translation costs when they bring their cases to regional courts (SNNP Supreme Court and SNNP High Court) on appeal or to federal Supreme Court as a cassation matter or to the House of Federation. After Sidaama was organised as an autonomous regional state, *Sidaamu Afoo* become the working language of the regional state including courts. This transition has however affected those who do not speak, read and write *Sidaamu Afoo*. This group of people includes those from Sidaama, or outsiders. Because of the change in the regional courts' language to *Sidaamu Afoo*, all documents submitted to these courts are required to be in *Sidaamu Afoo*. Furthermore, professional lawyers who do not speak *Sidaamu Afoo* are not anymore able to work in Sidaama regional state's courts because of language barriers. Though the adoption of *Sidaamu Afoo* language is a natural consequence of autonomy, dual or multi language policy could have been adopted as transition.

When it comes to women, this has created a huge financial burden on them who must not only cover court fees, lawyer's fee but an additional burden of paying for translation of court documents and court interpreters.

C. procedural complexity

There is multiplicity of judicial organs one has to exhaust before a case reaches the CCI or take cases to the highest courts on appeal.[1009] For instance, if a women's land case arises in Sidam regional state, it should first go to LAC, if settlement is reached or the parties do not agree with its decision, it goes to Woreda court. If one of the partied are not satisfied with the decision, it goes to the zonal court or state high court on appeal. If the zonal court or state high court reverses the decision, then it goes to regional Supreme Court. There is again a chance for the case to be reviewed through the state cassation court if there is basic error of law. If it was not to the new

[1009]Brightman Gebremichael Ganta, *supra note* 1, p. 322.

Proclamation which limited cassation over cassation for reasons specific under the law,[1010] it would again have the chance to go to the cassation division of the Federal Supreme Court. Exhausting the available remedies before these judicial organs requires a substantial money and time. One can imagine that this is unaffordable for a rural woman whose has a sustenance livelihood. The multiplicity of judicial organs is put in place to correct any error that may happen in adjudication of cases, it might be misused and abused by the parties to a case. To reduce the possibility, double appeal is prohibited i.e., the parties should only have one appeal chance unless the decision is reversed on the second appeal.[1011]

d. Physical accessibility

Women face difficulty to access courts and HoF/CCI because of lack of awareness and physical accessibility. Courts are located in distant places from the home of women. This is especially the case for a woman who wants to pursue an appeal before a higher court which are located at Zonal or regional level. In the Sidaama Regional State, appellate courts are located at regional level at Hawassa. Though there are mobile/circuit courts, this happens in a very limited case.

Similarly, CCI/HoF is located in Addis Ababa which is distant from rural areas. In case of constitutional cases, an application can be sent through post and email to CCI/HoF. However, it is difficult for rural women to have access to these channels.[1012] Furthermore, women are not aware of the requirement in making an application to courts and CCI.[1013]

Coming to Hawassa and Addis Ababa to submit a case is costly and time consuming for rural residents. Rural women may face varies setbacks such as expenses to cover costs of transportation, accommodation, meal etc while they are in Hawassa and Addis Ababa. Though CCI had a plan to open branch offices, this has not yet materialized.[1014]

e. Inadequacy of legal aid services

As discussed above, legal technicality in courts makes it indispensable to having legal assistance in court litigation. This requires examining the existing free legal aid services available to the public.

[1010] Article 10 (1(d)) cum. Article 2 (4(b)) of Proclamation No.1234/2021 provides cassation over cassation in circumstances when the decision by the State cassation division involves constitutional matters, misinterpret the law or apply wrong law in a way that it affects public interest and have a national importance and when it fails to apply the binding decisions of the Federal Supreme Court Cassation Division.
[1011] Brightman Gebremichael Ganta, *supra note* 1, p. 322.
[1012] Interview with informant 38, Case Flow Management Directorate Director, Secretariate of Council of Constitutional Inquiry, March 3, 2023.
[1013] Ibid.
[1014] Ibid.

Various institutions such as law departments of universities, prosecutors offices and CSOs provide legal aid service to indigent members of the society. Furthermore, lawyers are required to handle three cases free of charge annually.[1015] In the study area, Hawassa University, Center for Human Rights of Addis Ababa University, EWLA, Mizan Youth Lawyers Center, public prosecutor office at regional and woreda level provide free legal aid services. [1016] According to informants, most applicants in rural areas are not supported with legal aid since legal aid and *pro bono* services are urban centered and it is difficult for the rural population to access it.[1017]

Furthermore, the high demand and the available service do not match. There is also limited collaboration and coordination among the legal aid providers though there have been efforts to coordinate the service provided by various stakeholders.[1018] Though there has been efforts to adopt strategy for legal aid service since 2013, it is very recently that the strategy of legal aid is approved at the federal level. Thus, there is lack of standardized guidelines for the provision of legal aid that takes into account the needs of women and other vulnerable groups.[1019] It is important that free legal aid services are made available, accessible and standardized by establishing systems and procedures for a quality service.

In relation to CCI, it neither provide legal aid nor have a referral mechanism for legal aid services. Thus, rural women do not have access to legal aid. This has created difficulty for them to support their cases with evidence.[1020] In recent years, CCI started to refer cases to legal aid centres such as to Addis Ababa University legal aid centre and bar association centres. However, there is no formal cooperation to facilitate legal aid services for users of CCI.[1021]

f. financial setbacks

Most women are hesitant to bring cases because of the cost it involved. Court cases involve paying court fee, covering per diem and transportation costs for witnesses and for oneself and translation fee (to translate documents to Sidaama if they are in other languages) and paying lawyers' fee. These costs are burdensome for rural women.[1022]

[1015] Article 31 (1) of Federal Advocacy Service Licensing and Administration Proclamation No. 1249/2021.
[1016] Interview with Informants 02, 11, 23 and 29 who are president of Mizan Youth Lawyers Center, AAU-CHR Legal Aid Centers, and EWLA-Hawassa Branch respectively.
[1017] Ibid.
[1018] Anchinesh Shiferaw and Ghetnet Mitiku, *supra note* 899, p. 30.
[1019] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse, *supra note* 18, p. 19.
[1020]Interview with Constitutional Teaching and Awareness Creation Team Leader of the Secretariate of the Council of Constitutional Inquiry on March 3, 2023.
[1021] Interview with CCI Director, Case Flow Management Directorate Director of the Secretariate of the Council of Constitutional Inquiry on March 3, 2023.
[1022] Interview with Director of EWLA- Hawassa Branch Office, on 12 May 2022.

An application to CCI/HoF is free of service charges.[1023] Though there is no payment to submit application and to be reviewed by CCI/HoF, transportation and accommodation cost, and cost of hiring a lawyer to get legal advice, are some of costs rural applicants incur. Though the law envisages for *pro bono* services by lawyers and made it a requirement/mandatory for a lawyer to provide free services for free for three cases per annum,[1024] it is not clear whether it applies to constitutional cases.

g. Protracted time for decisions,

The House of Federation is required to give prompt decisions. The FDRE Constitution provides that it should decide on cases with recommendation from CCI within thirty days.[1025] However, the fact that the HoF meets twice a year made this promise to decide on cases within thirty days untenable. Considering this, the recently adopted Proclamation to define the power and responsibilities of the House does not prescribe any timeline within which the House has to make decisions. It rather provides that house should make its decision within a short time.[1026]

Similarly, CCI Proclamation left the determination of the period of time within which to render its recommendation to a directive to be issued by Council.[1027] From the cases reviewed, decisions take years to be concluded. The backlog of cases has made is difficult for CCI to give decisions in reasonable time.

Though the practice shows women are given priority when they bring cases related to marital problems, inheritance and juridical acts, it still takes long time to get final decisions. However, there is an argument that priority should not only be given when women bring cases but also when the case concerns women's issues too.[1028]

Chapter Summary

Women's access to justice is important to claim and defend their rights. This right can be enforced when the formal and informal justice system is available, accessible and render fair and just remedy. As discussed in this chapter, women face various barriers to access justice for the

[1023] Article 14 of Proc. No. 798/2013 a Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE and Article 10 (1) of Proclamation No. 1261/2021. However, article 10 (2) of proc. No. 1261/2021 provides that an applicant may be required to make service payment in accordance with a Regulation issued by the House.
[1024] *Supra note* 1015.
[1025] Article 83 (2) of the FDRE Constitution.
[1026] Article 18 of proclamation No. 1261/2021.
[1027] Article 12 (3) of Proclamation No. 798/2013 a Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE.
[1028] Interview with Constitutional Teaching and Awareness Creation Team Leader of the Secretariate of the Council of Constitutional Inquiry.

protection of their land rights. Women bring land cases before the formal justice system in the context of marital case, inheritance, polygamy, trespass and land encroachments. The courts make decision based on available law. However, the gap in the law and in its implementation has created a challenge for women to pursue justice before the formal legal system. Inconsistency in decisions, lack of uniform application of the law by courts and the law's failure to take into account the existing gap between in the law and the reality on of the ground have been the main reasons for inconstancy in some of courts' decisions.

Furthermore, lack of awareness and gaps in the implementation of rural women's land rights have resulted in several cases to be brought before CCI/HoF. Some of these cases could have been corrected at court level based on the constitutional rights provided under the FDRE Constitution. This has increased case load at CCI/HoF level. CCI/HoF should have only entertained constitutional disputes which involve constitutional interpretation but have been used as a mechanism to review judicial decisions. This is reflected in its approach which sometimes goes into inquiring about the evidence that was presented before a court of law. There is lack of clarity on the screening procedure to determine the kind of cases that are reviewable for constitutionality though they have passed through the court.

The legal gaps observed in relation to women's land inheritance rights, land as common/personal property during marriage and the effects of polygamous marriages on women's land rights are the causes for cases to be brought before courts and CCI/HoF. It is important that land laws are reviewed to make them gender responsive by analyzing their implication on gender equality though the approaches adopted by the courts demonstrate that courts play a role in rectified the impact of laws in practice. Though the CCI has been applying a gender responsive approach in some of its constitutional interpretation methods, this should be supported through various measures including legislative measures.

Women's access to constitutional adjudication should also be improved by giving priority to cases involving women's rights. Based on support structure for legal mobilization doctrine, access to constitutional adjudication can be realized when there are non-restrictive standing rules, upon removal of barriers to access justice including physical and financial barriers and through speedy/expedite disposition of cases. Legal awareness at grassroot level on rural women's land rights should be strengthened by government organs and legal institutions. It is also imperative to facilitate the availability and accessibility of legal assistant to rural women. Strengthening the implementation of land governance and administration to tackle challenges in recordings, fraud etc is also important steps towards the protection of rural women's land rights.

Chapter Eight: Effects of Formalization of Women's Land Rights in the Sidaama'sPlural Justice System

Introduction

As discussed under chapter one, land is the main economic resource on which human life depends for food, shelter, and income. Beyond it being an economic resource for our basic needs, it plays a significant role in determining the social and political status of individuals in rural society. Land entitles individuals power over others.[1029] It is also intertwined with cultural identity of people which mostly generate an emotional reaction when there is land related dispute.[1030] Thus, access, control and use of land are crucial for rural people to generate primary livelihood and lead a dignified life.

Among the section of the society that has limited access to land are women. These have been the case because of discriminatory norms and practices entrenched in the society. This calls for recognition of women's access, control and use of land that brings the full enjoyment of human rights such as the right to equality, food, health, housing, water, work and education.[1031]

In Ethiopia, land is attached with significant political, economic, and social value. It led to uprisings in the Ethiopian political history as discussed under chapter five.[1032] As illustrated under chapter six, considering the important place land has in the life of citizens, the government has embarked in land formalisation process. As has been discussed under chapter six, one of the consequences of formalisation of women's land rights through land registration and titling is an increase in women's awareness of their rights to use, administer and control land.[1033] This awareness and recognition of their rights is very useful to improve their bargaining power at the household level and to be able to participate in decisions related to land and its products.[1034] Some prior studies have demonstrated that the joint land certification and registration has improved equitable division of property during divorce and increased rural women's income during land rental.[1035] There are plenty of studies that

[1029] Daniel W. Ambaye, *supra note 25*, p. 27.
[1030] Birhanu Nega, Berhanu Adenew and S. Gebre Sellasie, 'Current Land Policy Issues in Ethiopia' in *Land Settlement and Cooperatives*, Land Reform, 2003/3, Special Edition, Ethiopian Economic Policy Research Institute, Addis Ababa, Ethiopia, 2003, p. 103.
[1031] United Nations Office of the High Commissioner for Human Rights (UNOHCHR) & UN Women, *Realizing Women's Rights to Land and Other Productive Resources*, 2013, p. 3.
[1032] *Land to the tiller* was the underlining questions that instigated the uprising of peasants and students' movement starting from 1950s to 1970s as discussed under chapter five. See Bahru Zewde, *A History of Modern Ethiopia 1855-1991*, 2002, Addis Ababa University Press and Research and Graduate programme Office, Addis Ababa.
[1033] Monterroso I, Enokenwa O and Paez-Valencia AM, *supra note* 694, p. 11.
[1034] D. Rahmato,*supra note* 12,, p. 82 and 85. See also Ayelech Kidie Mengesha, Reinfried Mansberger, Doris Damyanovic, Sayeh KassawAgegnehu and Gernot Stoeglehner, *supra note* 578, p. 8.
[1035] E. Adgo, E. et al. (2014), *Supra note 32*, p. 43-44; H. Girma and R. Giovarelli, 'Lesson 2: The Gender Implications of Joint Titling in Ethiopia' in *Focus on Land in Africa Brief,* 2013 available on

demonstrated the effect of land titling on land productivity and women's empowerment. These studies have demonstrated that land productivity has increased after land certification and female-headed households were able to rent out land and sharecrop with a higher price after the certification.[1036] Others have discussed how land certification contributed towards decreasing land related disputes.[1037] The certification programs have an impact of changing social relations and women's positions in the society. However, there is dearth of studies that investigating the effect of land registration and titling on the delivery of justice by the formal and informal justice systems (in plural legal setting) as discussed under chapter one.[1038]

This chapter examines the contribution of the land certification and registration program in land related proceedings before the formal and informal justice system. The chapter critically reflects on various roles the land registration and titling played in the adjudication of cases before the formal and informal justice system. Moreover, it examines the effects of the plural legal system on the protection of rural women's land rights. The chapter draws from the data collected from May 2-16, 2022 and July 18- Aug. 1, 2022 in the Sidaama Regional State with a view to navigate through the lived experiences of rural women to access justice in case of land disputes.

This chapter is organised as follows. The section following the introduction gives a brief overview of the notion of legal pluralism, legal centralism and legal hybridity. The second section discusses the effect of formalisation of women's land rights in the study site. The third section deals with the normative pluralism on rural women's land rights in Ethiopia using Sidaama as a case study. The fourth section deals with the settlement of rural women's land disputed in the plural legal system. It analysed the nature of land disputes, the avenues to resolve such disputes and the relationship between the formal and informal justice systems. The last section before the conclusion examines the changes in the local norms through vernacularisation of rural women's land rights.

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https://gatesopenresearch.org/documents/3-1018 (accessed on 28 July 2022), p. 6; UN Women, *Women's Land Rights and Tenure Security in the Context of the SDGs Situation Anlaysis Report Ethiopia* (final draft), 2019, p. 4; S. Bezu and S. Holden, "Demand for Second-Stage Land Certification in Ethiopia: Evidence From Household Panel Data", *Land Use Policy*, 2014, p. 195; S. Holden, K. Dininger and H. Ghebru, "Tenure Insecurity, Gender, Low-Cost Land Certification and Land Rental Market Particpation in Ethiopia", *Journal of Development Studies,* Vol. 47, 2011, p. 31-47, S. Holden and T. Teferra, *Land Registration in Ethiopia: Early Impacts on Women: Summary report*. UN-HABITAT, 2008.

[1036] S. Holden, K. Deininger and H. Ghebru, *supra note* 784, p. 370; K. Deininger, D. Ali and T. Alemu, *supra note* 785, p. 312–334; S. Holden and H. Ghebru, "Welfare Impacts of Land Certification in Tigray, Ethiopia" in S. Holden, K. Otsuka, and K. Deininger (eds.) *Land Tenure Reform in Asia and Africa: Assessing Impacts on Poverty and Natural Resource Management*, Palgrave Macmillan, London, 2013, p. 137; S. Holden, K. Deininger, and H. Ghebru (2011), *Id*, p. 31-47; S. Bezu and S. Holden (2014), *Id*., p. 195.

[1037] D. Rahmato,supra note 12, p. 17.

[1038] The only study that has tried to look into the land related violence against women is the study by Mekonen, W. et al (2020). entitled as *Strategy for Preventing and Mitigating Land Certification Related Violence against Women and Vulnerable Groups.* However, this study did not look into the effect of the land certification on the plural justice system.

8.1.The Concept of Legal Pluralism, Legal Centralism and Hybridity

Legal pluralism 'is generally defined as a situation in which two or more legal systems coexist in the same social field'.[1039] In other words, it permits the operation of two or more legal systems simultaneously. Plurality of legal orders and competing ideas of right and wrong – or rights and duties are created because of the existence of cultural difference which brings different legal adjudication and enforcement mechanisms.

The recent definition of legal pluralism goes one step further and define it as "a situation in which people could choose from among more than one co-existing set of rules" while legal plurality refers to "co-existence of multiple (sub-)legal systems within one state, to cater to different categories of persons who had no option to choose from among these bodies of law".[1040]

Legal pluralism is created when there are customary legal systems or informal legal systems that exist in parallel with the state/formal legal system.Here, it is important to dissect three concepts: legal centralism; legal pluralism and hybridity of laws and implementation.

Legal centralism argues

> law is an exclusive, systematic and hierarchical ordering of normative propositions, which can be looked at either from the top downwards as depending from a sovereign command or from the bottom upwards as deriving their validity from ever more general layers of norms until one reaches some ultimate norm . . . It is the factual power of the state which is the keystone of an otherwise normative system, which affords the empirical condition for the actual existence of 'law'.[1041]

According to this theory, "law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions."[1042] Any other normative order other than the state is considered to be subordinate to the state law. Laws that emanate from the church, community, economic organizations, or from any other entity is expected to be a lesser normative order and should be hierarchically subordinate to the state law.[1043] This

[1039] Sally Merry, "Legal Pluralism", *Law and Society Review*, Vol. 22, No. 5, 1988, p. 870.
[1040] Keebet von Benda-Beckmann & Bertram Turner, "Legal Pluralism, Social Theory, and the State", *The Journal of Legal Pluralism and Unofficial Law*, vol. 50 (3), 2018, p. 262.
[1041] John Griffiths, "What Is Legal Pluralism?", *Journal of Legal Pluralism*, 1986, p. 3. See also Ambreena S. Manji, "Imagining women's 'Legal World': Towards a Feminist Theory of Legal Pluralism in Africa", *Social & Legal Studies*, Vol. 8(4), 1999.
[1042] Griffiths, Id., p. 3.
[1043] Ibid.

conceptualization underlines that there is '[a] necessary connection between the conception of law as a single, unified, and exclusive hierarchical normative ordering and the conception of the state as the fundamental unit of political organization.'[1044]

However, the empirical evidence and the reality on the ground have shown that law is not monolithic, it is rather plural, and it is not only public but private one as well.[1045] The ideals of legal centralism are considered as idealistic claims which do not reflect the reality on the ground. Legal pluralism has been the factual phenomenon. This is more pronounced in countries with a history of colonialism or legal transplantation from outside. Since there is pre-colonial legal system that pre-existed the colonial law, the imposition of the later creates the existence of plural legal systems.[1046]

Scholars who took the middle ground between legal centralism and legal pluralism argued that a law other than the state can be considered as law if only recognized as such by the state law. This came to be understood as "normative legal pluralism". However, this idea was challenged as there were non-state laws such as religious laws that are considered as laws even though the state has not recognized them as such. This bought the idea that various laws or legal systems can co-exist on equal footing with the state legal system. This later idea takes legal pluralism to mean the coexistence of the various legal systems independently of each other with their own legitimacy and validity.[1047]

However, recent scholarships have added another conceptualization and pointed that there is interaction among the various legal systems. This conceptualization is known as hybridity. Accordingly, the intersection of different legal systems leads to the transformation of these legal systems in the way that the past will continue to exist in its transformed form.[1048] This requires a constant process of negotiation and renegotiation. In hybrid system, the various legal systems overlap without one displacing the other. It results the various legal systems supplementing each other rather that replacing one another.[1049]

Legal pluralism does not only result in plurality of legal norms but also judicial plurality/institutional legal plurality. The sections below discuss the effects of the normative

[1044] Ibid.
[1045] Griffiths, Id., p. 4.
[1046] S.E. Merry, *Supra note* 1039, p. 869.
[1047] Benda-Beckmann & Turner, *supra note 1040*, p. 263.
[1048] N. Fairclough, *Discourse and Social Change*, 1992, p. 64-65.
[1049] S. MuÈller-Mall, *Legal Spaces: Towards a Topological Thinking of Law*, Springer Science & Business Media,2013, p. 12-13.

plurality and the institutional legal plurality on women's land rights after discussing the effects of formalization of rural women's land rights in the Sidaama Regional State.

8.2. The Effects of Formalisation of Rural Women's Land Rights in the Sidaama Regional State

As discussed under chapter two, the formalisation of women land rights by the state has the advantage of protecting rural women from land alienation by investors, local elites and private individuals. It brings both social and economic benefits to women. Women's access to land is also fundamental to ensure their social inclusion and facilitate their access to agricultural inputs. It is also an important factor to sustain cultural and collective identity.[1050] Furthermore, the formalization of land rights through land certificates can play an important role in the judiciary enforcement of women's land rights by serving as important evidence in the adjudication process of land claims by women.

Ethiopia has introduced a land registration and certification program in the late 1990s. Previously, land registration was limited in some parts of the country and does not include joint ownership. In the Southern part of the country, for example traditionally the land tenure system was characterized by patrilineal inheritance and virilocal residence.[1051] While this was the widespread phenomenon in the country, the constitution guarantees gender equality in all its aspects. It is hence the proper enforcement of the constitutional provisions that necessitated the land registration program. As some of the studies discussed under chapter six demonstrated the program promoted women's rights through joint rural land titling in the name of a husband and wife. It has empowered female-headed households to rent out their land. However, the effect of the land registration in improving their awareness of the rightsand in empowering women in decision making process at the household level differ from place to places.For example, in one study it was found out that the joint titled women are more informed about their land rights and have improved lobbying capacities than untitled women.[1052] While there are anecdotal examples about the level of awareness increase, one may not aptly say that the right holders are fully aware of their rights.The findings of this study are also a mixed bag. According to an informant,

[1050]Jennifer C. Franco, *supra note* 113, p. 5.
[1051] Clarissa Augustinusn *et al.,* Land Certification in Ethiopia - Early Impacts on Women Copyright © United Nations Human Settlements Programme (UN-HABITAT), 2008
[1052] Adane Dabissa, *Impacts of Joint Land Rights Titling on Women Empowerment: Evidence from Ethiopia* Master Thesis, University of Wageningen, 2013, p. 36.

I have not yet got a certificate though the joint land I have with my husband is registered. The land registration is undertaken only in the presence of my husband without involving me. Since we have not yet got the certificate, I don't know the benefit of it.[1053]

It is not common for a wife to ask her husband to have a joint land certificate when the marriage is intact.[1054]

Another two informants retaliated:

The certificate has increased my awareness of my rights to land. I know I can get the share of the land upon divorce.[1055]

The land certification has ensured equality between men and women. Women now can claim their rights.[1056]

The existence of informal land transactions called *Kontract* has affected rural women's land rights despite the certificate program. Even if the law prohibits a husband from entering into any transaction on the land (land rental or donation) without the consent of his wife,[1057] there is plenty of evidence that the existing practice does not respect this rules and most of land transactions are made without the wife's consent through informal transactions.[1058] Though these kinds of transactions can be made null and void if the wife files a complaint within two years of knowing the transaction, most rural women do not bring cases because of either lack of awareness or not taking their rights seriously.[1059]

This is also aggravated by lack of mechanism to ensure update of land registration upon any transactions is made by the land holder and a third party. Since most of the transactions are made informally, there is no means for the government to trace them and update the registry. This also in turn reduces the ability of a wife to know about such transactions entered by her husband or vice versa. Though the law does not recognize any transaction on the land which does not fulfill the formality requirements i.e. to be in writing and concluded before an authorized agency, third party

[1053]Interview with informant 53 conducted on July 21, 2022 at Dori Bafano.
[1054]Interview with informant 55 conducted on July 23, 2022 at Morich town.
[1055] Interview with informant 47 on July 19, 2022 at Sheberdino.
[1056] FGD with five participants on July 26, 2022 at Alawa Ano Kebele.
[1057] Article 10 (3) and 12 (5) of the Sidaama Regional StateRural Land Use and Administration Proclamation No. 27/2023.
[1058] Interview with Director of Ensuring women, Children and Youth Inclusion and Benefit Directorate at Sidaama Regional States Women, Youth and Social Affairs Bureau on 04 May 2022 at Hawassa.
[1059] Interview with a judge and Registrar at Hawassa Area High Court on 04 May 2022 at Hawassa.

have the right to be reinstated to their positions upon proving that they entered in the transaction in good faith. There are a number of cassation decisions on such matters which supported this position.

According to informants, the land registration and certification program has increased government revenue through taxation. The certificate serves as evidence during dispute. Furthermore, the land certificate is like "money saved" since it helps women to claim their rights during divorce and land related disputes.[1060] However, the land registration process has its own challenges. According to one of the informant accounts

> *the registration process of land has taken more than five years in my village. If I wait for its registration, it is going to take a longer period of five to ten years. Thus, I have applied to the Kebele requesting its registration which would take a year. This process in the administration of land discourages most from getting their land registered*.[1061]

Most of the informants also confirmed that the land certification and registration has increased women's confidence and decision-making power at the household level to a very moderate level. According to informant,

> *I am a third wife and has three children. I now hold my own land after I got divorced. The land was joint land with my ex-husband. We used to plant Enset, maize, trees, and coffee. It was my ex-husband who plowed the land. During that time, he sales the crops and used to give me money only for household expenditures. He does not disclose the amount of money he earned and he gives me the money for household expenses after negotiating with him. .... During the divorce proceeding also the certificate helped me to claim my share*[1062]

Thus, the Certificates contribution in the household decision making dynamics was minimum based on the qualitative evidence of this study. The certificate rather was useful when there are legal disputes. Female head of households confirmed this by saying that "I got my own land.Whenever there is a land dispute, the certificate serves as proof of my ownership. Furthermore, the certificate protects me from external interference."[1063]

[1060] Interview with *Chairperson* of kebele's women association/women's League, conducted on Aug. 12, 2022.
[1061] Ibid.
[1062] Interview with informant 47on July 19, 2022 at Kebel- Dila Chanega Worda- Shebedino.
[1063] Ibid.

The subsequent section discusses the roles and effects of the formalization of rural women's land rights in the administration of justice in a plural legal setting in the Sidaama Regional State.

8.3.Normative Legal Pluralism on Rural Women's Land Rights in Sidaama Regional State

The normative systems that are applicable at the level of various legal orders overlap to most extent exhibiting variation to some extent. At the international level, there is the international legal order that plays a role in human rights norm and standard setting. As discussed under chapter four, the international legal framework has recognised women's equal rights to access, control and use land with men in binding conventions.[1064] This international legal framework is expected to be enforced by the national laws including by the Sidaama regional State.

In this relation, the Sidaama Regional State has adopted its own regional land law. The Sidaama Rural Land Administration and Use Proclamation No.27/2023 has provision regarding women's equal access to such critical resources. According to article 5(4) of this Proclamation, a woman who wants to engage in farming can access and use rural land for free. It also upholds that rural land that is held jointly by a husband and wife should be registered in the name of both.[1065] A rural women who are above the age of 18 and interested to engage in agricultural activities have the right to access and use agricultural land.[1066] The Sidaama Regional land law protects female heads of household to use their land rights. Women are entitled to obtain land certificate in their own name when they are female heads of households or jointly with their husband when they are married. It also protects those women whose husband is away to use the rural lands and obtain land certificates in their own name.[1067] It furthermore provides that a husband and wife are entitled to a joint holding certificate.[1068] Accordingly, a jointly owned rural land can only be leased or exchanged upon the consent of both the husband and wife.[1069] If the consent of one of these parties is missing, the lease or exchange contract will be void. In addition to this law, the family law of SNNP is still applicable in the Sidaama regional state until a new family law of the region is adopted.[1070] The law on

[1064] Article 14 of CEDAW and article 19 (C) of Maputo Protocol are the binding instruments that protect women's land rights. In addition, there are non-binding soft laws that protect women's rights to land. These are para. 165 (e) of Beijing Platform for Action (1995), the Habitat Agenda (2003), Goal 5 of the Sustainable Development Goals (SDG) (2015) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) as discussed under chapter 4.
[1065] Article 8 (5) of Proclamation No. 27/2023.
[1066] Article 5 (2) (4) of Proclamation No. 27/2023.
[1067] Article 8 (8) of Proclamation 27/2023.
[1068] Article 8 (5) of Proclamation No. 27/2023.
[1069] Article 10 (3) and 12 (5) of Proclamation 27/2023.
[1070] The Family law of SNNP is currently applicable in the Sidaama Regional States pending the adoption of a new legislation for the regionin accordance with Proclamation No. 8/2019 of Sidaama Regional State.

inheritance in Civil Code is still very relevant for the protection of rural women's land rights during succession.

In the study area, there are customary norms that are distinctive from the state law in addition to norms that are incompatible with the state law. Some of these gendered social norms and customary laws discriminate women from inheriting land. According to elders,

> *women are excluded from inheritance because upon marriage she is considered to belong to her husband's clan and that she will get land when she moves to her husband's residence from his family*.[1071]

According to informants, there are various saying that support women's exclusion from inheritance. For example, "*Ba'innoqa'eballureggiranno*" or "*Balluraggirinoqa'eBa'initte*" means "A land inherited by in-laws is a lost land or it is a cursed land ".[1072] This is to say that if the land is not inherited by a son, it is going to considered as a lost land since the in-laws of the daughter is going to inherit it.

Thus, as can be inferred from the cases discussed above, daughters' inheritance of land is prohibited by the customary system because of the patrilocal nature of marital residence. Furthermore, the customary system does not prohibit polygamous marriage. Polygamous marriage is rampant in the study area though it is declining through time because of religious condemnation and the economic pressure that accompany polygamous marriage.[1073]

According to elders, they believe that it is equitable if a piece of land is given to a son than a daughter. One of the elders gave the following account:

> *In the Sidaama tradition, we have our own dispute resolution mechanism called Affini. When a dispute arises on a piece of land between a daughter and a son, it is brought to us. We consult both disputants. We ask the daughter to think about to give the land to her brother since she is going to get land with her husband. We give her a week to think about this. After a week, based on Sidaama's tradition, she gives us her response. We plead to her*

[1071] Interview with elders on 11 May 2022 at Dore Bafano Woreda.
[1072] Interview with Informant 34, President and vice President of Kebele's Land Administration Committee on July 21, 2022. An interview with informant 33, Prosecutor at S/R/S Attorney General and former Judge at Hawassa on July 20, 2022.
[1073] Interview with Director of Land Administration and Use Directorate of the Sidaama Regional State Agriculture and Natural Resources Development Bureau on 09 May 2022. Protestant religion which condemns polygamous marriage is dominant in the Sidaama region.

to leave the land to her brother based on Sidaama's tradition.[1074] *When she agrees, we bless her saying "God raise you and expand your offsprings; peace be upon you; the blessing follows you"*

From this admission from one of the elder, elders try to apply the customary rules which favor land rights of sons whenever a case is brought to them. Women's rights to land are not recognized as she is believed to leave her family and join her husband's family based on the patrilocal marital arrangements in Sidaama.

This normative incompatibility between the two systems in relation to the practice of polygamy has brought the development of new rules by the formal normative system in order to address the effect of polygamous practices on women's land rights. The regional land certification and registration program has tried to deal with the negative effect of the practice on women's land rights by issuing a joint land certificate to the wives in such marriages despite the fact that the family law of the region (SNNP) prohibits bigamous marriage. Even though the FDRE Constitution recognized normative and judicial pluralism; it is not a *carte blanche* protection.[1075] In fact, the Federal Constitution clearly proclaims that the obligation of the state relates to 'the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution'.[1076] Furthermore, the FDRE Constitution requires all organs of the government to enforce the human rights provisions of the constitution including the provisions on women's rights.[1077] It further declares that the FDRE constitution is the supreme law of the land and any law including customary law that contravenes the constitution is null and void.[1078] Thus, the normative plurality that is permissible under the constitution is subject to the supremacy clause of the constitution.[1079] In light of this, it is important to inquire the constitutionality of the practice of joint land titling of a husband and wives in polygamous marriage. In this regard, it is argued that the practice of issuing a joint certificate for wives in polygamous marriage entail *de facto* recognition of polygamous marriage which is prohibited under the family codes of both the federal and the regional state and this might inadvertently encourage polygamy.[1080] Based on this argument, it can be argued that the practice is unconstitutional since it affects women's rights. However, the law

[1074] Interview with elders on 11 May 2022 at Dore Bafano Woreda.
[1075] Girmachew Alemu Aneme, *supra note* 630, p. 19.
[1076] Article 91 of the FDRE Constitution.
[1077] Article 13 (1) of FDRE Constitution.
[1078] Article 9 (1) of the FDRE Constitution.
[1079] Aneme, *supra note* 630, p. 20.
[1080] Belachew Mekuria Fikre, "Bigamy and Women's Land Rights: The Case of Oromia and SNNP National Regional States", *Ethiopian Journal of Human Rights*, Vol. 1, 2013, p. 106 and 107.

should not be blind to the effects of the practice of polygamous marriage which in reality is prevalent and has caused women's displacement/dispossession from land when the man marries second or more wife. Its negative effects on women should not be ignored. The law needs to regulate the effect of such act on women. Thus, joint certification of wives' rights should not be taken as *de facto* recognition of polygamous marriage as valid marriages before the law as the practice attempts only to regulate women/wives' rights to land.

Through the FDRE Constitution permissible approach to the operation of legal pluralism, normative and judicial plurality having the state and customary/religious systems is observed. However, the co-existence of the two systems has also created a complex and various outcome in the settlement of land disputes as discussed in the section below.

8.4.Settlement of Rural Women's Land Rights Disputes in Plural Legal System

8.4.1. Nature of Land Disputes that Involves Rural Women

Dispute or competing claims over a land is a fact of life. It emanates from the struggle among various social groups or individuals to have effective access and control over land and its productive resources. These disputes are settled by a third-party umpire to determine who has rights, what these rights are and for how long these rights can be exercised.[1081]

As the analysis of the empirical data from the field shows, the types of land disputes in the study area can be categorized as land disputes that arise from disputes over land boundaries, demarcations, land transactions (rentals and disguised sales), and those that arise within family relations such as in relation to inheritance and divorce. Disputes related to state acquisition of local land or expropriation is rare in the rural area as it happens mostly in the peri-urban or urban areas and its resolution mostly involves only men except in case of a female headed household.[1082]Most of the land rights disputes involving women arise in relation to divorce cases, inheritance cases, fraudulent contracts and in case of bigamous/polygamous marriage.[1083]Female-headed households and widows are more prone to fraud and loss their share in sharecropping arrangement. The following is the account of one of the case of a widow which also demonstrates the route women pass through to seek justice:

Case 1 (informant 45): typical example of widow woman struggles to get justice

[1081] Jennifer C. Franco, *supra note*113, p. 5.
[1082] Interview with informant 27, Assistant Professor at Hawassa University on 12 May 2022.
[1083] Interview with judges conduced on 06 and 10 May 2022 at Hawassa Area High Court and Hawyela Tula First Instance Court. Most of the cases submitted to the legal aid centers at Hawassa also demonstrate this reality.

I am a 60-year widow. I was deceived by the cousin of my diseased husband who claimed the Eucalyptus (ባህር ዛፍ) plantation on my land is his own. He first came up with a contract where he orally informed me that the contract is for sharecropping for four rounds by planting and cutting Eucalyptus. However, the contract I signed gave him the right to cut and take the plantation on the land indefinitely. When I signed the contract, I did not understand the contract as I cannot read. He started to talk in the village that I had given him the land so that the land stays in my husband's generation. He also started to say that 'no one will be able to protect her'. I then took the case to elders and local land administration. My male relative represented me before the elders. The elders summoned him six times. When they were about to decide for his ostracization because of his disobedience of the orders of elders, he appeared before the elders at the 6th round of their session. They decided for him only to take the Eucalyptus he planted and to leave my husband's land to me. However, he refused to comply with the elder's decisions. The elders took three years without any resolution of the case. At the end, when they could not resolve the case, they said "HalaaluFushohe"- "the truth relieve you". Then I took the case to court. The court within two months decided in favor of him based on the contract. I did not get any legal aid support. It was my grandson who used to bring me to court by his motorcycle from the village. I spent more than 5000 birr without any resolution until now. At this time, I could not take the case to higher court on appeal because of financial challenges, lack of awareness of how to take the case on appeal and lack of support from my family. I tried all means to resolve the case. I also took the case to religious leaders with no avail. I could not get any solution to my case, and I only expect the right judgement from God.[1084]

As discussed in the above case and also based on the information obtained from other informants, in the study area, land border related disputes are not court-centered. Border related disputes are settled by LAC. LAC is established by the regional Bureau of Agriculture and Rural Development and has the mandate to allocate and distribute of land holdings and settle land related border disputes between neighbors.[1085] The method of dispute resolution before LAC is based on the customary form of mediation whereby the members of LAC attempt to resolve the dispute in a reconciliatory manner to keep the peace and tranquility of the community. LAC has five to seven members elected by the community. In most cases, it includes members from the community/elders.

[1084]Interview with informant 45 on July 19, 2022 at Dila Chanega Worda- Shebedino Kebele.
[1085] Article 12 of Proc. No. 110/2007 of SNNE Rural Land Administration and Use Proclamation.

The members interviewed retaliated it has been years since they took their position through an election. There has not been an attempt to hold periodic election to replace members of LAC. They try to identify the proper demarcation of land whenever there are border disputes through testimonies from neighbors. If a dispute arises over land among family members including among married couples, they try to mediate the parties with the aim that a family relation will not be broken.[1086]

It is those land disputes that relate with land transfer/rental, land as part of marital property to be divided during divorce, petitory action, trespass action and inheritance that become court centered. These land disputes are submitted before the formal justice institutions and the informal institutions including the customary organs. It is rarely women are involved in cases that claim compensation in relation to land expropriation.[1087]

8.4.2. Avenues to resolve land related disputes involving women

To be meaningful, land rights need to be legally recognized, socially and judiciary enforceable.[1088] There are three avenues to resolve land related disputes involving women. These are namely; the administrative organs, the formal justice system and the informal justice.

Administrative organs

The first option for people to resolve land disputes related to land borders is before the administrative organs. As some studies demonstrated land is perceived to be a political issue which is mostly resolved by political office as an administrative matter rather than as a legal case that should be resolved by courts.[1089] This is especially true to the kind of land disputes involving demarcation of land, grazing lands and dispute over uncultivated land. This kind of land disputes are dealt by district level peasant associations and district administrative organs rather than by a judiciary organ.[1090] The main purpose of these administrative organs is to resolve the dispute as peaceful as possible keeping the social cohesion. The administrative organs decide such disputes relying on eyewitness and documents presented before them.[1091] Since the decisions of these organs is the main evidence considered by courts, parties to the dispute are reluctant to take their cases to

[1086] FGD conducted on 26 July 2022 at Alawa Ano Kebele.
[1087] Interview with informant 27, Assistant Professor at Hawassa University.
[1088] Workwoha Mekonen, Maria Gladys Savolainen, Felicity Buckle and Matthew Woodhouse. *supra note* 18, p. 12.
[1089] Mamo Hebo, *supra note* 47, 2005, p. 127; FDG conducted with LAC members on 26 July 2022 at Alawa Ano Kebele.
[1090] Ibid, p. 128 and 130.
[1091] FGD conducted with LAC members on 26 July 2022 at Alawa Ano Kebele.

courts as a first instance unless the disputes continue despite the decisions of the administrative organs. The administrative organs that involve in settling the disputes include LACs. Most of the members of LACs are village elders.[1092] The elders tend to apply customary rules rather than state law.[1093] This has a negative implication on women's rights as some of the customary rules on inheritance are not compatible with state laws as discussed above. Furthermore, if the customary rules are applied, the disputants should give their consent to be adjudicated by the customary system. However, as the law and the practice demonstrate, they are not given a chance to give consent since LACs is considered to be the first instant body to entertain land disputes.

The other main challenge is that women's participation in the decision-making process by the administrative organs is very limited. According to informants, women are not part of the core member of LAC except a representative of the kebele's women association who is privileged to be a member by virtue of her nomination from the association[1094] The absence of voice representing women and defending their interest, preferences and needs has a negative implication on the decisions that are reached. The 'politics of presence' theory argues that the inclusion of women in any decision-making process at the public sphere is necessary for a legitimate, democratic, responsive and effective outcome of the decision.[1095]The current thinking is that women's participation and inclusion should not be considered as a favor done for women, but it should be taken as their human rights. The various international human rights instruments and their jurisprudence require states to ensure women's participation in decision-making processes.[1096] The State is not only required to refrain from any action that undermines women's participation, but also required to take a positive action which can be in the form of gender quota. A gender quota can serve as an effective tool to bring women on board in decision-making process especially in contexts where there are systemic and structural gender inequalities. It should also be noted that the inclusion of women in decision-making process should be sought with a view to including women with diverse socio-economical background. Gender quotas should be implemented by ensuring the inclusion of women from diverse class, ethnicity, religion, urban/rural residency, disability, and

[1092] Interview conducted with Dore Bafano Land Administration and Use expert on 11 May 2022 at Dore Bafano. See also Wibke Crewett and Benedikt Korf , "Ethiopia: Reforming Land Tenure", *The Politics of Capital*, Vol. 35, No. 116, 2008, Taylor & Francis, Ltd, p. 203-220.

[1093] Interview conducted with Kebele Level Land Administrative Committee Member on July 23, 2022 at Dila Chaneki Kebele.

[1094] Interview conducted with Dore Bafano Land Administration and Use expert on 11 May 2022 at Dore Bafano.

[1095] Institute for Democracy and Electoral Assistance (IDEA), *Women Constitutional-Makers: Comparative Experiences with Representation, Participation and Influence: First Annual Women Constitution-Makers' Dialogue*, Edinburgn, 2019, p. 9.

[1096] One of the 12 objectives of the Beijing Platform for Action, adopted at the Fourth World Conference for Women in 1995, was 'women's equal access to and full participation in power structures and decision making'.

other diversity.[1097]Unlike other regional proclamations,[1098] the Southern Nations, Nationalities and Peoples (SNNP) Rural Land Use and Administration Proclamation does not provide quota for women participation in LAC.

Thus, the lack of women's participation in the decision-making process on land related dispute before the administrative organs makes women's rights to be at precarious situation. This had also the effect of discouraging women from taking their cases to the administrative organs. According to many of the informants, it is men who bring land disputes before LAC in most of land related disputes. This is especially true when the dispute is against a third party, the husband tends to bring the case instead of the wife because of the existing gender norms which encourage men to led in such cases.

Formal Justice System

The formal justice system comprises of courts as recognized under the FDRE Constitution. The law recognized parallel or dual court systems that are established at the federal and regional levels. The court system is established at the regional level having three tiers, i.e., Woreda, Zonal, regional high and Supreme Court (with regional cassation power to adjudicate matters arising from regional laws or in their delegated power over federal matters). Disputants can have access to these regional courts on matters that arise based on regional laws. They have one addition opportunity to bring their case to a Federal Cassation Division of the Federal Supreme Court when there is basic error of law.[1099] In addition to these mechanisms, the parties have the opportunity to bring a case before CCI and HoF if the case involves a constitutional matter.[1100]

[1097] Meskerem Geset and Tayechalem G. Moges, "Counting Absence in Political Equality: A preliminary Gender Analysis of the Electoral Law Reform in Ethiopia" in Meron Zeleke and Meskerem Geset (eds.), *Gender, Development and Women's Rights: Ethiopian Perspective*, 2020, p. 66. See also Emezat H. Mengesha, *Women's Representation in Ethiopia's Political Parties, Issues of Inclusion and Diversity*, 2022, Institute for Security Studies.

[1098] Article 5 (4) of Proclamation 239/2014 of Tigraye Regional States Proclamation requires a minimum of two members of LAC out of five to be women. Article 26 of the previous Amhara Regional States Rural Land Administration and Use Proclamation No. 133/2006 requires the LAC to have at least one-woman member. However, this is lacking in the revised Proc. No. 252/2017 of Amhara Regional State Rural Land Administration and Use Proclamation.

[1099] Article 80 (3) of the FDRE Constitution. Cassation over cassation has been controversial subject and its constitutionality is challenged. See Muradu Abdo, *The Cassation Question in Ethiopia*, 2014, School of Law of Addis Ababa University. See also Mahari Redae, "Cassation Over Cassation and Its Challenges in Ethiopia", *Mizan Law Review*, Vol. 9, No. 1, 2015. However, this is put to rest with the adoption of a new proclamation that clearly support cassation over cassation in circumstances when the decision by the State cassation division involves constitutional matters, misinterpret the law or apply wrong law in a way that it affects public interest and have a national importance and when it fails to apply the binding decisions of the Federal Supreme Court Cassation Division. See Article 10 (1(c & d)) of the Federal Courts Proclamation No. 1234/2021.

[1100] Article 83 (1) of the FDRE Constitution.

For women to be able to use the formal justice system, it is important that they have awareness on their legal rights. Furthermore, there should be support from the justice system to ensure access to justice by requiring the formal system to support a disputant when she brings a case and during the litigation of a case. Thus, the provision of legal assistance is fundamental. In the study area, legal assistant is accessible to women who live in the surrounding of Hawassa. In the remote rural areas, legal aid service is not available.[1101] The prosecutor office has started to provide legal support in civil cases. However, these services are not publicized well and it is only few individuals who are benefiting from this service. According to informants, the prosecutor offices have very limited human resources to represent indigent members of the society. Thus, they have not yet publicized the service not to be overwhelmed with the demand for such services.[1102] According to informants, they often do not get support from informal networks such as family member and elders to take the case to the formal justice system due to the deep entrenched societal view that such cases should be settled privately or by the customary system.[1103]

In the circumstances when cases are taken to the formal justice system, the land title deed is serving as corroborative evidence as the courts do not use the certificate as *prima facie* evidence.[1104] According to judges, there are some irregularities during the issuance of certificate they have observed from the cases brought to them. Accordingly, in some instances, it was found that the same certificate on the same land is issued for more than one family. There are also fraudulent acts committed by husbands by registering their female relatives instead of their wife to deprive the wife from sharing the land. Corruption and disappearance of documents have also been reasons for courts to hesitate to take the land certificate as the sole evidence to proof holding rights. The available literature and jurisprudence at the international level is also against using land certificate as the sole evidence to proof of land rights. Accordingly, land titling may "further reinforce the inequality to access land especially in countries which have a justice system that require

[1101] Interview with Directors of EWLA Hawassa Branch and Mizan Youth Lawyers Center on May 12 and 04, 2022 at Hawassa.
[1102] Interview with prosecutor at Sidaama Regional State Attorney General on 20 July 2022 and Prosecutors at Hawyela Tula Justice office on 10 May 2022.
[1103] Interview with key informant 14 on 23 July 2022 at Moricho town.
[1104] Article 35 (2) of Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017 clearly stipulates that landholding certificates are legal evidences and judges *may not* consider other documentary evidence or any witness before consulting the available land certificate. Since the phrase 'may not' is used, the legislator has left it the discretion of courts to consider certificate as evidence. Thus, in the event there is a strong reason to ignore considering the certificate as conclusive evidence, courts may hear witness or other evidence. However, Article 28 (2) of Benishangul Gumuz Regional State 's Rural Land Administration and Utilization Proclamation No. 152/2018 provides that a court cannot accept other documents and witnesses in the presence of land certificate. This provision made the land certificate conclusive evidence to be considered before a court when it is available. It also provides that land certificates can only be challenged before a court only when there is a strong written document and a convincing reason (Article 28 (4).

certification as evidence in formal claims. The commodification of land mostly benefits elites and those with access to capital and credit rather productive producers."[1105] As discussed under chapter four, in COHRE v. Sudan[1106], the African Commission on Human and peoples' Rights has dealt with whether legal title to land is a necessary condition for the protection of property rights.[1107] The Commission held that "[i]t doesn't matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by Article 14."[1108] Here, the Commission considered traditional usage as a means to property rights rather than land titling.

Though there is improvement in number of female judges from time to time, the justice system is still male dominated. According to the existing data, the number of female judges in SNNP (which included Sidaama zone) was 114 (11%) from a total of 992 judges in 2017/18.[1109] At national level too, female judges represent 15% of judges though this is improving in recent years.[1110]

According to informants, even though courts can promote women's rights by applying the law and treating men and women equally during divorce and inheritance, the expenses involved to bring cases before courts and the time it takes to get final decisions are very discouraging for rural women. In addition to costs related to legal services, most women who come to Woreda courts or high court in Hawassa, incur transportation and accommodation costs. According to one the female informant,

> *I spent 10,000 birr to take my case to court including the expenses I have incurred for the transportation and accommodation of witnesses. However, when I took my case to elders, I incurred 1200 birr for six sessions of the elders meeting, 200 birr for each session*.[1111]

The other challenge is the decision of the formal justice system is not easily socially enforced because of lack of social legitimacy. Even when a court decides for women to share land from her husband upon divorce or from her family during inheritance, such decisions are not socially enforced. She is pressured to 'sale' or rent out the land and leave the area by her ex-husband and his

[1105]Smith Narula, *supra note* 4, p. 146.
[1106] African Commission on Human and peoples' Rights: *Center on Housing Rights and Evictions (COHRE)v. Sudan*, Communication No. 296/2005 (29 July 2010).
[1107] OHCHR, *supra note 513*, p. 28.
[1108] Ibid.
[1109] Central Statistics Agency, *Regional-Level gender Disaggregated Data Mining and Analysis Report*, 2019, p. 137.
[1110] Central Statistics Agency, Id., p. xxvii.
[1111] Interview conducted with Key informant 47 on 19 July 2022 at Shebedin Woreda.

family in case of divorce or by her relatives who are co-heir and got a reduced share from inheritance because of the decision.[1112]Thus, these factors are mostly discouraging women from taking cases to the formal justice system.

Informal Justice System

The constitutional recognition of the customary justice system did not only bring normative plurality but also it resulted in judicial plurality. According to Girmachew,

> Normative plurality emerges from the coexistence of different sources of order and leads to judicial plurality through the development and expansion of institutions which serve the various sources of order.[1113]

Though the law has not yet given official recognition to the customary law and its institutions in the study area, they are the legitimate *modus operandi* in the study area to settle land related cases that are brought by the parties to a case.

Below a discussion is made on the normative and institutional framework of customary system in the Sidaama regional state. The discussion compliments what has been described under chapter three in regard to the Sidma's customary normative and institutional framework as described by key informants.

Normative and Institutional Framework of the Customary System

The discussion below elaborates on the practice of the customary justice system, the actors involved, the legitimacy of elders, and the procedural aspects of customary justice system of Sidaama.

According to the study informants, *afini* system is one of the customary systems that exist in the study area. *Afini* meaning 'hear me' and it is much respected phrase and "when the elders ("chamesa") use [this] word, no one moves or say something. Everybody listens to when the elder says *afini* and respects their decision."[1114] The elders hear cases in public and in a transparent manner. It involves 5-7 elders based on the level of the customary court. There are a number of clans (*Gosa*) in Sidaama and each of them has their own *Afini* system. The highest decision maker

[1112]Interview with key informants in Hawassa.
[1113]Girmachew Alemu Aneme, *supra note 630*, p. 5.
[1114]Interview with elders on 11 May 2022 at Dore Bafano Woreda.

is the *Moti* or the king of each clan (*Gosa*).[1115]These elders got the responsibility to mediate through their lineage. All of these elders are senior male. The services by elders are rendered without any monitory remuneration or considerations. They are served with coffee if the parties are willing to do so. The place of adjudication is not permanent except for the highest tier where the *Muti* /clan king resides. Sometimes they go to claimant house or adjudicate the case in the place where the parties agreed to come.

As discussed under chapter three, the dispute resolution mechanism of the customary justice system of Sidaama is decentralized. There are four levels of dispute resolution Councils (*Songo*). These are *ayidu songo*, *oollu songo*, *garote songo*, and *mootete songo*. These councils adjudicate cases at lineage, village, sub-clan and clan, sub-clan levels respectively. There is a council that resolve inter-clan (*Aleta*) disputes. At the village level, parties to the case are given the chance to present their cases. But once elders utter the word "*Afinii*", no one speaks but oldest elder. After the parties to the dispute present their case, they go separately and deliberate on the case. Their decision is mostly based on consensus. The procedure of the council involves taking oaths and making a confession. If no one admits to the wrong done, the elders curse him/her by saying that the sky god *Magino* will judge him/her for not coming out with the truth. If there is confession, the elders decide the punishment.[1116] If the elders cannot solve the case or other party refuse to comply with the decisions of elders, elders will close the case by saying "*Halaalu Fushohe*" – meaning "let the truth free you".

Eyewitnesses are the main evidence that is utilized in the customary system. It is believed that oath is a means to find the truth. The system has its own rules regarding punishment called *Sera* which can be fine, apology or compensation. Anyone who is not respecting the customary rules and the decisions of the customary councils is socially ostracized. According to informants, "he/she is outcasted by the local community. They will not be allowed to attend funerals or weddings when they are found to be at fault."[1117] This kind of punishment is not time bound. It is only when the violator agrees to respect the customary rules and gives deference to the system that the punishments cease. The final decisions of elders are respected and enforced by the community.[1118]

Customary systems are generally perceived to be free of favoritism and stands for truth. However, this is eroding through time. Some female informants raised the issues that some elders are biased

[1115] Interview with elders on 22 July 2022 at Yergalem.
[1116] Interview with elders on 22 July 2022 at Yergalem.
[1117] Interview with a Judge at Social court conducted on 19 July 2022 at Shebedino Woreda. Interview with informant 3 on May 19, 2022 at Kebel- Dila Chanega Worda- Shebedino.
[1118] *Supra note* 1116. Interview with key informant 13 on 21 July 2022 at Dori Bafano Woreda.

towards men for the mere fact that they socialize with them outside of adjudication.[1119] One of the female informants pointed that "Eyewitnesses give truthful testimony in the customary courts. However, if the litigant has a good reputation, elders may incline to support him."[1120]

The customary justice system that reaches the wider population is considered as legitimate and cost effective to deliver speedy justice on win-win basis. Its proximity to the disputants and efficiency to deliver speedy justice has made them to be the primary preferences by disputants in family matters including land disputes. The decisions of customary justice system are respected without having any police officer that enforces the decision.[1121] In addition, customary courts focus on reconciliation and have a flexible procedure that made them to be preferable by justice seekers.[1122]

However, the customary system does not allow women to participate as elder or litigants. The elders are appointed either because of their ancestral lineage has been playing such a role or because of their ability to mediate and their social acceptance.[1123] This is confirmed as a common thread in most of the customary systems at various parts of Ethiopia by similar studies.[1124] In customary systems, women are expected to bring cases through their male family members. This has denied them from representing their cases and interests and renders them to become *persona non grata*. The lack of power to bring a case in their own name - *locus standioinjudicio* – has diminished their legal capacity and personality.[1125]

Though the rule is that a woman can access the justice system through her male relatives, there is now an exception to it in Sidaama. It has become evident that a woman can access the justice system by her own when she does not have a male relative, i.e., father, brother or uncle or a widow can present her case whenever there is no male family member to represent her.[1126]

[1119] Interview with key informant 52 on 21 July 2022 at Dori Bafano Woreda.
[1120] Interview with informant 47 on July 19, 2022 at Kebel- Dila Chanega Worda- Shebedino.
[1121] Ibid.
[1122] Meron Zeleke, "*Ye ShakochChilot* (the court of the sheikhs): A Traditional Institution of Conflict Resolution in OomiyaOromiya Zone of Amhara Regional State", Ethiopia, *African Journal on Conflict Resolution*, Vol. 10, No. 1, 2010, p. 82.
[1123] Interview with elders on 22 July 2022 at Yergalem and Dore Bafano.
[1124] Meron Zeleke, *Beyond the Exclusion Theses: Women and Customary Courts in Ethiopia*, in Kjetl Tronvoll (ed.), *Supplementary Report under the Project Protection of Women's Rights in the Justice Systems of Ethiopia*, 2016, p. 5. Meron in this paper argues that even if women are underrepresented in most customary justice system, there are few customary systems which are inclusive or lead by only women. She mentions *ErfoMereba* in Wallo, *Siinqee* in Arsi and *Ya Shaykoch*Chilot.
[1125] Abiola Sunmon, *Gender Inequality, Legal Pluralism & Land Reform in South Africa*, unpublished thesis, 2005, p. 24 (A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements for the degree of Master of Arts, Department of Law, Carleton University, Ottawa, Canada)
[1126] Interview with informant 47 on July 19, 2022 at Kebel- Dila Chanega Worda- Shebedino.

Despite the lack of direct access to the customary justice system by women, women in the study area are active in making choices for what type of cases they use the customary justice system to adjudicate. In most instances, women prefer their cases related to divorce to be adjudicated by the customary system either by privately consulting elders or delegating their male family members to take the case on their behalf. One of the female informants said that

> *Women won't go to courts because they face ostracization. Thus, they prefer to go to elders. Mostly they also presume that the case will be referred to elders from courts if they first take the case to court.* [1127]

Though women's choice is constrained by the culture which expects them to take the case to elders through male family member, they try to explore and make choice between the court system and customary justice system. This kind of forum shopping takes place in the study area when rural women prefer the customary justice system to adjudicate divorce cases with the belief that the marriage can be saved through the reconciliatory approaches of elders. According to informants, it is a taboo for a woman to get a divorce. Thus, they prefer the customary system which resorts to reconciliation rather than divorce.[1128] On the other hand, rural women tend to take inheritance cases to the court because of the awareness they have that the rules of the customary justice system do not allow women to inherit land from their family because of the patrilineal inheritance system.[1129] In these cases, women users of the justice system swing back and forth between these legal systems. The choices the rural women make between the customary and the formal justice system (forum shopping) is an expression of their agency though this tendency creates a state of uncertainty. The liberal feminist theory, which holds that women are not passive actors rather they have agency that enable them to make choices in response to existing realties support this. However, this agency is exercised within a given reality which is shaped by political-economic structures and gender ideology which constrains women's choice making based of the existing social and cultural norms on the role of women in the society. Thus, through women choose to use the customary justice system, they do so knowing that they are not going to represent themselves before these institutions but rather they are going to be represented by male relatives. This transfer of their agency to male relatives is done voluntary with the view that this will give them an advantage before the customary justice system which is led by male elders who prefer to deal with men. This has ensured for women optimal outputs. Thus, from utilitarian point of view, women benefit from this arrangement

[1127] Interview with key informant 45 on 19 July 2022 conducted at Shebedino Woreda.
[1128] Interview with key informant 55 on 23 July 2022 conducted at Moricho town.
[1129] Interview with judges and prosecutors in Hawassa 06 and 10 May 2022.

to some extent. However, from a justice point of view, women lack of direct participation promotes and entrenches gender inequality in the social structure.

The lack of official recognition of the customary system by law has resulted in a gap for the enforcement of its decisions by the formal organs such as land administrative organs. If the customary court decides for a share of land to be given to a disputant, the land administrative authorities will not enforce the decision since the customary system is not officially recognized. According to one of the informants, in a dispute with her husband to get her share of the crop from their jointly owned land, the elders decided for her to get an equal share from the crop. However, the elders were not able to enforce the decision upon the refusal of her husband to give her share.[1130] An effort has been made to make members of the LAC to compose elders who also happen to resolve family disputes. These elders play a double role as an elder in the customary system and being member of LAC.[1131]

8.4.3. The relation between the formal and the informal justice systems

The relationship of two or more coexisting normative/judicial systems is mostly characterised by inconsistencies or normative collisions in most of the available literatures.[1132] Such inconsistency is peculiarly observed in relation to women's rights.[1133] However, it is also important to look beyond such inconsistency and look into where these two systems interact or influence each other to transform themselves.

In this regard, there are three approaches. These approaches are unitary, dual/plural, and integration approaches. The unitary/uniform approach is when the state legal system abolishes all other customary system (both the customary laws and institutions) for various reasons including the need to modernise the legal system or as part of state building effort. This was the case in the 1960's in Ethiopia except in few circumstances under which the customary law can operate as discussed in the previous section.[1134] The dual approach allows for the formal justice system and customary

[1130] Interview with key informant 46 on 19 July 2022 at Shebedino.
[1131] FGD conducted with LAC members on 26 July 2022 at Alawa Ano Kebele.
[1132]Susanne Epple, "Introduction" in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020, p.12.
[1133]Berihun Adugna Gebeye, "Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State", *Women in Society*, Vol. 6, p. 9. See also Epple, id., 2013, p. 20
[1134]Article 3347 of the Civil Code provided "Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed. " Four approaches are adopted under the Civil Code. First, the Customary law was left to govern those matters that are not governed by the Civil Code. Thus, customary rules are used to fill gaps when the code is silent. Second, the code made direct reference to custom. Third, the customary law was incorporated in several provisions of the civil code in relation to family law (betrothal, moral prejudice, kinds of marriage, intestate inheritance), property law (usucaption,

system to operate side by side on specific matters. Thus, courts and customary system exists in parallel on certain matters. The integration approach tries to create compromise between unitary and dual approach by blending the two systems together after resolving/reconciling conflicting norms between the customary and state rules.[1135] In some jurisdiction, the decisions of the customary courts are made appealable to higher courts of the state.[1136] The plural approach leaves the formal and informal justice system to operate in parallel without putting any limitation on their applicability either based on human rights considerations or practical issues.[1137]

During colonial era, British rulers prefer the integrationist approach with the view that integrating the African customary rules with the British increase legitimacy, validity of the legal system and result in strengthen the indirect rule of the British. The thinking was that the African customary laws will steadily adapt the English idea of justice, law and procedure as they are perceived to be imprecise, yet adaptable to change.[1138]

In the study area, a certain level of cooperation in the form of cross reference between the customary system and formal justice system is observed. It is reflected in the courts tendency to discontinue a case if the parties to the case agree to a mediation process by elders. Again, there is a practice on the part of the courts in the area to refer a case to elders if the parties agree to it. This tendency is contrary to the views of legal centralism which takes law/formal system to be hierarchically above all, legitimate, and able to provide solution to all problems.

In addition, the customary law is adapting to the changing circumstance as a 'living customary law' does. This change is observed in relation to inheritance. The view that a woman cannot inherit land is eroding through time. The elders now consider a daughter's right to inherit her father's land in case he is not succeeded by a son/s. In previous times, the share of the inheritance was given to male relative such as her uncle or cousins because of the cultural rule that prohibits/excludes

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right of way, and rural servitude), and torts (in determining the amount of fair compensation). This involved directly incorporating the customary rules in the Civil Code. According to Rene David, the customary rules which fulfil the following criteria were incorporated in the code. These criteria are when the customary rule is accepted by the majority of the highland population, when the customary rules are not repugent to natural justice or when it does not go against social and economic development and when the customary roles are clear and articulate in the civil law term. Muradu Abdi and Gebreyesus Abegaz, Customary Law: Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009, p. 114 and 123.

[1135]Muradu Abdi and Gebreyesus Abegaz, *id.*, p. 208-209.

[1136]Muradu Abdi and Gebreyesus Abegaz, *id.*, p. 74.

[1137]Muradu Abdi and Gebreyesus Abegaz, *id*., p. 208-209.

[1138]Muradu Abdi and Gebreyesus Abegaz, *id*., p. 74

women from inheriting land.[1139] Because of the growing awareness too, fathers are leaving a will behind for their daughters to inherit land.

Furthermore, land certificate is becoming one of the pieces of evidence on which the customary justice system relies on for its adjudication of cases from time to time. Thus, the joint land certificate, which has introduced the idea that a woman can have a right on the land, has contributed in changing some of the customary rules to be more gender sensitive and responsive.

8.5.Changes in Local Norms through Vernacularizing of Rural Women's Land Rights

The interview with elders shows that women's rights have now become part of the vernacular of the elders when dealing with the issue of women. This relates to their exposure to various trainings organized by the government and NGOs on women's rights issues. Women informants supported this partially. Accordingly, "previously, women were not allowed to be present before the respectable elders under any circumstances. Now it is improving. A woman can present her case when she is allowed by *Affini* elders when there is no male relative representing her."[1140]

In the Focus Group Discussion with elders and members of LAC, most of the participants agreed that there are changes in women's rights. However, the dissenting elder expressed his view which is different from the ideas endorsed by the other participants of the FGD. He reiterates that women's right is only given lip service. He points "people do and live according to their culture though they say they respect women's rights."[1141]

Intrahousehold dynamics have been affected by the land certification in other places. A combination of factors contributed to it. However, this is not manifested in the Sidaama Regional State. This is explained by the lack of women's participation in LAC- no legal obligation provided for women's representation in Sidaama regional state Proclamation on land use and administration. The social norms are still entrenched in the community. The joint land certificate comes to picture when there is divorce or during inheritance.

In the study area, the certificate program has contributed to bring change in the views of some of the members of the society who have now started to challenge the social norms that perpetuated the

[1139] Interview with a Judge at Social Court conducted on July 19, 2022.
[1140]Interview with informant 47 on July 19, 2022 at Kebel- Dila Chanega Worda- Shebedino.
[1141] Focus Group Discussion with five participants conducted on July 26, 2022, at Alawa Ano Kebele.

view that land belongs to the husband's clan only.[1142] This is evidenced in the shift of the inheritance practice which only promoted patrilineal inheritance. The inheritance practice in some places is now shifting through father's initiative to leave a testament inheriting some of their property including land to their daughter/s.[1143] Women are also claiming their rights. The following is an account of one of the informants.

Case 2 (Informant 19): It shows women's agency to negotiate their right despite the cultural norms on women's inheritance

> *I live in Alamo Alo kebele. I am the only daughter among nine siblings. Though the culture does not support land inheritance, I asked my father to give me a share of land and he decided to give me my share from the land available. However, the culture discourages women from inheriting land through various sayings such as "if a woman inherits a land, the land will be empty". However, nowadays, things are changing through women's rights advocacy. Women have started to go to court when their rights are violated, though the culture discourage them taking cases to courts*.[1144]

As can be implied from her background, she was able to get a share of land from her father because of her awareness of her right as chairperson of kebele's women association.

Another informant retaliated the following.

Case 3 (informant 47): A case showing a mother's supporting her daughter inheriting land

> *I have only a daughter. But she is going to inherit land from her father though the culture does not support this. Previously, when a man has only daughters, people start to ask behind his back who is going to inherit him since he does not have a son that can succeed him*.[1145]

Similarly, there is also change in the view that women cannot own land. This change is happening with father's initiatives to leave will inheriting land to their daughters or husband's initiatives to give the share to each of his wives their own share in polygamous marriages as discussed in case below.

[1142]Interview with Director of Ensuring women, Children and Youth inclusion and benefit Directorate at Sidaama Regional States Women, Youth and Social Affairs Bureau on May 04, 2022 at Hawassa.

[1143] Interview with Sidaama Regional State Agriculture and Natural Resources Development Bureau on May 09, 2022 at Hawassa.

[1144]Interview with Chairperson of kebele's women association/women's League, conducted on Aug. 12, 2022.

[1145] Interview with informant 47 on July 19, 2022 at Kebel- Dila Chanega Worda- Shebedino.

Case 4 (informant 45): Wives in polygamous marriage getting land despite the cultural norms

> *I am a third wife and the two before me have land in their own names. My husband has land in his own name too. When a husband has more than one wife, he gives a share of the land to each wife so that upon his death there won't be any land related dispute among his wives.*[1146]

These changes are brought because of women's rights advocacy that has been taking place through media, meetings and informal means by NGOs, universities and government institutions. It is worth mentioning here that the AAU-CHR has been promoting women's human rights through its rights promotion activities by giving training to community actors such as *Idir* leaders, elders, women's associations in the study area. It has distributed promotional materials on the rights vulnerable groups and broadcasted 336 radio programs from 2017 to 2022. It has also provided legal aid services to 52,661 (28,103 F and 24,558 M) vulnerable groups of society in six project areas including Hawassa and its surroundings.[1147] Though the change is slow, the continuous work and consorted actions from all stakeholders including government organs, NHRI and NGOs will play role in changing the discriminatory practices.

Chapter Summary

The customary and the formal systems have co-existed for many years. However, this parallel coexistence of the customary and the formal system has been changing to a complementary one over time. In relation to land rights, there is competition between the state and the clans in Sidaama Regional State to control or exert power on the administration and management of land. This has led to competition and sometimes complementarity between the state and the customary systems depending on each circumstance. The customary system has been serving as a means to reduce the backlog that would have been created if all land related disputes are taken to courts. The customary justice system is better placed to resolve land related communal problems in reconciliatory and peaceful manner than the court system. In such circumstances, the courts should respect the choice of the parties to the case to resolve their dispute through the informal mechanisms. However, when there is collision between the formal and informal rules of the justice system, the constitutionally protected human rights should prevail. There should be normative complementarity between the

[1146] Interview with key informant 45 conducted on July 19, 2022 at Sheberdina Woreda. This was also collaborated by a judge.
[1147] AAU-CHR, Project STRACE Narrative Report, Dec. 2017-Sep. 2022, p. 5.

formal and the informal justice system on constitutionally protected rights including women's rights.

The establishment of LAC has shown that the state systematically uses the elders to address land related disputes. However, the lack of women's participations in these mechanisms has been the main challenge that contradicts women's rights to participate in decision-making process and impact the outcome of decisions. Thus, the state needs to promote women's participation in land dispute settlement and in land governance and design programs that aim to increase women's literacy and strengthen the cooperation between the formal and informal justice systems.

The incompatibility of the customary system rules on inheritance is also another factor which puts women's rights in precarious situation when their cases are adjudicated before the customary courts. The rise in women's awareness of their rights and the related informed choice making between the two systems is a new development that is observed. Women exercise their agency through forum shopping by making a choice between the two systems based on the level of protection of their rights. But for the women to be able to exercise their agency, the state should make sure that the customary system only adjudicates cases when the parties to it gave their free and full consent for it to exercise its jurisdiction based on the FDRE Constitution. If proven otherwise, decisions by the customary justice system should be quashed as unconstitutional. For this to happen, the state should regulate the relations between the state justice system and the customary justice system and make the decisions of the customary justice system reviewable by courts and before the HoF/CCI.

Though the land registration program has contributed in improving rural women's awareness of their rights to land, it has little contribution in the justice system serving as a piece of evidence. This is because of the prevalence of informalities and irregularities related to land transactions in the legal landscape which relates to fraudulent acts, disappearance of documents, corruption, registration of a female relatives rather than the wife. This has minimized the evidentiary role of land certificates before court of law. Thus, the courts could not take the certificate as exclusive evidence rather they look for other additional circumstantial evidence such as eyewitness to prove the holding rights to compliment it. For the certification program to play its role in the justice system, it is important for good governance and rule of law to be maintained in the issuance process of land certificates. An accountability mechanism should also be strengthened.

Chapter Nine: Findings, Conclusions and the Way Forward

Introduction

This chapter is dedicated to present the major findings, conclusions and the way forward based on the discussions that have been made under this dissertation. The discussions attempt to analyze the place of rural women's land rights under the global human rights framework, its historical, political, social and legal significance at national level and the effects of formalization of rural women's land rights in a plural justice setting at sub-national level. By doing so it tries to show there is no linear responses to formalization of women's land rights and various actors at the global, national, and local levels have responded to it in multiple and complex ways. As the empirical data from the field work demonstrated, formalization of land rights is introduced in the context where there are gendered social norms and its effectiveness in achieving its aim depends on interaction between these social norms and its objectives. The fact that the formalization of land rights has worked in a society where private ownership is valued as means to get one`s rights respected and protected makes it interesting to see its effect in society where such conceptualization of property rights is lacking.

The dissertation tries to understand the factors that influence the realization of rural women's land rights by making an in-depth examination of the historical, political, institutional and legal context in which rural women's land rights are situated. The dissertation also examines the link between land registration and certificates and various women's rights. The study goes beyond the legal rights recognized under international and national legal framework and looks into women's experience and lived realties in pursuing justice through empirical data collected. This Chapter attempts to reveal the major implications of the findings of the study by dividing it into sub-themes based on the research questions indicated under chapter one. This part of the dissertation attempts to wind-up the study by providing the major findings, and the conclusions. It also provides the way forward which policymakers, practitioners and other researchers can consider in working on the issue.

9.1. Women's Land Rights as a Human Rights

There is no international human rights instrument that explicitly recognizes the right to land for anyone except that the right to access to land which is recognized in relation to indigenous peoples and rural women.[1148] The rights to adequate standard of living, housing, food, health and work incorporated under UDHR and ICESCR, are linked to access to land.[1149] The general provisions

[1148] Elisabeth Wickeri and Anil Kalhan, *supra note* 418, p. 16.
[1149] Elisabeth Wickeri and Anil Kalhan, *id.*, p. 16-17.

under most international human rights instruments including the ICCPR referring to due process, equal protection and non-discrimination guarantees are relevant to the right to land.

Notwithstanding the lack of explicit mention about land rights in the UN human rights treaties, human rights and development are interrelated which has profound implications on land rights. Having regard to this, continental human rights instruments in Africa have given a relative emphasis on the recognition of the right to development including the right to land. The African Charter on Human and Peoples Rights (ACHPR) recognize the right to development as a group right and the Protocol to ACHPR on the Rights of Women in Africa (Maputo Protocol) in particular stipulates that "women shall have the right to sustainable development, including the right to land and credit."[1150]

Despite lack of explicit provisions under the UN human rights system, national laws have explicit provisions on the right to land which determines how land is accessed, used, controlled and transferred.[1151] The FDRE Constitution guarantees state ownership of land that rules out the sale of land by individuals and private actors.[1152] This Constitutional provision for the state ownership demonstrates the state`s inclination to justice or social equity over efficiency. The provision of the Constitution ensures the right of farmers to obtain land without payment which manifests that the principle of fairness is the dominant consideration. The Constitution aims to protect farmers from losing their land to the capitalist as it takes land to be a safety net for farmers. However, the subsequent laws and practices related to large scale land investments and *Kontract* in the study area demonstrate the state is trying to balance between social justice and economic efficiency.[1153] In this relation, the subsequent land laws recognize land leasing and inheritance rights which indicates that there is moderate shift towards giving due consideration to the principle of efficacy.[1154]

Land rental was allowed first by Amhara Regional Rural Land Administration and Use Proclamation No. 133/2006. The 2017 Amhara Region Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017 allows mortgaging of land to access productive resources such as fertilizer that increase land productivity. The same is envisaged under the Sidaama Regional State's Rural Land Administration and Use Proclamation No. 27/2023. The draft Proclamation on rural land use and administration of the Federal Government also allows land to be

[1150] Article 19 of the Maputo Protocol.
[1151] M. Witten., 'The Protection of Land Rights in Ethiopia', *Afrika Focus,* Vol. 20, Nr. 1-2, 2007, p. 154-155.
[1152] Article 40 (3) of the FDRE Constitution.
[1153] Muradu Srur, *supra note 273*, p. xiv.
[1154] W. Crewett and B. Korf, 'Ethiopia: Reforming Land Tenure', *Review of African Political Economy*, Vol 35, No. 116, 2008, p. 208.

used as collateral for rural land holders to get credit from a formal financial institution. This implies land is not any more considered as means for subsistence, but it is becoming one of the means to run the economy. Though commodification of land is not yet on the agenda of the legal reform, it seems that the country has adopted an approach to slowly increase the role of land in the market.

The Constitution guarantees women equal rights to own, use and transfer land. The subsequent pieces of legislation at the federal and regional levels also echo this aspiration of the Constitution. However, this aspiration of the law is far from its realization in reality. This study tries to understand and examine the factors that influence women's land rights by analyzing the historical, political, institutional and legal contexts.

9.2.Context of Rural Women's Land Rights in Ethiopia

Women had been excluded from acquiring land and having rights on the land through history. The land tenure system that existed during the imperial period has created economic classes based on land and women did not have any place in the class-based system. Though the Derg regime tried to undo the land-class system during the feudal system, it failed to take measures that are inclusive of women. During the EPDRF period, though there have been various legal measures take, some of the gender-blind laws with the existing social norms that exclude women has been a barrier to achieve equality in women's land rights.

The study demonstrated that women's land rights vary based on their age, marital status, and their position in the household in the study site. Women in female headed household have more rights in terms of control of land compared to male-headed households. Women in marriage relations have to share their rights with their husband and the marital dynamics is a determinant factor of the rights she can exercise on the land. The social status of women and their relationship within their family also has an effect on land rights. The existing social norms in Sidaama regional state propel women having less of rights in relation to land because of patrilocal and patrilineal system. The practice of polygamy has also affected women's land rights especially upon divorce when the land has to be divided among the spouses.

The study has brought out that even if the existing laws including the Constitution guarantees non-discrimination, it does not translate to gender equality in relation to land rights. The existing social norms have got their way in the legal system. Though legal systems and social norms are perceived to be separate arena, there are instances where one is the continuum of the other. This is especially reflected when laws appear as gender blind. For example, the legal provisions which only entitle inheritance to family members permanently living in the household had the effect of excluding

daughters who moved to their husband's residence upon marriage. During the implementation of laws, it interacts with social norms which have sometimes created a context that resulted disadvantage for women. Social norms are determinants of who can pursue justice, what kind of justice one can pursue and how. These norms are mostly gendered. Social norms play important role in determining how women are treated and perceived while they pursue justice. They determine whether it is appropriate and legitimate for a woman to bring or defend legal claims on land rights on her own and for her own benefit. The formal system may be perceived as place where private matters should not be handled. In such circumstances, the customary system is taken as legitimate and socially acceptable.

Though rural women have a legal right to own, control, access or administer land, they may not be able to exercise these rights because of the existing social and gender norms in the study site. The gender norms set boundaries on women and men's role, relationships, behavior etc. For instance, women lose their land rights with their natal family when they move to their husband's residence in a patrilineal system of Sidaama. This deprives them of inheriting land. The gender norms in the study site also set boundaries by detecting that a woman cannot be part of a discussion on land and considering land issues to be men's business. Accordingly, "the extent to which women are viewed as farmers rather than helpers, as producers rather than homemakers, or as contributors rather than dependents all shape their ability to interact with others regarding land issues.[1155] Thus, the historical exclusion of women from exercising land rights, the gender-blind laws and the gendered social norms on rural women's land rights in the study area are the contextual factors that prevented rural women from enjoying their human rights to access, control and use land to its fullest.

9.3.The Intersection between Rural Women's Land Rights and Land Registration and Certification Program

In order to address the challenge of land insecurity and ensure gender equality, land registration and certification program is introduced in Ethiopia which registered and certified a husband and wife jointly. The registration and certification have taken place at two levels. The first level land certification (FLLC) which took place from 1997 to 2013, resulted in registration and certification of land by demarcating land using locally available materials and giving certificate at household level. However, the lack of plot-level mapping supported with new technologies and providing accurate cadastral maps has brought the need for the second level land certification (SLLC).

[1155] Gali`e et al., 2013; Twyman et al., 2015 cited in C. Doss and R. Meinzen-Dick, *supra note* 100, p. 8.

The land certification program has brought about an impressive achievement reflected in its coverage. The data on women's land rights is also very impressive. However, it is important to look deeper and analyze aspects of land certification in changing women's everyday life struggles which includes wellbeing, earning a daily bread and being protected from violence and discriminatory practices. In other words, the analysis should go beyond numbers of certified women and investigate how it has translated into real life gains for women.

To this end, this study has made an attempt to analyze the effects of land registration and certification by reviewing existing evidence to look into the impacts of formalization of land rights. Studies have demonstrated that the rural land registration and certificate have positively contributed to rural women tenure security and an increase in productivity. The program has also helped for the establishment of land administration structures that go from the federal-regional to the lowest kebele level. This helped courts to have expert testimony on disputed lands. The expert testimony has been more useful than the certificates which are susceptible for fraud. Furthermore, the land registration and certification program has improved women's participation in land related activities at the household level by increasing their bargaining power to some extent with a big variation from place to place.

Despite these benefits of the land certification program to the protection of rural women's land rights, post-certificate studies including the interviews at the study site have demonstrated that rural women's rights to control and participate in the transfer rural land rights is still lagging behind because of the entrenched gendered social norms and practices.

The reasons behind the persistent inequalities in women land rights can be explained by the existing entrenched patriarchal views, cultural practices (such as polygamous marriage and prohibition of women's land inheritance), institutionalized gender biases, gender neutral laws and lack of women's movements centered on rural women's land rights. In a legal landscape where land transactions are dominantly informal, the certificate program brought little change in improving access and the delivery of justice. The courts could not take the certificate as sole and conclusive evidence as the informal system and irregularities related to fraud, disappearance of documents, corruption, registration of a female relatives rather than the wife are dominant. Thus, the courts in the study site mainly rely on witness testimonies to prove land holding rights.

Furthermore, transforming the entrenched social norms that disadvantage rural women from accessing, controlling and using land has been slow because of the limited participation of rural women in their affairs. The land registration and certification program, which is a state-centered

initiative, has not been able to garner rural women's participation in its process and administration. The top-down approach of this state-centered initiative took women as object of transformation. This has resulted in a very slow change in the social norms on rural women's land rights. Furthermore, there is a lack of CSOs engagement on the issue as they were under a restraining legislation since 2009 which limited access to fundings for CSOs working on human rights and women's rights issues. Though the law which has crippled their capacity is changed recently, their engagement on the issue of rural women's land rights is still very limited.

9.4. The Effect of Plural Justice System on Rural Women's Land Rights

Departing from the previous approaches that recognised and empowered state judicial institutions for the adjudication of disputes, the FDRE Constitution explicitly recognizes the role of the customary and religious institutions in adjudication of family matters.[1156] Though a proclamation has been adopted in relation to *sharia* courts providing its jurisdiction,[1157] there is no subsidiary law that specifically authorizes the customary justice system to adjudicate cases until recently. A specific law on the scope of their jurisdiction, the rules that should be applied by these institutions which include both substantive and procedural laws and their relation with formal justice system has not been introduced except in Oromia Regional State.[1158] The lack of such law that recognizes customary justice system has resulted in the *de facto* function of informal justice system and allowed users of justice system to strategically apply forum shopping by going back and forth between the formal justice system and the customary justice system.[1159]The co-existence of the two systems has created a complex and various outcomes in the settlement of rural women's land disputes. It has resulted in both normative legal pluralism and judicial plurality on rural women's land rights.

In relation to normative legal pluralism, this study finds that there are customary norms that are distinct from and incompatible with state laws. Some of these gendered social norms and customary laws discriminate women from inheriting land and allows the practice of polygamous marriages despite its prohibition under the formal laws. This normative incompatibility between the two systems in relation to the practice of polygamy has forced the formal system to introduce an approach that addresses the pecuniary effect of polygamous practices on women's land rights. The regional land certification and registration program has also tried to deal with the negative effect of

[1156]FDRE constitution allows customary and religious laws to be applied on personal and family matter (art. 34 (5) &78(4).
[1157] The Federal Courts of Shari'a Consolidation Proclamation No. 188/1999.
[1158] Oromia Regional State Proclamation to Establish and Recognize the Oromia Regional Customary Courts (Proclamation No. 240/2021). See also Gebre Yntiso, *supra note* 624, p. 55.
[1159] Desalegn Amsalu, *supra note* 634.

the practice on rural women's land rights by issuing a joint land certificate to wives in such marriages despite the fact that the family law of the region prohibits bigamous marriage. Furthermore, courts have attempted to devise a mechanism to ensure wives in polygamous marriage get their share of rural land upon divorce. However, their approach on the proportion of land divided among wives has not been uniform. Some courts have tried to give a half share of the land to the first wife and allowed the other half to be divided among the wives and the husband. Some others have divided the land equally among all the wives. The lack of consistency in the decisions has made the formal system unpredictable and unreliable.

Judicial plurality is observed in the study area since women take rural land related cases to both courts and customary justice system through their male relatives as the customary justice system does not allow women to participate as elder or litigants. Furthermore, though the existing subsidiary laws have not incorporated much from customary laws, there is an exception in the case of rural land administrative and use proclamations. Most of the regional land administrative proclamations mandate elders who can be members of Kebele level Land Administration and Use Committee (LAC) to settle land disputes. LAC should facilitate the dispute to be resolved by local elders through negotiation and arbitration.

It is only when the elders cannot resolve the case that the case is submitted to Woreda court. Taking land cases to LAC is not provided as an alternative to courts. As it is now, the parties to land disputes are required to take their case to LAC as a first instance. This approach contradicts the Constitutional provision which requires for parties to give their consent when they take cases to alternative dispute resolution mechanisms.[1160] The other main challenge is that women's participation in the decision-making process by the administrative organs is very limited. The absence of voice representing women and defending their interest, preferences and needs has a negative implication on the decisions that are reached.

Thus, lack of women's participation, discriminatory instance on inheritance of land by women are aspects of the informal justice system which makes it incompatible with human rights principles. Thus, the customary justice system needs to be reviewable for its constitutionality based on the supremacy clause of the constitution which requires every law and custom to comply with the constitutional provisions.

[1160] Article 34 (5) of the FDRE Constitution.

When we look at the formal justice system too, women access to courts is very limited because of the inaccessibility of the formal justice system in terms of finance, physical accessibility, technicality of court litigation, enforceability of decision and limited support from CSOs. The formal justice system needs to achieve *de facto* equality in addition to addressing some gaps in the *de jury* protection and promotion of rural women's participation in land governance.

9.5.Women's Land Rights through Constitutional Interpretation

The FDRE Constitution embraces a non-judiciary constitutional review system by confirming the power to interpret the Constitution to the House of Federation (HoF) which is a political organ representing nations, nationalities and peoples of Ethiopia based on recommendations from Council of Constitutional Inquiry (CCI) which is composed of legal experts. This is preferred by the framers of the Constitution because of the ethnic federal system which puts nations, nationalities and peoples as the owners of the Constitution and therefore its interpreter. In addition, the framers might have feared of judicial activism on constitutional matters.[1161]

The fact that the federal system prioritizes the rights of nations, nationalities and peoples including their cultural rights has a negative effect in respect of individual rights including women's rights.[1162] The HoF has subscribed to the premise that the Constitution belongs to nations, nationalities and peoples and therefore, they have to interpret the Constitution which has diminished the focus on the rights of women.

Several cases have been brought before the CCI/HoF involving issues of women's land rights or requiring a gender sensitive constitutional interpretation. The CCI/HoF has given its decision, some of which has implication for women's land rights. However, the fact that the CCI/HoF does not have any guideline to make a gender responsive constitutional interpretation made their decisions to be inconsistent. Based on the cases analyzed in this dissertation, though there are few instances where CCI/HoF have made landmark decisions against unconstitutional decisions of courts, there is no mechanism they can use to oversee their decisions are followed by courts and other government institutions. The CCI/HoF has declared provisions of some laws unconstitutional in some of its decisions. However, there is no instance where the House of Peoples' Representatives has made any change to these laws based on the decisions of the CCI/HoF.

To reiterate, there is also limited evidence showing the contribution of the land certification program for rural women's access to justice. Though the land registration program has contributed

[1161] Assefa Fiseha,*supra note* 320, p. 10 & 11.
[1162] Dereje Feyissa, *supra note* 969, p. 14.

in increasing productivity, household decision making power of women and tenure security, it has little contribution in the justice system serving as a piece of evidence. The following are some of the factors for the minimum contribution of the land certification program in enhancing women's access to justice:

- Legislative gaps- This relates to the Lack of gender sensitive laws/interpretation of laws (which can be observed from the cases that are brought to CCI). Furthermore, an initiative to reform the land law and land administrative system started recently though there have been legislative reforms on other sectors such the CSOs law.
- Implementation challenges- the findings of this study show that women's participation in the administration of land registration and certification programs is inadequate. This relates to inaccessibility of the land registration process to women. Some of the informants of the study pointed that wives were not present during registration. However, female headed households were able to get their land registered in their own name with their full participation. Furthermore, maladministration of the certificate program and lack of accurate measurement of land in the first level land certification which used local materials to measure the land and the certificate only indicated the neighbors not the exact map of the land has contributed to the hesitant of courts to use of the certificate in the justice system. Furthermore, rural women face difficulty in presenting land certificate as evidence because of perjury and fraud as well as due to inaccessibility of evidence to women.
- Enforcement of decisions- though courts have made decisions in tandem with women's land rights, their social enforcement has been challenging in relation to rural women's land inheritance rights and divorce cases. These challenges came from family members who lost a share from inheritance or from division of property during divorce through the judicial decisions.
- Inadequate accessibility of the justice system- the study has shown that women's participation both in the formal and informal justice system is very limited. Furthermore, women face various challenges such as physical and financial barriers, linguistic barriers, lack of legal aid support to access justice.

Conclusion

This dissertation goes beyond the law on paper and tries to analyze the effects of government responses and action on rural women's land rights in the existing socio-cultural context using a gender lens. It analyzes the clash between the formal and the informal justice system and the consideration that are taken into account in choosing these forums by their users. The study

analyzes the contributions of the formalization of rural women's land rights to women's access to justice by situating it in the existing political, social, legal and historical context.

This study contributes to developing an analytical framework that goes beyond the law and investigates the law in practice. It shows that laws, institutions, actors, norms, and practices interact with each other at various stages in protecting or violating rural women's land rights. The dissertation contributes to knowledge by analyzing the complex role of various actors found at different levels in negotiating women's land rights.

The study focuses on the global, national, and sub-national/local levels. The global level discussion shows the tension between women's land rights and global liberal economic governance. The latter subscribes to market economy where efficient use of land is more appreciated while the former aspires to see rights of vulnerable groups are protected and respected. At the national level, the idea of land as common property comes from the maxist ideology which the TPLF endorsed by incorporating it in the FDRE constitution. The Constitution at the same time is oriented with liberal ideas of human rights by specifically recognizing women's rights in general and women's rights to access, administer and control land in particular. The national level context has institutionalized women's rights issues through women's departments in line ministries and came up with constitutional and framework legislation on land that give due attention to gender. However, gender blind or gender-neutral subsequent laws have the effect of sustaining the existing gender inequality and prescribing to the gendered social norms unintentionally. The sub-national/local level is found to be an arena where local gender norms play out a more dominant role with a less consideration of the laws that came from the national government. The existing social norms are much stronger in deciding rural women rights to land, as demonstrated using the Sidaama Regional State as a case study.

The study shows that various actors such as officials and experts at the federal and regional land administration offices, judges, legal aid providers, prosecutors, elders, members of LACs, CSOs, development partners, global financial institutions play important roles in the formalization process of rural women's land rights. Their responses range from adopting a gender responsive legislation to bringing social changes in the power relationships. This requires constant negotiation, adaptation, creating alliances etc.

The study shows there is no linear process to ensure women's land rights. It is a complex process operating in a complex context. The contextual factors at a household, state, community or customary levels are determinants of rural women's land rights. The study demonstrated that

diffusion of norms on rural women's land rights from the global to local is not always possible rather local context has determined how rural women's land rights are negotiated, respected and enforced in the plural justice system of the Sidaama Regional State.

The Way Forward

Based on the findings of the study, the study makes the following recommendations as a way forward.

1. Legal and Policy reform

Legal reforms are an important tool to bring change in gender equality. However, legal reforms cannot by themselves drive changes in gender equality. It needs to be accompanied by political and socio-cultural transformation. For a successful legal reform to take place in the area of women's land rights, it is important to take into account the socio-cultural and political contextual factors that affect gender equality.

When discriminatory and gender-blind laws and policies persist, there is a need to revise them to guarantee women's land rights and full compliance with international human rights instruments such as CEDAW. Where favorable legal provisions and policies do exist, implementation may still be sporadic if there is no enabling environment.

Though there are recent move to revise federal and region land laws in Ethiopia, there should be a comprehensive approach to it. The reform in land laws and policies should be participatory, transparent, and informed by recent developments. Such reform should first identify the gender discriminatory laws and practices. This can be done with the support of women's rights organizations. In the legal reform, grassroots rural women's groups and rural women themselves should be consulted and participate in the whole process of legislative drafting.

Reforms in the legal arena should not be limited to land laws but it needs to be accompanied with reform in family laws in order to protect rural women's land rights in polygamous marriages. Furthermore, mechanism to allow women get credit and benefit from agricultural extension should be pursued. Women's interest during credit should be protected by requiring both spouses consent upon credit.

The relationship between the formal and the informal legal system should be legislated with a view to protect women's constitutional rights without losing sight of the benefit of plural legal systems in terms of availing accessible justice.

The draft revised federal land law and some of regional land laws such as Sidaama and Amhara land laws have envisaged land to be used as collateral to get credit. These laws should make sure that women benefit from credit access and such credit is given to the household upon full consent of both spouses.

2. Programmatic interventions
    a. Legal literacy and support

The land certification program should be accompanied by awareness creation programs to make the public aware of their rights and responsibilities. The prevailing practice is to undertake informal land deals such as land rental etc. without fulfilling the legal requirements that protect women's involvement. This has resulted in many to lose their rights. Furthermore, women are not fully aware of the certification process and the benefit from it in the study area. Thus, it is important for projects and interventions by governmental and non-governmental institutions are focused on legal literacy and support.

The limited legal aid services in urban area should also expand to rural areas to reach rural women. Rural women need support to take their cases before the formal and informal justice system and litigate their rights.

    b. Capacity building to state personnel

The success of the land registration and certification process in achieving gender equality and protecting women's land rights depend on its capacity to enforce land rights in a gender responsive manner.

The judiciary and elders of the customary justice system need to be capacitated and engaged on gender integration in their decisions and work through trainings, consultations, and dialogues among the various stakeholders.

    c. Adopting a whole-society and whole-government approach in securing women's land rights

Various actors contribute to rural women's land rights. Thus, it is important to involve and work with these actors. These actors include legislators, customary and religious leaders, the judiciary, NGOs working on women's legal, social and economic empowerment, women movements, rural women and men, development partners, government land rights institutions and women's machineries etc. These actors should create platforms to exchange information and work together.

For the enforcement of rural women's land rights, those who carry out land registration at the community and government levels should undertake an inclusive, participatory and transparent process in the registration and certification of land. The land registration and certification program should adopt a bottom up approach.

Furthermore, duty-bearer state organs such as the judiciary who adjudicate disputes should be involved in protection of rural women's land rights by applying a gender sensitive judicial interpretation and application of laws.

Grassroots NGOs and CSOs can also play a role in mobilizing the local community and creating awareness of women's land rights. They also contribute by providing legal aid. It is important to ensure rural women's meaningful involvement and participation in any endeavors the various actors engage in. Changes in social norms can be brought by identifying the key roles of these various actors, mobilizing resources and coordinating all activities toward the specific goals of women's rights protection.

It is important women take part in various associations such as women's group, credit associations etc to network and exchange information on land. Women's participation in the local land committees is very crucial for their rights to be respected and protected. Women's voice is important at regional and local levels. Women need to participate in the various positions at governmental and non-governmental organizations. To accelerate the changes, there is a need to adopt a bottom-up approach where rural women can organize themselves representing their own interest and pushing for the changes they want to see. To achieve this, the state can play the role of facilitation for women's active participation without state capture of the process of agenda setting.

The certification program needs to be transparent, inclusive, participatory, digitalized, and accurate in order to ensure its contribution to the justice process to land related dispute by serving as reliable piece of evidence. Thus, the current effort to support the land certification with modern technology should be strengthened and sustained.

It is also important to publicize landmark decisions by the judiciary and constitutional adjudication bodies to trigger changes in judicial and customary practices that discriminate against rural women's land rights. This can be done through pilot-judgements which can be done by selecting one case among the massive influx of cases with similar issue and make a precedent decision so that similar cases can be resolved in a similar way. This will help to address systemic and structural issues that lead to increases case of women's land rights.

d. Facilitating the interaction between formal and informal justice system

It is important that the relationship between formal and informal justice system is formalization. This will facilitate the interaction between the two systems. As discussed, the informal justice system is not subject to review for its constitutionality because of lack of formalization of the system. Its formalization will facilitate its decisions to be reviewed by the constitutional review mechanism. Furthermore, training of mediator on right based approach or constitutional rights of women without affecting their traditional mechanism/procedure can be envisaged.

Moreover, there should be normative complementarity between the formal and the informal justice system in relation to constitutional rights. The customary justice system is better placed to resolve land related communal problems in reconciliatory and peaceful manner than the court system. It is also preferred by many because of its physical and financial accessibility and reconciliatory approaches. In such circumstances, the courts should respect the choice of the parties to the case to resolve their dispute through the informal mechanisms when the disputants are clearly informed of their options and rights. NGOs and government institutions should make women aware of the rights in this regard. However, when there is collision between the formal and informal rules of the formal and informal justice system, the constitutionally protected human rights should prevail. This requires an interaction and engagement between the two systems to be envisaged. This is practical and should be done in a manner that respects women's land rights.

Programs that aim to strengthen the cooperation between the formal and informal justice systems need to be envisaged. It is important not to essentialize the formal or the informal justice system as one is more workable than the other. Women's free agency to choose one of these systems should be respected.

The women's rights should prevail in formal and informal justice systems based on the constitutional principles. The promising practices of the CCI to quash unconstitutional decisions from a women's rights perspective is commendable and should be the future direction. Barriers to access justice should be addressed and women's access to constitutional review mechanisms should be strengthened.

The author believe that the implementation of the above recommendations will enable the government to respect, protect and fulfill its human rights obligations under international human rights law. This enables the government to have a good reputation and get funding and technical support to develop its capacity. Further, such actions will enable the government to get political support and deliver on its commitments to its people to acquire legitimacy.

Annexes

Annex 1: Data Collection Guides and Tools

The data collection tools utilized in the study include; in-depth interviews, Focus Group Discussions (FGDs), trial observations, and court case collection guideline. General rules, interview guides and checklists are provided in this document that guided the overall data collection process.

The guiding questions are prepared for the following research participants:

i. Judges, lawyers, legal aid providers, prosecutors and judicial authorities such as Sidaama regional, zonal and Woreda courts' judges, judges of Cassation division of the Federal Supreme Court ;
ii. Members of Sidaama regional State Council including women parliamentarians and parliamentarians in the House of Peoples representatives' (HoPR) representing the Sidaama regional State;
iii. Executive organs (e.g., Sidaama Regional State Police, land administration offices (at regional, Zonal and Woreda level), Women and Children Affairs offices (at regional, Zonal and Woreda level) and legal aid centers at Sidaama Regional State's Bureau of Justice and Hawassa University;
iv. The House of Federation (HoF) and the Council of Constitutional Inquiry (CCI);
v. National Human Rights Institutions (Hawassa Branch of Ethiopian Human Rights Commission and Hawassa Branch Ethiopian Institute of Ombudsman);
vi. Women's and other NGOs (EWLA's Hawassa Branch, Mizan Youth Lawers Center and others)
vii. Customary Court's Judges/Elders;
viii. Development partners that implemented projects in the Sidaama regional state
ix. Researchers and policy makers who are familiar with the region

Furthermore, an empirical data is collected from rural women who passed through the judiciary system to protect their land rights and their relatives and family members (husbands or other family members). Women who have several encounters with the judicial system or have received final decisions recently are selected. A purposive inclusive criterion is used to include women who have a success and failure stories and with diversified socio-economic background.

Based on the findings of the study, the general research questions is updated throughout the interview process to make them more relevant and updated.

The secondary sources of data is utilized in this study include documents such as laws, regulations, reports, unpublished research reports, published research findings, etc

General Rules of the interview

This part sets the general rules that the researcher or research assistant followed in the data collection process with the study participants and stakeholders during individual interviews and focus group discussions.

- I informed the interviewee that the interview/discussion take place in Amharic, and if they have difficulty communicating in Amharic, they are provided with an interpreter.
- I asked them if they feel comfortable and safe with the setting, or they have preference for another alternative place.
- I introduced myself and the research project as follows:

  I am Anchinesh Shiferaw, a PhD candidate at CHR, AAU. I am currently undertaking a study that investigates the rights of rural women to land. It examines normative, institutional and enforcement procedures for the protection of rural women's right to land in the Sidaama Regional State. The study focuses on the joint land titling and how it has been implemented and its significance in advancing women land right

  This interview is conducted to gather information for the research purpose. There is no direct and immediate benefit that will be brought for you from this research. However, the research might be useful for policy makers and other researchers to devise mechanisms to address some of the problems that the study will find out.
- I informed the interviewee/s that they are selected to participate in the research because of the knowledge or experience they have in the area I am researching. I assured them that the information they provide will remain confidential and that the interview continues as long as it is consented. I also informed them that they do not need to answer any questions they are not comfortable with. I informed them that they can take breaks or leave the room/interview site whenever they need to.
- I informed them that the data that is obtained from the study participants will be used only for the sole purpose of informing my PhD study and corelated publications. The PhD study and its publications will be disseminated among the academic community in the university and through its publication by renowned publishers and will be available to the public in the library or online.
- I informed them that if the interviewee/s are willing, voice recording will be used for later analysis and crosschecking. I informed them that I will be recording the interview to help me write down and remember the things that they tell me with their permission. I assured them that no one will hear the recording or the transcription of the interview except me/research assistant. I also assured them I will use the information they provide for the research/study purpose.

  Note: When the interviewee/s refuses to be recorded, I continued with the interview and keep notes of what is said.
- I informed them to feel free and share with me their experience and knowledge without fearing being judged as right or wrong. I heard their stories and accounts with enthusiasm to learn more and without any judgement.

- I gave them the chance to ask questions, if any. I asked them to ensure their consent and, when they express their willingness to participate in the study, I gave them the consent form to sign. However, if the research participant is an illiterate/unable to sign, I/my research assistant read the consent form and ask them their response for each question and help them do a finger print/any mark as their signature. Or if they became sensitive or uncomfortable to the request to give their written consent, I asked them to give their oral consent.

Consent Form

Name, position and contact address of study participant:

Name:
Position:
Address:
Email:

Yes	No	
☐	☐	I confirm that the purpose of the study has been explained and that I have understood it.
☐	☐	I have had the opportunity to ask questions and get clarifications and the researcher has answered all my questions.
☐	☐	I understand that my participation in this study is voluntary and that I am free to stop the interview and withdraw at any time, without giving a reason and without consequence.
☐	☐	I confirm that I have received information about, and understand the research being conducted, and I agree to participate in this study.
☐	☐	I understand that my participation in this study is voluntary and there will not be any monetary or non-monetary remuneration for giving the interview.
☐	☐	I confirm that I am 18 years of age or over.
☐	☐	I consent to my data being recorded and transcribed and understand that I will be referred to anonymously in any publications.

By signing this form, I agree that my answers, which I have given voluntarily, can be used for the PhD thesis and its corelated publications.

Signed (researcher): _____
Date: _____
Signed (Study participant): _____
Date: _____

Part one

Guiding questions for rural women and their family members who passed through the Justice (formal or customary) System (Women who have several encounters with the judicial system or have received final decisions recently will be selected.)

A. Questions to rural women who passed through the judiciary/customary system

1. Tell me about yourself
   - Name
   - Age
   - Educational background:
   - Marital status:
   - If married, at what age did you get married:
   - If divorced or is a widow, how long did you stay in the marriage? when did you get divorced/got separated from your husband?
   - Do you have children? How many? Can you tell us about their age and education: whether they are in school and how they are doing?
   - What is your source of income?
   - Number of dependents: do you support yourself only? How many dependents do you have to support with your income?
2. General questions – what are the type and size of land you have and what kind of benefits do you enjoy in relation to land?

Probing questions:

- Do you have solely or jointly held rural land? For what purpose do you use your land?
- What kind of rights do you enjoy in relation to your land?
- Are you aware of rural women's rights to use, control and administer rural land?
- Do women in your community have right to land? What kind of rights do they have pertaining to land?
- What are the factors that determine access to land in your community?

3. General question: Do you have a land certificate? If so, what is the effect of land certification on your rights (if the research participant has already obtained land certificate)? If not, why did not you obtain land certificate?

Probing questions:

- Do you have a land certificate? If yes, how did you obtain the land certificate?
- What are the contents of the certificate?
- What are the advantages/disadvantages you got by obtaining the certificate?
- What are the rights that you are entitled to on the basis of the land certificate?
- Who make decisions on the land you hold regarding its administration and use?

- Are you involved in decisions regarding the administration and use of the land? If yes, in what ways do you participate in the decision making? If not, why are you not taking part in decision making process with regard to land administration and use?
- Are you entitled to give consent when there is any transaction related to the land?
- Who controls the income from the land?
- Who makes the decision regarding the expenses to be spent on the land?
- What are the effects of rural women's joint landholding rights on violence against women/domestic violence (VAW/DV)? Did that decrease VAW/DV?
  (note: Explore "whether" and "how" women's ownership and control of land act as a form of social protection against a specific vulnerability, namely the experience of intimate partner violence.)

4. General question on access to justice- How do you settle disputes that arise in relation to land from any person in violation of your right on the land?

Probing questions:

- Did you face any land related dispute before?
- If yes, where did you take land dispute case you have faced before? What were the causes for the dispute? Who were the parties involved?
- When and why did you decide to take the case to court/customary court? If you have not pursued justice, what restrained you from doing so?
- Was there any legal or related support you got while pursuing your case? If yes, from whom?
- What measures have you taken to protect your rights before courts/customary court or other government organs?
- What remedies have you obtained for the violations of your land rights?
- Are you satisfied? If yes, in what regard were you satisfied? If not, why?
- What general measures should be taken by the government and other entities to prevent and remedy the violations of your land rights?

5. General questions- what are your experiences while passing through the justice (customary or formal) system?

Probing questions:

- What kind of claim in relation to your land did you take to court/customary court?
- How did you formulate your claim – did you use rights language/right claim or violation of law?
- Which of your land rights or law/norm related to land was violated? When was it violated? Who violated your rights (husband, family member, neighbor, creditor etc?
- What kind of steps did you take to get remedies for the violation of your rights (before taking the case to court/customary system)?
- To whom did you take the case? What remedies were provided?
- If the research participant has land certificate, how did the land certificate help you in pursuing justice? Was the land certificate in any way necessary to vindicate your right before the court/customary system? If not, why was it is useful?

- If the research participant did not have land certificate, did courts recognize the customary rights on the land acquired through long usage/possession of the land?
- What is the impact of pursuing land related cases on your children and other family members?

6. General Question – what are the challenges to access justice for land related disputes?

Probing questions:

- What challenges did you encounter in seeking justice to vindicate your land right?
- At what stage (litigation or enforcement) did you encounter a problem?
- Do you think you encountered the challenges because you are a woman? If yes, please tell me how and why?
- What are the impediments to rural women to access justice in relation to their land rights?
- How long did it take to get a decision? What were the costs?
- What kind of legal or related support did you get in pursuing your case? If there was no support, what type of support did you need at the time? and why?
- How did the judges/elders dealing with your case treat you? Did you feel comfortable/uncomfortable with the way they handled your case? If yes, why?
- What are the perceptions of the society or government institutions towards a woman who take cases to the justice system?
- What was the outcome of the case?
- Did you feel that you have got justice? Why?
- What are the most important things you think should be considered in order to ensure that rural women who faced violation of their land rights get justice?

7. General question- what were the effects of denial/success in court/customary case?

Probing questions:

- What kind of rights related to land was respected/denied as a result of the decision?
- What were the barriers in the enforcement of the decision, if any? Who created such barriers?
- What are the implications of the decision on your life and that of your family's?

B. Additional questions for a rural woman who is/was in polygamous marriage and who passed through the judiciary/customary system

- Do women in polygamous marriage have right to land in the customary system or in the formal system? What are these rights?
- What are the challenges a rural woman in polygamous marriage face to get the protection of her rural land rights?
- How does the land certification process protected/violated the land rights of a women in polygamous marriage?
- How do formal courts or customary courts enforce the land right of a rural woman in a polygamous marriage? What are the peculiar challenges faced by such woman?

Guiding Questions for key informants

I. Judges (particularly those sitting in civil and family benches), lawyers, legal aid providers and prosecutors

- Tell me about yourself (name, position, number of years in your current position, educational background etc)
- What kind of rural women's land rights issues often brought to courts for trial?
- Do you think rural women often seek the assistance of courts for the protection of their land rights? If not, why?
- What kind of violation of their land rights does rural women sustains which is different from the one's men face? Why do rural women face such kind of violation to their rights?
- Who are the violators in most cases?
- What kind of evidence does the court requires for rural women to vindicate their right to land?
- Does the land certification program assist in the adjudication of rural women's land right cases? If yes, in what ways? If no, what are the problems that did not make the certificate useful during litigations?
- Do courts recognize the customary rights on the land acquired through long usage/possession of the land if there is no land certificate? If so, what kind of evidence is acceptable to prove these rights?
- How do rural women use the land certificate to claim their rights?
- Do rural women access documents/certificates when they want to use them as evidence in court proceedings?
- What kind of defects makes land certificates unacceptable for court proceedings?
- What are the trends in court decisions? Did land rights violation/land disputes increase/decrease after the land registration and certification program?
- What kind of changes the land certification brought in adjudication process of land disputes? If and, how?
- How arerural women's ownership rights to property in general or holding rights to land recognized in the community before the land certification program?What kind of holding rights existed? What have changed over time?
- What are the traditional forms of land tenure system among the Sidaama?
- What are the barriers inhibiting ruralwomen from reporting violations of their land rights, to pursue its adjudication before the formal and informal justice systems?
- What kind of initiatives exist to create awareness on women's rights in general and on rural women's land rights?
- Are rural women forced to transfer their land holdings? Who is responsible for that (state or individuals)? What the causes for the transfer of the land holdings? What are the impacts on women? What are the protection mechanisms available to protect rural women from land alienation?
- Are women's land rights respected/violated during divorce and succession proceedings? How?
- What are the considerations you take in adjudicating rural women's land rights?
- What kind of support is provided to rural women to claim their rights and access justice?

- What mechanisms exist to enforce decisions of courts in relation to rural women's land rights?
- What barriers exist to enforce court decisions related torural women's land rights?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women's land rights?

II. <u>The Members of Sidaama regional State Council including women parliamentarians and</u> parliamentarians in the House of Peoples' Representatives (HoPR) representing the Sidaama Regional State

- Tell me about yourself (name, position, number of years in your current position, educational background etc)
- What is your view on rural women's land rights in the Sidaama regional state?
- What are the existing legal frameworks that protect rural women's land rights in the Sidaama regional State?
- Do you think the State Council has laid adequate legal framework to ensure the constitutional rights of rural women related to land?
- What has the Council done to ensure that land rights of rural women are protected by all organs of the regional state?
- What kind of violations are observed in relation to rural women land rights? What do you think are the reasons for violations of rural women land rights among the Sidaama? What are the reasons for lack of women's equal enjoyment of rural land with men despite the constitutional guarantee to that effect?
- What special measures has the Council taken to ensure executive organs fully implement the land rights of rural women?
- Has the Council taken any specific measures, legislative or other measures, to ensure customary laws and practices that offend land rights of women are abolished or made compatible with the FDRE Constitution?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women's land rights?

III. <u>Executive organs</u> (e.g. land administration offices (at regional, Woreda and kebele level), Women and children affairs offices (at regional, Woreda and Kebele level) and legal aid centers at Bureau of Justice and Universities)

- Tell me about yourself (name, position, number of years in your current position, educational background etc)
- What kind of rights exist in relation to rural women's right to land?
- What is the legal framework that governs rural women's land rights in the Sidaama regional state? What is your assessment of its adequacy?
- What is the role of your institution in the protection of rural women's land rights?
- What are the institutional mechanismsto enforce rural women's land rights? What is your assessment of the adequacy of the institutional mechanism to address rural women's land rights? What gaps do you observe? What is the role of your institution in the protection of rural women's land rights?
- When was the land certification and registration program started? How was its reception by the community when it was first introduced?
- What are the purposes of the land registration and certification programs?
- Do you have sex disaggregated data on land registered and certified? Can I get a copy of it?

- What are the advantages and disadvantages of the rural land registration and certification program for women? (Did it empowered women or disadvantaged women (because of lack of information), caused fragmentation of land, increase land disputes, increase cost, contributed to the abolition of customary rights)
- How do rural women participate in the process of land registration and certification at the local level?
- What mechanisms exist to address grievance during land registration and certification process?
- Are rural women aware of their rights recognized by the land certificate? What measures did you take to make rural women aware of their rights under the certificate?
- Where do rural women claim their rights to land?
- What kind of support is provided to rural women to claim their rights and accessjustice?
- How do rural women use the land certificate to claim their rights?
- What is the impact of the land certification program on land disputes? Did land rights violation/land disputes increase/decrease after the land registration and certification program?
- What kind of changes did the land certification program bring in cultural practices related to inheritance or polygamy?
- How do women access loan using the land certificate?
- Are rural women compelled to transfer their lands? Who is responsible for that (state or individuals)? What are the causes of such acts? What are its impacts on rural women? What are the protection mechanisms available to protect rural women from forceful land transfers?
- What kind of land related violence do rural women face? Why are rural women targeted? Who often violates rural women's land rights?
- Do rural women sustain any kind of violation of their land rights which is different from what men face?
- What are the laws and institutions that resolve land related dispute?
- What are the various social norms related to rural women's right to land?
- What kind of ownership rights to property in general or holding rights to land recognized in the community before the certification program?
- If so, what kind of holding rights existed? If not, what have changed over time? Are rural women's land rights recognized currently?
- What are the traditional forms of land tenure system?
- How is the customary tenure system gendered?
- what role the customary justice system plays in the adjudication of rural women's land
- What are the barriers for rural women to report violations of their land rights and to pursue its adjudication before the formal and informal justice systems? How are the customary and statutory justice systems relate in Sidaama?
- What kind of initiatives exist to create awareness on women's rights in general and on rural women's land rights in particular?
- What are the perceptions on women's land rights?
- What are the effects of land alienation, land grabbing and expropriation on rural women?
- What are the effects of women's joint land holding rights on violence against women (VAW/DV)? Did that decrease/increase VAW/DV?

(explore “whether” and “how” women’s ownership and control of land act as a form of social protection against a specific vulnerability, namely the experience of intimate partner violence/domestic violence.”.)

- Do rural women access documents/land certificates when they want to use them as evidence in court proceedings?
- Are there any defect in certificates which make them defective to be used in court proceedings?
- Who are the actors that provided financial and technical support for the land registration and certification program?
- What is your legal mandate in relation to the protection of rural women’s right to land? What measures related to your legal mandate has your office taken to ensure the enjoyment by rural women of their right to land?
- Are there special measures taken by your office (such as affirmative action) that are meant to ensure the enjoyment by rural women of their right to land?
- What challenges and opportunities are there for rural women to seek the protection of their land rights before customary and religious courts?What are the perceptions of the society or government institutions towards a woman who take cases to the justice system?
- Are there administrative measures taken to ensure customary and religious practices do not contravene rural women’s land rights? What are those measures and how successful have they been?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women’s land rights?

IV. Sidaama regional police

- Tell me about yourself (name, position, number of years in your current position, educational background etc)
- How common are rural land disputes in your locality?
- Are such cases involving land disputes reported to the police? If yes, how often?
- What is the nature of the cases reported to you?
- Who often reports such cases?
- What kind of gendered pattern do you observe in such cases? Can you provide statistical data on the reported cases for the last few years?
- How does your office handle such cases?
- What are the barriers for rural women to report violations of their land rights andto pursue its adjudication before the formal and informal justice systems?
- What kind of support do you provide to rural women seeking to protect their land rights?
- What kind of support provided to create awareness on land rights of rural women?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women’s land rights?
- What kind of interventions by governmental and NGOs should be made to improve the justice system response to rural women’s land disputes?

V. Customary Courts (elders)

- Tell me about yourself (name, position, number of years in your current position, educational background etc)
- What kind of customary land tenure system existedin Sidaamapreviously? What makes it different from the contemporary land tenure system?
- To what kind of rights are rural women entitled in the customary tenure systems? Is there any change in the tenure system regarding women through the years? Are women entitled to have land right in Sidaama customary justice system? If not, why not?
- If there are changes when did these changes occur and what brought about the change?
- What kind of rural land related disputes are brought to customary courts? Who brought such disputes? Have you ever decided on disputes relating to land rights of rural women? What kinds of disputes are brought to you by women? Which of these disputes are frequently brought to you? What remedies do you provide?
- Who are the adjudicators in the customary justice system? What role do women have in the adjudication process as judges, litigants, or witness?
- What kind of skills and knowledge do the adjudicators of customary courts have? Are they trained? Who trained them and what was the training/s about?
- Do they have any training on women's rights in general and rural women's land rights in particular? If yes, when did they get the training and who were the actors who offered the training?
- What kind of rural land related cases are submitted to the customary system? What are the rules of the customary system on rural women's land rights?
- Do rural women submit/report cases to the customary court related to land? If no, what are the barriers for rural women to report violations of their land rights andto pursue its adjudication before the customary system?
- Are rural women allowed to bring land related cases? If not, who bring such cases on their behalf?
- Why do people bring disputes on land rights to customary system?
- Do you think rural women's land rights are adequately protected by customary adjudication, compared to ordinary courts? Are there measures taken by customary courts to ensure women feel confident to seek remedies for violations of their land rights before these courts? If yes, what are these measures? Can you tell me some specific cases related to the joint titling that you adjudicated ?
- What kind of evidence is required for rural women to vindicate their land rights at the customary court? Are land certificates acceptable before customary courts to establish women's rural land rights? If no, why are not they acceptable?
- Do customary courts recognize the customary rights on the land acquired through long usage/possession of the land if there is no land certificate? If yes, how are rural women prove such possession?
- What are your views on the joint land certification/titling program?
- Does the land certification process in any way affect the adjudication of rural women's land rights before the customary system? If yes, what are the different ways, it impacted the adjudication process?

- What kind of intervention by the government or any other stakeholder you think will improve rural women's land rights before the customary court?

VI. The House of Federation and the Council of Constitutional Inquiry

- Tell me about yourself (name, position, number of years in that position, educational background etc)
- Does the House or the Council have any mandate in ensuring the protection of rural women's land right? If yes what are these?
- The data shows that there is high number of rural land cases brought before the HoF/CCI. What are the reasons behind high number of land cases being brought before the HoF/CCI? Who brings these cases? What kinds of women rights to land are violated frequently?
- What kinds of gaps in the law and decisions of courts trigger constitutional interpretation?
- What kind of challenged women face to pursue cased before the HoF/CCI?
- What kind of measures taken to reduce the high flow of land related cases to HoF/CCI and to ensure the constitutional rights of rural women to land?
- In your opinion, does the land registration program have any impact on the protection of rural women's land rights? If yes, what are the added values?
- What kind of gaps did you observe in the land certification program? What has been the success and failures of the land registration program in terms of protection of rural women's land rights?
- How do social norms and values impact the protectionand/or violation of women's land rights or vice versa?How does the HoF mediates between apparently conflicting rights - cultural and women's right?
- What kind of activities your office undertakes to promote the protection of rural women's land rights?
- What measures do you recommend to be taken to ensure the constitutional interpretation respect rural women's land rights?

VII. NGOs (EWLA and others)

- What are the challenges and opportunities to protect rural women's land rights in Ethiopia?What are the main challenges in the enforcement of rural women's land rights?
- What are the barriers for rural women to pursue justice for violation of their land rights?
- What are the challenges in the court adjudication of rural women's land rights?
- What should be done to ensure the protection of rural women's land rights?
- In your opinion, does the land registration program have any impact on the protection of rural women's land rights? If yes what are the added values?
- What kind of gaps did you observe in the land certification program? What has been the success and failures of the land registration program in terms of protection of rural women's land rights?
- How do social norms and values impact the protectionand/or violation of women's land rights or vice versa?
- What kind of advocacy or any related work have you done to promote gender sensitive rural land certification process?
- What kind of activities your office undertakes to promote the protection of rural women's land rights?

- What is the contribution of religious and customary courts and institutions for the protection and/or violation of rural women's land rights? What challenges and opportunities are there for rural women to seek the protection of their land rights before customary and religious courts?What are the perceptions of the society or government institutions towards a woman who take cases to the justice system?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women's land rights?

VIII. National Human Rights Institutions (EHRC and Ethiopian Institute of the Ombudsman)

- Tell me about yourself (name, position, number of years in that position, educational background etc)
- Have you engaged in monitoring the implementation of rural women's land rights? What kind of rural women's land rights issues arise in your work? What do think are the challenges in the protection of rural women's land rights?
- Are rural women's land rights given special attention in your promotion and monitoring of women´s constitutional rights, including their property rights?
- Do you handle cases involving rural women's land rights? If yes can you give us an example of the different types of cases that might have been brought to your attention?
- Why do you think rural women preferred your institution than the judiciary for handling their cases related to land rights?
- What remedies do you provide for cases involving rural women's land rights?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women's land rights?

IX. Development partners that implemented projects on Women's Land Rights

- Tell me about yourself (name, position, number of years in your current position, educational background etc)
- What kind of support do you provide to improve rural women rights to land? Why did you focus on this area?
- What are the purposes of your program?
- How do you see the effects of the land certification program in improving women's land rights? What are your views on the joint land titling?
- What are the challenges in the land certification process?
- What challenges and opportunities are there for rural women to seek the protection of their property rights?
- What kind of challenges do rural women face to adjudicate their rights to land?
- What kind of support is available for rural women to realize their right to land?
- What recommendations would you make to improve the overall justice system so that it can better protect rural women's land rights?

Part Two
Questions for Focus Group Discussion (FGD)

- What kind of customary tenure system exists in Sidaama? What rights do rural women have in such system?
- What factors determine access to rural land under the customary system? Do rural women have access to land? If not, why? If yes, what are the rural women's rights protected under the customary tenure system?
- What kind of rural women's land rights are protected by the formal legal system?
- When was the land certification and registration program started? How was its reception by the community when it was first introduced?
- What are the challenges for rural women to get their share of land registered and certified?
- What are the effects of the land certification program on rural women's land rights? What kind of changes did it bring in the formal and customary justice system? Are there changes in the attitudes and practices of elders in handlingrural women's land rights because of the certification program?
- What are the gaps in the rural land registration and certification process?
- What kinds of disputes arise in relation to rural women's land rights? Where are these disputes taken? What kinds of support system exist for rural women to take their cases to the justice system?
- What are the implications of a rural woman pursuing a case on her children and other family members?
- What kind of challenges rural women face to get their rights protected by the formal or customary system? What are the perceptions of the society or government institutions towards a woman who take cases to the justice system?
- What kind of measures should be taken to protect rural women's land rights? By whom?

Part Three
Observation and Documents Collection Checklist

- Documents: from all relevant institutions
    - Proclamations, regulations & directives
    - Reports (research or performance)
    - Statistical documents
    - Court cases
    - Circulars
    - Manuals, guidelines, formats
- Site visits & observation checklist:
    - *Court (observations during court hearings)*
        - Women friendliness of the physical environment, including for nursing mothers.
        - Representation of women in the court during hearings
        - Support service/information centre
        - Manner of officers' interaction with women coming to court

- The ease with which women interact and follow up their case

- *customary systems*
  - Women friendliness of the physical environment, including for nursing mothers.
  - Representation of women as litigants and adjudicators
  - Availability of support service/guide
  - Manner of elders' interaction with women having case
  - The ease with which women interact, participate, and follow up their cases.
- *Local Land administration committee*
  - Representation of women in the committee
  - Availability of women's friendly support service/guide
  - Manner of interaction with women having case
  - The ease with which women interact, participate, and follow up their cases.

Selection criteria for court cases

Cases related to women's land rights will be collected randomly. However, the following will be considered in selection court cases to be included for analysis:

- Cases that are decided after the certification program started;
- Cases on which the court rendered a final decision;
- Cases that have gone through the higher court and high profile cases;
- Cases related to division of land as a common property in marriage, land as subject of inheritance, violence on the land etc

Checklist to analyze court cases

- What are the types of violations in the cases?
- How are the violations conceptualized? Are they considered as human rights violations, violation of laws or economic violence?
- What kind of rural land related violations are common to women?
- What are the remedies sought and the judgments?
- Is there any inconsistency in decisions? Why is that so?
- What are the remedies provided for land alienations?
- How did the formalization of land rights affect court decision? Do the formalizations enable courts to decide using land certificates as evidence? In which cases land certificates are used as evidence? How much weight is given to land certificate as evidence in land cases adjudication? If it is not serving its purpose, what are the gaps in the land certificates?
- What kind of recognition is given to customary land rights acquired through long usage/possession of the land in the formal court?

Part Four
Data Collection Plan

Data Collection tool	Information to be captured	Description of Data Source	Quantity[1163]	Timeframe
In-depth interview	- Rural women's understanding and perception of land registration and certification process (its benefits and challenges in claiming land rights) - Mapping of the types of issues arising in relation to rural women's land rights. - The challenges rural women face in using the land certification as evidence to get the rights respected before administrative and judiciary organs. - Available avenues for rural women to settle land related claims, the process of forum shopping and factors affecting forum shopping - The challenges/barriers that rural women face in claiming their rights to control, use, and administer land including societal perception of rural women who defend/protect the land rights. - The lived experience of rural women who have been in land related disputes - The types of land related disputes in which rural women are involved. - Determinant factors in rural women's success/unsuccess rates in land related disputes - Societal attitudes and perceptions about rural women claiming their rights	- Rural women involved in land rights dispute or matrimonial property dispute	15 interviews	- *May 1-July 30, 2022 at Hawassa and its surroundings*
		- Husbands involved in matrimonial property dispute or land disputes	5 interviews	
		- Family members of rural women in marital or land related disputes	5 interviews	
		- wives/partners in the context of polygamous relationships	5 interviews	
			Total = 30	

[1163] The number of interviews provided are the minimum number determined with the believe that it will allow the researcher to reach saturation of information.

	- Impact of rural women pursuing their rights on their children and other family members - Rural women's land rights litigants who are in polygamous relationships			
Key Informant Interview	- Mapping actors and interventions - Identifies norms, laws, institutions (structures), mandates and responsibilities of different bodies, capabilities, and available resources - Roles of formal and informal institutions in protection rural women's land rights - Practical challenges rural women face in protecting their land rights through the land registration process - Existing interventions undertaken by different sets of actors to support the protection of rural women's land right -Changes in the attitudes and practices of elders/judges on rural women's land rights because of the certification program - Legal, institutional and enforcement gaps in existing interventions to support protection of rural women's land rights - Identifies recommended interventions to bring about meaningful changes.	- *Head/key personnel of key government institutions* - Regional legislative organ - courts: supreme court, high court, Woreda court - Agriculture Bureaus/offices at the regional, zonal and Woreda levels - Land administration and use offices (rural): regional and Woreda level - Property registration offices (urban) - police: Woreda/local level - Ethiopian Institution of the Ombudsman branch office - Women and children affairs offices: regional, Zonal & Woreda level - Legal aid centers of Hawassa University and the Center for Human Rights of AAU - *Civic associations & NGOs* - Ethiopian Women's Lawyers Association (EWLA) Hawassa Branch - To be identified and listed during field visit -*Religious/customary dispute settlement institutions* - Elders -*Federal level institutions* - Experts at the Secretariat of	To be determined based on actual actors inventory during field visit	

		Council of Constitutional Inquiry - Agriculture Ministry -*International development partners* - UNWOMEN		
Focus Group Discussion	-Understanding the local social norms related to rural women's land rights -Challenges/barriers rural women face in safeguarding their land rights -Challenges in the land certification program and its gendered dimensions -Supports available for rural women in protecting land right -Changes in the attitudes and practices of elders on rural women's land rights because of the certification program -Gaps in existing interventions	-Members of Local Land administration Committees at Woreda/kebele level -Land experts at Woreda offices -Community leaders and members of women's organisations to be identified in the respective study sites -FGD with local farmers/peasants (five women and men each).	6 FGDs with 5-8 participants.	
Court Case Studies	-To find patterns and trends in the type of cases brought before courts, decisions and rights protected -To ascertain the use of land certificates in litigation -The use of human rights language/discourse in courts' decisions -	-Cases decided by regular courts at the federal Cassation division of FSC and regional courts -Decisions by House of federation and Council of Constitutional Inquiry	- 20 selected cases based on the criteria set above at regional and zonal courts - 10 selected cases at the Cassation Division of FSC - 5 selected cases at the HoF/CCI	
Observation of live trials at customary and formal courts	-Processes of the trials -Participation of rural women in the trials and attitudes of judges towards women's rights in general and that of women's land rights -changes in the attitudes and practices of elders on women's land rights because of the certification program.	-Adjudication proceedings before customary courts.	- Five trials	

Document Collection	- Statistical data on the certification program
	- Norms, structures, and processes
	- Challenges/barriers rural women face to protect their land right
		- Collecting: Proclamations, regulations & directives, Court cases, reports (research or performance), Statistical documents, Circulars, Manuals, guidelines, Formats from key governmental and non-governmental institutions as well as from study participants
		- Key government institutions
		  - Regional legislative organ
		  - Courts
		  - Bureau of Agriculture and Natural Resource
		  - Land administration and use offices (rural)
		  - Property registration offices (urban)
		  - Bureau of finance and economic development
		- International institutions
		  - World Bank
		  - UNWOMEN
		  - NGO
		- Hawassa university legal aid center
		- EWLA (Hawassa Branch)
			Number of documents depends on the availability	

Annex 2: List of Informants

Key Informants

No.	Date of the interview	Institution	Sex	Position	Place of interview
01	04 May 2022	Sidaama Regional Sates Women, Youth and Social Affairs Bureau	M	Director of Ensuring women, Children and Youth inclusion and benefit Directorate	At his office- Hawassa City
02	‘’	Mizan Youth Lawyers Center	M	President	At his office- Hawassa City
03	‘’	Hawassa Area High Court	M	Assistant Judge	at the café of his office- Hawassa City
04	‘’	Hawassa Area High Court	M	Court Registrar	At café of his office- Hawassa city
05	06 May 2022	Hawassa area High Court	M	Judges of the Civil Bench of the Hawassa Area High Court	At their office-Hawassa city
06	“	Aleta Chiko Woreda Women, Children and youth Affairs office	M	Legal Officer at Aleta Chiko Woreda Women, Children and youth Affairs office	At Hawassa area High Court
07	May 09, 2022	Sidaama Regional State Agriculture and natural Resources Development Bureau	M	Land Administration and use Directorate Director	At his office- Hawassa City
08	‘’	‘’	F	Agricultural Land Administration Expert	‘’
09	‘’	‘’	M	Agricultural Land Administration Planning Expert	‘’
10	May 10, 2022	Hawyela Tula First Instance Court	F	President	At her office- Tula subcity
11	,,	AAU-CHR legal aid center at Hawyela Tula First Instance Court	M	Legal aid provider	At his office-Tula subcity
12	,,	Hawyela Tula Justice office	M	Prosecutor	At his office- Tula Subcity
13	,,	Hawyela Tula Justice Office	M	Hawyela Tula civil case core process Prosecutor	At his office- Tula subcity
14	,,	Tula Sub-city Abela Akola Women, Children and Youth Office	F	Women Association Chairperson and Women developmental army leader	Tula subcity
15	,,	Tula Sub-city Women, Children and Youth Office	M	Psychologist	At his office- Tula Sub-city
16	,,	Tula sub-city Agriculture and natural resources office	M	Vice head and Director of Land Administration Sector	,,

17	,,	Elder	M	Elder	At Tula Sub-city Women, Children and Youth Office
18	11 May 2022	Hawassa Zuria Woreda First Instance Court	M	Judge	At his office in Dore Bafano Woreda
19	,,	Hawassa Zuria Woreda Justice Office	M	Hawassa Zuria Civil case administration core process coordinator	,,
20	,,	Elder	M	elder	
21	''	Elder	M	elder	
22	,,	Hawassa Zuria Woreda Women, Children and Youth Office	M	Women empowerment core processing coordinator	
23	,,	CHR legal aid center	M	Legal aid provider	
24	,,	Dore Bafano Land Administration and Use Office	M	Dore Bafano Land Administration and Use Expert	At his office in Dore Bafano
25	12 May 2022	AAU-CHR Hawassa project office	M	Legal aid provider at Hawassa Area High Court	At Hawassa University cafe
26	,,	EWLA- Hawassa Branch	F	EWLA-Hawassa branch	At her office
27	''	Hawassa University	F	Assistant Professor	At her office
28	''	Ethiopian Institute of Ombudsman-Hawassa Branch	M	Investigation Directorate Director	At his office
29	''	EHRC-Hawassa Branch	M		At their office
30	13 May 2022	Talita Rise Up	F	Talita Rise Up Director	At a Hotel
31	19 July 2022	Social Court	M	Judge at Social Court	Kebel- Dila Chanega Worda- Shebedino
32	20 July 2022	S/R/S Attorney General and former Judge	M	Director of Secretariate for Prosecutor Administration at S/R/SAttorney General	Hawassa City
33	20 July 2022	S/R/S Attorney General and former Judge	F	Prosecutor at S/R/S Attorney General and former Judge	Hawassa City
34	21 July 2022	Land Administration Committee	M	President and vice President of Kebele's Land Administration Committee	Yelebukoromo Kebele
35	23 July 2022	''	M	Chairperson of land administration Committee	Dila Chaneki Kebele
36	21 October 2022	Project officer seconded to MoA by UN Women	F	Project officer seconded to MoA, UN Women	Addis Ababa
37	12 Aug. 2022	Alawa Ano kebele's Women Association/Women's League	F	Chairperson of Kebel's Women Association/Women's League	Alawa Ano kebele
38	23 October 2023	Land Use and Administration Expert, MoA	M	Land Use and Administration Expert, MoA	Addis Ababa
39	3 March 2023	Secretariate of the Council of	M	Constitutional Teaching and	Addis Ababa

		Constitutional Inquiry		Awareness Creation Team Leader of the Secretariate of the CCI	
40	3 March 2023	Secretariate of the Council of Constitutional Inquiry	F	Case Flow Management Directorate Director on of the Secretariate of the CCI	Addis Ababa
41	17 June 2019	House of Federations conducted on.	M	Director of Identity Issues and Constitutional Interpretation Directorate	Addis Ababa
42	17 June 2019	House of Federation	M	Registrar	Addis Ababa
43	Sep. 16, 2020	Ethiopian Human Rights Commission (EHRC)	M	Director of Monitoring and Research Directorate	Addis Ababa
44	Sep. 10, 2020	Ethiopian Institute of Ombudsman (EIO)	M	Director of investigation Directorate	Addis Ababa

List of female interviewees who passed through the justice system

No.	Date of the interview	Position	Sex	Age	Education	Marital Status	No. of children (M=male, F=female	Place of interview	Case Type
45	19 July 2022	Farmer	F	60	No formal education	widow	4 (1 M and 3 F)	Dila ChanegaWorda-Shebedino Kebele	Kontract
46	"	Trader	F	35	10+2	Married	Two (1 M and 1 F)	,,	Donation from father
47	''	Chair person of women's association	F	36	Grade 8	3rd wife	Two (1 F and 1 M)	,,	Divorce
48	''	Farmer	F	25	Grade 10	Single		,,	Inheritance from mother line
49	''	Farmer	F	45	Grade 5	Widow	6 (3M and 3 F)	,,	
50	''	Farmer	F	30	Grade 4	2nd wife (widow)	6 (2M and 4F)	,,	Dispute with the other wife
51	,,	farmers	F	45 and 43		divorcee	8 and 6		inheritance
52	21 July 2022	Farmer and employee	F	35	Grade three	Widow	3 M	Dori Bafano's court	inheritance
53	,,	Farmer	F	40	No formal education	married	6 (4 M and 2 F)	,,	inheritance

54	22 July 2022	former member of land Administration Committee	F	76				Yergalem	
55	23 July 2023	housewife	F	30	8 grade	divorcee	3 (2M and 1F)	Moricho town (address Leku kebele)	Marital case
56	,,	student	F	20	12 grade	divorcee	2 (1F and 1M)	Yerba town	Marital case
57	,,	farmer	F	30	7 grade	divorcee	3 F	Dila Chaneki Kebele	Marital case
58	,,		F	80	No formal education	widow	3F and 1M	,,	Inheritance case
59	,,	No job	F	28	Grade 7	divorcee	2 (1F and 1M)	Leku town	Marital case
60	26 July 2022	Grade one teacher	F	28	10^{th} grade	married	1	Alawa Ano kebele	inheritance
61	,,	Small scale trader	F	35	5^{th} grade	divorcee	1 F and 1M	,,	Marital case
62	,,	Small scale trader	F	30	4^{th} grade	divorcee	1 F and 1M	,,	Marital case

Focus Group Discussion (FGD)

No.	Date of interview	No. of participants	Positions	Place of interviews
1	26 July 2022	five participants	Alawa Ano kebele land Administration Committee secretary, members of LAC, secretary of prosperity party, Kebele's speaker	Alawa Ano Kebele
2	16 August 2022	Five participants	Beltsange kebele land Administration Committee secretary and member, finance officer and members	Shebedi Woreda

References

Books

Aalen, Lovise, *The Politics of Ethnicity in Ethiopia: Actors, Power, and Mobilization under Ethnic Federalism*, 2011, Brill.

Bahru Zewde, *A History of Modern Ethiopia 1855-1991*, Addis Ababa University Press and Research and Graduate programme Office, 2002, Addis Ababa.

Bahru Zewde, *The Quest for Socialist Utopia: The Ethiopian Student Movement c. 1960-1974*, 2014.

Baxi, Upendra, *The Future of Human Rights*, New Delhi: Oxford University Press, 2002.

Boone, Catherine, *Property and Political Order in Africa: Land Rights and the Structure of Conflict*. 2014, Cambridge: Cambridge University Press

Brems, Eva, Beken, Christophe Van der and Solomon Abay Yimer(eds.), Human Rights and Development: Legal Perspectives from and for Ethiopia, 2015.

Craven, Matthew, *The International Covenant on Economic, Social and Cultural Rights: A perspective on its Development', Clarendon Press*, 1995.

Crotty, Michael, *The Foundations of Social Research: Meaning and Perspectives in the Research Process*, 3rd edition, 2003.

Daniel Behailu, 'Transfer of Land Rights in Ethiopia, Towards Sustainable Policy Framework', *Eleven International Publishing*, The Hague, 2015.

Daniel W. Ambaye, *Land Rights and Expropriation in Ethiopia*, Springer Theses, Springer, Cham, 2015.

De Soto, Hernando, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books, 2000.

Epp, Charles, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago, IL: University of Chicago Press), 1998.

Hoben, Allen, *Land Tenure among the Amhara of Ethiopia: The Dynamics of Cognatic Descent*, the University of Chicago Press, 1973.

Ikdahl, I. *et al.*, *Human Rights, Formalisation and Women's Land Rights in Southern and Eastern Africa*, 2005.

L..Kreuger and L. Neuman, *Research Methods, Qualitative and Quantitative Approach*, 2nd ed.,Boston: Parson Education, Inc, 2006.

Lavers, Tom, Ethiopia's 'Developmental State': Political Order and Distributive Crisis, Cambridge University Press

Merry, Sally, *Human rights and Gender Violence. Translating International Law into Local Justice.* Chicago, London: University of Chicago, 2006.

MuÈller-Mall, S., *Legal Spaces: Towards a Topological Thinking of Law*, Springer Science & Business Media, 2013.

Platteau, Jean-Philippe, *Institutions, Social Norms, and Economic Development*, Harwood Academic Publishers, Amsterdam, 2000.

Steiner, H. J. and Alston, P., *International Human Rights in Context: Law, Politics and Morals*, 2nd ed., 2000, Oxford.

Viljoen, Frans, *International Human Rights Law in Africa*, 2007.

Book Chapters

Abebaw Yirga Adamu and Balsvik, Randi Ronning, 'Students' Participation in and Contribution to Political and Social Change in Ethiopia' in Elina Oinas, Henri Onodera and Leena Suurpää (eds.), *What Politics?: Youth and Political Engagement in Africa*, 2018.

Aguilaw, Gaby Oré, 'The Local Relevance of Human Rights: A Methodological Approach' in Koen De Feyter (ed.), *The local relevance of human right,*. Cambridge University Press, 2011.

Anchinesh Shiferaw and Ghetnet Mitiku, 'Assessment of Legal Aid in Ethiopia: A Research Report' in Fasika Hailu and Kokebe Wolde (eds.), *Assessment of Legal Aid in Ethiopia: A Research Report and*

Proceeding of the National Workshop of Legal Aid Providers, 2013, Center for Human Rights, Addis Ababa University.

Beckmann, V. and Padmanabhan, M., 'Analyzing Institutions: What Methods to Apply?' in V. Beckmann and M. Padmanabhan (eds.), *Institutions and Sustainability: Political Economy of Agriculture and the Environment- Eassays in Honour of Konrad Hagedorn*, 2009.

Cappeletti, Mauro, Introduction in *Access to Justice and the Welfare State*, 1981.

Cook, Rebecca J., 'Women's International Human Rights Law: The Way Forward.' In Rebecca J. Cook, *Human rights of women: National and international perspectives.* University of Pennsylvania Press, 1994.

Desalegn Amsalu, "Use and abuse of 'the right to consent' Forum shopping between shimgilinna and state courts among the Amhara of Ankober, north central Ethiopia" in Susanne Epple, Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020.

Dessalegn Rahmato, 'Land Rights and Tenure Security: Rural Land Registration in Ethiopia' in J. Ubink, A. Hoekema, and W. Assies (eds), *Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia, and Latin America*, Leiden University Press: Dordrecht, The Netherlands, 2009.

Epple, Susanne, "Introduction" in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020.

Feyter, Koen De, 'Localising Human Rights' in Wolfgang Benedek, Koen De Feyter and Fabrizio. Marrella (eds.), *Economic Golobalisation and Human Rights*. Cambridge University Press, 2007.

Fletcher, Amber J., 'The Reality of Gender (Ideology): Using Abduction and Retrodcution in Applied Critical Realist Research' in Michiel van Ingen, Stephanie Grohmann, and Lena Gunnarsson (eds.), *Critical realism, Feminism and Gender: A reader*, 2020, Routledge.

Gebre Yntiso, "Understanding Customary Laws in the Context of Legal Pluralism", in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020.

Gedion T. Hessebon and Abduletif K. Idris, 'The Supreme Court of Ethiopia: Federalism's Bystander' in Nicholas Aroney and John Kincaid (eds.), *Federal Countries: Federalists or Unitarists?,* University of Toronto Press, 2017.

Getachew Assefa, "Towards widening the constitutional space for customary justice systems in Ethiopia" in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020.

Grossman and Sarat, 'Access to justice and the limits of law' in Foster, Gambatta May (ed.), *Governing through courts,* 1981.

Holden, S. and H. Ghebru, "Welfare Impacts of Land Certification in Tigray, Ethiopia" in Holden, S., Otsuka, K. and Deininger, K. (eds.) *Land Tenure Reform in Asia and Africa: Assessing Impacts on Poverty and Natural Resource Management*, Palgrave Macmillan,London, 2013.

Holden, Stein T., 'The Gender Dimensions of Land Tenure Reforms in Ethiopia 1995-2020' in Uchendu Eugene Chigbu (ed.), *Land Governance and Gender: The Tenure-Gender Nexus in Land Management and Land Policy*, 2022.

Ibhawoh, B., 'Restraining Univeralism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse' in P. Zeleza and P. McConnaughay (eds.), *Human Rights, the Rule of Law, and Development in Africa*, Philadelphia: University of Pennsylvania Press, 2004.

Lavers, Tom, 'The Political Economy of Land Policy in Ethiopia: Evolving Rationales and Challenges of State Ownership' in Melaku Gebeye Desta, Dereje Feyissa Dore and Mamo Esmelealem Mihretu (eds.), *Ethiopia in the Wake of Political Reforms*, 2019.

Levitt, Peggy, 'Making Women's Human Rights in the Vernacular: Navigating the Culture/Rights Divide', in Hodgson, Dorothy Louise and Hodgson, Dorothy Louise (eds.), *Gender and Culture at the Limit of Rights,* University of Pennsylvania Press, 2011.

Meron Zeleke, 'Beyond the Exclusion Theses: Women and Customary Courts in Ethiopia' in Kjetl Tronvoll (ed.), *Supplementary Report under the Project Protection of Women's Rights in the Justice Systems of Ethiopia,* 2016.

Meskerem Geset and Tayechalem G. Moges, "Counting Absence in Political Equality: A preliminary Gender Analysis of the Electoral Law Reform in Ethiopia" in Meron Zeleke and Meskerem Geset (eds.), *Gender, Development and Women's Rights: Ethiopian Perspective*, 2020.

Meyer, M., 'Between Theory, Method, and Politics: Positioning of the Approaches to CDA' in R. Wodak and M. Meyer (eds.), *Methods of Critical Discourse Analysis*, 2009.

Muradu Abdo, 'Kontract: A Hybrid Form of Law Among the Sidaama' in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions*, 2020.

Niemi-Kiesiläinen, P. Honkatukia & M. Ruuskanen, 'Legal Text as Discourse' in Svensson, Gunnarsson and Davies M. (eds), *Exploiting the Limits of Law,* 2007.

Original Wolde-Giorgis, "Land Tenure and Gender" in Taye Assefa (ed.), *Food Security Through Sustainable Land Use: Policy on Institutional, Land Tenure, and Extension Issues in Ethiopia: Proceedings of the First National Workshop of NOVIB Partners Forum on Sustainable Land Use*. Addis Ababa: NOVIB Partners Forum on Sustainable Land Use, 1999.

P, Alston 'The Historical Origins of the Concept of "General Comments" in Human Rights Law.' In Chazournes, Boisson de and DV, Gowland (eds) *The International Legal System in Quest of Equity and Universality*: Liber Amicorum Georges Abi-Saab. Springer, 2001.

Seyoum Hameso, 'The Sidaama Nation: An Introduction' in Seyoum H. and M. Hassen (eds.), *Arrested Development in Ethiopia: Essays on Underdevelopment, Democracy, and Self-determination*, 2006.

Solomon Deresso, 'The Right to Self-Determination, Minorities and Indigenous Peoples in Africa' in Solomon Dersso (ed.), *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa*, 2010.

Ubink, Janine M, 'Legalising Land Rights in Africa, Asia and Latin America: An Introduction' in Ubink, Janine M, Hoekema, A., and Assies, W. (eds), *Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia, and Latin America*, Leiden University Press: Dordrecht, The Netherlands, 2009.

Wodak, R., 'What CDA is about? A summary of its History, Important Concepts and its Developments' in R. Wodak and M. Meyer (eds.), *Methods Of Critical Discourse Analysis*, 2009.

Zeleza, Paul., 'The Struggle for Human Rights in Africa' in Zeleza, Paul. T. (ed.), *Human Rights, the Rule of Law, and Development in Africa,* University of Pennsylvania Press, 2004.

Zenebework Tadesse, 'Revisiting Rural Development in Ethiopia Though the Gender Lens' in Zenebework Tadesse (ed.), *Issues in Rural Development - Proceedings of the Inaugural Workshop of the Forum for Social Studies*, 18 September 1998, Addis Ababa, Forum of Social Studies.

Journal Articles

Aalen, Lovise, 'Ethiopia: The Interplay Between Federalism and Dominant Party Rule and Sidaama's Quest for Statehood', *International Journal on Minority and Group Rights*, Vol. 28, 2021.

Aalen, Lovise, 'Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia', *International Journal on Minority and Group Rights*, vol. 13, no. 2/3, 2006.

Abebaw Abebe Belay and Tigistu G/meskel Abza, Protecting the Land Rights of Women through an Inclusive Land Registration System: The Case of Ethiopia, *African Journal on Land Policy and Geospatial Sciences*, Vol.3, Special.2 (March 2020).

Abebe Demewoz Mengesha, 'The Role of Sidaama Indigenous Institutions in Conflict Resolution: In the Case of Dalle Woreda, Southern Ethiopia', *American Journal of Sociological Research*, vol. 6 (1), 2016.

Abraham Ayalew, 'Compliance of National Human Rights Institutions (NHRIs) in Ethiopia with the Paris Principles', *Ethiopian Human Rights Law Series,* Vol. 5, 2012.

Achamyeleh Gashu Adam, 'Decentralised Rural Land Administration in Ethiopia: The Case of Amhara Region', *Journal of Land and Rural Studies*, Vol. 6 (1), SAGE Publication, 2017.

Acharya, Amitav, 'How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism', *International organization,* Vol. 58 (02), 2004.

Adem Kassie Abebe, Towards More Liberal Standing Rules to Enforce Constitutional Rights in Ethiopia, *African Human Rights Law Journal*, vol. 10, 2010.
Alvarez, José E., 'The Human Right of Property', 72 *U. Miami Law Review* 580, 2018.
Anchinesh Shiferaw Mulu, 'The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia', 2019, *Mizan Law Review*, Vol. 13, No. 3.
Assefa Fisseha, 'Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)', *Mizan Law Review*, Vol. 1, No. 1, 2007.
Auerbach, Jerold S, *Justice Without law?,* Vol. 762. Oxford University Press, USA, 1984.
Ayelech Kidie Mengesha *et al.,* 'The Contribution of Land Registration and Certification Program to Implement SDGs: The Case of the Amhara Region, Ethiopia', *Land 2023*, 12, 93.
Banda, Fareda, 'Blazing a Trail: The African Protocol on Women's Rights Comes into Force.' *Journal of African Law*, Vol. 50 (1), 2006.
Belachew Mekuria Fikre, "Bigamy and Women's Land Rights: The Case of Oromia and SNNP National Regional States", *Ethiopian Journal of Human Rights*, Vol. 1, 2013.
Belete Bizuneh, 'Women in Ethiopian History: A Bibliographic Review', *Northeast African Studies,* vol. 8, no. 3, 2001.
Benda-Beckmann, Keebet von and Turner, Bertram, "Legal Pluralism, Social Theory, and the State", *The Journal of Legal Pluralism and Unofficial Law*, vol. 50 (3), 2018.
Benjaminsena, Tor A. *et al.*, 'Formalisation of Land Rights: Some Empirical Evidence from Mali, Niger and South Africa', *Land Use Policy*, Vol. 26, 2008.
Berihun Adugna Gebeye, "Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State", *Women in Society,* Vol. 6.
Berman, P.S., "Towards a Jurisprudence of Hybridity", *Utah Law Rev*., Vol. 1, 2010.Brightman Gebremichael Ganta, 'Access to Rural Land Rights in Post-1991 Ethiopia: Unconstitutional Policy Shift', *Journal of Land and Rural Studies*, Vol. 7 (1), 2019.
Boone, Catherine, Land Tenure Regimes and State Structure in Rural Africa: Implications for the Forms of Resistance to Large-Scale Land Acquisitions by Outsiders. *Journal of Contemporary African Studies*, Vol. 33 (2), 2015.
Boone, Catherine, Property and Constitutional Order: Land Tenure Reform and the Future of the African State, *African Affairs*, Vol. 106 (425), 2007.
Cappelletti, Mauro and Garth, Bryant, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective', *Buffalo Law Review*, Vol 27, 1977.
Chinigo, David, 'The Politics of Land Registration in Ethiopia: Territorializing State Power in the Rural Milieu', *Review of African Political Economy*, Vol. 42, No. 144.
Chinkin, Christine and Wright, Shelley, The Hunger Trap: Women, Food, and Self-Determination, 14 *Michigan Journal of International Law*, 1993.
Cochrane, Logan and Sebsib Hadis, 'Functionality of the Land Certification Program in Ethiopia: Exploratory Evaluation of the Processes of Updating Certificates', *Land*, 8, 149, 2019.
Cotula, Lorenzo, Toulmin, Camilla and Hesse, Ced, *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues*, 2004.
Crewett, Wibke and Korf, Benedikt, "Ethiopia: Reforming Land Tenure", *The Politics of Capital*, Vol. 35, No. 116, 2008, Taylor & Francis, Ltd.
Crummey, Donald, 'Women and Landed Property in Gondarine Ethiopia', *International Journal of African Historical Studies*, 1981.
Daniel Behailu Geberamanuel and Gemmeda Amelo Gurero, 'The Enigma of Informal Rural Land Deals in Ethiopia: Evidence from Peri-urban Areas of Hawassa City', *Haramaya Law Review*, vol. 6, 2017.
Deininger, K., D. Ali and T. Alemu, "Impacts of Land Certification on Tenure Security Investment, and Land Market Participation", *Land Economics*, Vol. 87, 2011
Demewoz Mengesha, The Role of Sidaama Indigenous Institutions in Conflict Resolution: In the Case of Dalle Woreda, Southern Ethiopia, American Journal of Sociological Research, vol. 16 (1), 2016.

Dereje Feyissa, 'The Praxis of Combating VAW in Ethiopia: A Political Interpretation', *DIIS Working paper*, 2020:10.

Destrooper, Tine, 'Uprooting the Curious Grapevine: The Transformative Potential of Actor-Center Perspectives and Localization in the Field of Human Rights'. *Journal of Human Rights*, Vol. 16 (4), 2017.

Ege, S, 'Land Tenure Insecurity in Post-Certification Amahara, Ethiopia', *Land Use Policy*, Vol. 64, 2017.

Elleni Centime Zeleke, When Social Science Concepts Become Neutral Arbiters of Social Conflict: Reading the Ethiopian Federal Elections of 2005 through the Ethiopian Student Movement of the 1960s and 1970s, *Northeast African Studies,* Vol. 16, No. 1, 2016

Eyob Balcha Gebremariam, Thandika Mkandawire's Model for an African Developmental State, and the Ethiopian Experiment (2001-2018), *Africa Development,* Vol. XLIX, No. 2, 2024.

Facio, Alda and Morgan, Martha I., 'Equity or Equality for Women? Understanding CEDAW's Equality Principles', *Alabama Law Review,* Vol. 60, 2009, p. 1146-1147.

Fletcher, Amber J., 'Applying Critical Realism in Qualitative Research: Methodology Meets Method', *International Journal of Social Research methodology*, Vol. 20 (2), 2016.

Gemma, Burgess, 'A Hidden History: Women's Activism in Ethiopia', *Journal of International Women's Studies*, Vol. 14, No.3, 2013.

Getu Sisay, 'Departure of Ethiopian Family Laws: The Need to Redefine the Place of Societal Norms in Family Matters', *Haramaya Law Review,* Vol. 4 (1), 2015.

Gilbert, Jérémie, 'Land Rights as Human Rights: The Case for a Specific Right to Land', *International Journal of Human Rights,* Vol. 10, No. 18, 2013.

Giovarelli, Renee and Hirut Girma , 'Lesson 2: The Gender Implications of Joint Titling in Ethiopia' in *Focus on Land in Africa Brief,* 2013.

Griffiths, John, "What Is Legal Pluralism?", *Journal of Legal Pluralism*, 1986.

H. Girma and Giovarelli, R., 'Lesson 2: The Gender Implications of Joint Titling in Ethiopia' in *Focus on Land in Africa Brief,* 2013 available on https://gatesopenresearch.org/documents/3-1018 (accessed on 28 July 2022).

Habib Jemal, 'A Critical Assessment on Provisions of the Federal Constitution of Ethiopia with Regard to Federal-Regional Governments Relationship on Land Law', *Oromia Law Journal*, Vol. 9, No. 1, 2020.

Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu, 'Power of Land Administration under the FDRE Constitution', *Journal of Ethiopian Law*, Vol. 31, 2019.

Hagmann, Tobias and Peclard, Didier, Negotiating Statehood: Dynamics of Power and Domination in Africa, Development and Change, Vol. 41 (4), *International Institute of Social Studies,* 2010.

Hailemariam Ayalew, Yeshwas Admasu and Jordan Chamberlin, Is Land Certification Pro-poor? Evidence from Ethiopia, *Land Use Policy*, Vol. 107, 2021.

Hailu Burayu, Elias N. Stebek & Muradu Abdo, 'Judicial Protection of Private Property Rights in Ethiopia: Selected Themes', *Mizan Law Review,* Vol. 7, No.2, December 2013.

Hiwot Abera Areru, Mesay Hailu Dangisso and Bernt, 'Births and Deaths in Sidaama in Southern Ethiopia: Findings from the 2018 Dale-Wonsho Health and Demographic Surveillance System (HDSS)', *Global Health Action,* Vol. 13, 2020.

Hodson, Loveday, "Women's rights and the periphery: CEDAW's optional protocol." *European Journal of International Law,* Vol. 25, no. 2, 2014.

Holden, S., Deininger, K. and H. Ghebru, "Impacts of Low-Cost Land Certification on Investment and Productivity", *American Journal of Agricultural Economics*, Vol. 91(2), 2009.

Holden, S., Dininger, K. and H. Ghebru, "Tenure Insecurity, Gender, Low-Cost Land Certification and Land Rental Market Particpation in Ethiopia", *Journal of Development Studies,* Vol. 47, 2011.

Holden, Stein, Deininger, Klaus and Hosaena Ghebru, 'Tenure Insecurity, Gender, Low-Cost Land Certification and Land Rental Market Particpation in Ethiopia', *Journal of Development Studies* 47, 2011.

Hurter, Estelle, 'Access to Justice: To Dream the Impossible Dream?, *The Comparative and International Law' Journal of Southern Africa*, Vol. 44, No. 3, 2011.

Hussein Ahmed Tura, '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*, Vol. 2, No. 2, 2014.

I., Jansen, 'Discourse analysis and Foucault's "Archaeology of knowledge"', *International Journal of Caring Sciences*, 1(3), 2008.

Jamieson, Michell K, Govaart, Gisela H. and Pownall, Madeleine, 'Reflexivity in Quantitative Research: A Rationale and Beginner's Guide', *Social and Personality Psychology Compass*, Vol. 17(4), 2023.

Jiang, Belle *et al*., A Theoretical Framework for Understanding Help-Seeking Processes among Survivors of Intimate Partner Violence, *American Journal of Community Psychology*, vol. 36, Nos.1/2, 2005.

Kabeer, Naila, 'Resources, Agency, Achievements: Reflections on Measurement of Women's Empowerment', *Development and change,* Vol. 30, no. 3, 1999.

Kaldor, Mary, 'The Idea of Global Civil Society' *International Affairs 79*, no. 3, 2003.

Lavers, Tom, 'Land Registration and Gender Equality in Ethiopia: How State-Society Relations Influence the Enforcement of Institutional Change', *Journal of Agrarian Change*, Vol. 17, Issue 1, 2015.

Lavers, Tom, Responding to Land-Based Conflict in Ethiopia: The Land Rights of Ethnic Minorties Under Federalism, *African Affairs*, 117/468, 2018

Legesse Lemma, The Ethiopian Student Movement 1960-1974: A Challenge to the Monarchy and Imperialism in Ethiopia, *Northeast African Studies*, Vol. 1, No. 2, 1979.

Levitt, Peggy and Merry, Sally, 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States', *Global Networks* 9, no. 4, 2009.

Lieblich, Eliav, 'How to Do Research in International Law? A Basic Guide for Beginners', 2021, *Harvard International law Journal Online*.

Lund, Christian and Boone, Catherine, Introduction: Land Politics in Africa–Constituting Authority over Territory, Property and Persons, Africa: *Journal of the International African Institute*, Vol. 83, No. 1, Special Issue: Land Politics in Africa: Constituting Authority over Territory, Property and Persons (February 2013).

Mamo Hebo and Masayoshi Shigeta, 'Continuity and Change in the Rights of Arsii Oromo Women to Property in West Arsii, Ethiopia', *Nilo-Ethiopian Studies* 19, 2014.

Mamo Hebo, 'Land Disputes Settlement in a Plural 'Institutional' Setting: The Case of Arsii Oromo of Kokossa District, Southern Ethiopia', *African Study Monographs*, Suppl. 29, 2005.

Mancino, Maxim and Bose, Srinjoy, 'Land Rights in Peacebuilding Discourse: Domination and Resistance in Timor-Leste's Ita Nia Rai program', *Australian Journal of International Affairs,* Vol. 75 (5*),* 2021.

Manji, Ambreena S., "Imagining women's 'Legal World': Towards a Feminist Theory of Legal Pluralism in Africa", *Social & Legal Studies,* Vol. 8(4), 1999.

Mann, Michael, The Automomous Power of the State: Its Origins, Mechanisms and Results, *European Journal of Sociology* / Archives Européennes de Sociologie / EuropäischesArchiv für Soziologie, Vol. 25, No. 2, Tending the roots : nationalism and populism,1984.

Mastewal Yami and Snyder, Katherine A., 'After All Land Belongs to the State: Examining the Benefits of Land Registration for Smallholders in Ethiopia', *Land Degardation and Developmen*, Wiley Online Library, 2015.

Mchangama Jacob, 'The Right to Property in Global Human Rights Law', *Cato Policy Report,* Vol. XXXIII No. 3, 2011.

Mekonnen Firew Ayano, 'Rural Land Registration in Ethiopia: Myths and Realities', *Law and Society Review*, vol. 52, No. 4, 2018.

Mequanint B. Melesse, Adane Dabissa & Erwin Bulte, 'Joint Land Certification Programmes and Women's Empowerment: Evidence from Ethiopia', *The Journal of Development Studies*, 54:10, 2018.

Meron Zeleke, "*Ye Shakoch Chilot* (the court of the sheikhs): A Traditional Institution of Conflict Resolution in Oromiya Zone of Amhara Regional State", Ethiopia, *African Journal on Conflict Resolution,* Vol. 10, No. 1, 2010.

Meron Zeleke, Tadesse K. Woldetsdik and Birhanu. Mosissa, 'Women's Property Rights and Claims in Customary Justice Systems: A Case Study of Ambo and Hawassa Zones', *Ethiopian Journal of Human Rights,* Vol. III, 2018.

Merry, Sally, "Legal Pluralism", *Law and Society Review,* Vol. 22, No. 5, 1988.

Meskerem Geset Techane, 'Economic Equality and Female Marginalization in the SDGs Era: Reflections on Economic Rights of Women in Africa', *Peace Human Rights Governance*, Vol. 1(3), 2017.

Mgbako, Chi *et al*., Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights, *Fordham International Law Journal,* vol. 32, 2008.

Mizanie Abate Tadesse, 'Rethinking Litigation Grounded Enforcement of Constitutional Rights in Ethiopia', *Journal of Ethiopian Law*, Vol. XXXII.

Mohammed Abdo, Legal Pluralism, Sharia Courts and Constitutional Issues in Ethiopia, 2011, *Mizan Law Review,* Vol. 5 (1).

Munro-Faure, Paul and Palmer, David, 'An Overview of the Voluntary Guideline on Governance of Tenure', *Land Tenure Journal,* 2012.

Mutua, Makau Wa, The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties, *Virginia Journal of international Law*, Vol. 35, 1994/5.

Narula, Smita, 'The Global Land Rush: Markets, Rights, and the Politics of Food', *Stanford Journal of International Law, Vol. 49*, 2013.

Negussie Afesha Aytaged, 'The Ethiopian Constitutional Promises to the Nation and Nationalities: The Myth and the Operational Reality', *Bahir Dar University Journal of Law*, vol. 6, no. 2, 2016.

Nigussie Afesha, Major Differences between the Revised 'Federal' and SNNP Regional State Family Codes, *Mizan Law Review,* Vol. 11, No. 2, 2017.

Otto, Dianne, '"Gender Comment": Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?' 14 *Canadian Journal of Women and the Law* 1, 2002.

Palmer, David *et al*., Fostering a New Global Consensus: The Voluntary Guidelines on the Governance of Tenure, *Land Tenure Journal*, 2012.

Pardy, Maree, 'Under Western eyes again? Rights vernacular and the gender culture 'clash'', *Australian Journal of Human Rights*, Vol. 19 (1), 2013.

S. Bezu and Holden, S., "Demand for Second-Stage Land Certification in Ethiopia: Evidence From Household Panel Data", *Land Use Policy*, 2014.

Schlager, Edella and Ostrom, Elinor, 'Property-Rights Regims and Natural Resources: A Conceptual Analysis', *Land Economics*, Vol. 68, No. 3, University of Wisconsin Press, 1992.

Shewakena Aytenfisu Abab, Feyera Senbeta Wakjira and Tamirat Tefera Negash, *Determinants of the Land Registration Information System Operational Success: Empirical Evidence from Ethiopia, Land,* Vol. 10, 2021.

Sisay Alemahu Yeshanew, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia, *African Human Rights Law Journal*, Vol. 8 (2), 2008.

Sjaastada, Espen and Cousin, Ben, 'Formalisation of Land Rights in the South: An Overview', *Land Use Policy*, Vol. 26, 2008.

Slavchevska, Vanya, *et al*., Beyond Ownership: Women's and Men's Land Rights in SubSaharan Africa, *Oxford Development Studies,* vol. 49, no. 1,2021.

Smith, Lahra, 'Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia', *The Journal of Modern African Studies*, vol. 45, no. 4, 2007.

Soifer, Hillel and Matthias vom Hau, Unpacking the Strength of the State: The Utility of State Infrastructural Power, *Studies in Comparative International Development*, Vol. 43, 2008.

Solomon Dessalegn Dibaba, 'Ethiopia History of Land Tenure and The Present Land Governance: The Case of Oromia Region', *International Journal of Academic Research and Development*, Vol. 5, Issue, 1, 2020.

Sosina Bezu and Holden, Stein, 'Demand for Second-Stage Land Certification in Ethiopia: Evidence From Household Panel Data', *Land Use Policy*, 2014.

Stutchbury, Kristina, 'Critical Realism: An Explanatory Framework for Small-Scale Qualitative Studies or 'Unhelpful Edifice'?', *International Journal of research and Method in Education*, Vol. 45, Iss. 2, 2022.

Takele Soboka Bulto, 'Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory', *African Journal of International and Constitutional Law*, Vol. 19, 2011.

Temesgen Solomon Wabelo, 'Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries', *Beijing Law Review*, Vol. 11, 2020.

Tura, A., '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*, Vol. 2, No. 2, 2014.

Viljoen, Frans, 'Human Rights in Africa: Normative, Institutional and Functional Complementarity and Distinctiveness', *South African Journal of International Affairs*, vol. 18, No. 2, 2011.

Whittal, Jennifer, 'A New Conceptual Model for the Continuum of Land Rights', *South African Journal of Geomatics*, Vol. 3, No. 1, January 2014.

Wickeri, Elisabeth and Kalhan, Anil, Land Rights Issues in International Human Rights Law, *Malaysian Journal on Human Rights*, Vol. 4, No. 1, 2010.

Williamson, Oliver E., 'The New Institutional Economics: Taking Stock, Looking Ahead', *Journal of Economic Literature*, Vol. 38, No. 3, 2000.

Witten, M, 'The Protection of Land Rights in Ethiopia', *Afrika Focus*, Vol. 20, Nr. 1-2, 2007.

Zimmermann, Lisbeth, 'Same Same or Different? Norm Diffusion Between Resistance, Compliance, and Localization' in *Post-conflict States. International Studies Perspectives, Vol. 17 (1),* 2016.

Zwingel, Susanne, 'How do norms travel? Theorizing international women's rights in transnational perspective', *International Studies Quarterly,* Vol 56 (1), 2012.

መሓሪ ረዓኢ፣የተሻሻለውን የቤተሠብ ሕግ ለመገንዘብ የሚረዱ አንዳንድ ነጥቦች፣ ቅጽ 1 ፣ 1995 ዓ.ም፤ [Mehari Redae, *Some Points in Understanding the Revised Family Code*, Vol. 1, 1995 EC, Amharic Version].

Reports, Policy Documents, News articles/reports, thesis and Working Papers

'Land Tenure and Development' Technical Committee, *Formalising Land Rights in Developing Countries: Moving From Past Controversies to Future Strategies*, Paris, Ministère des Affaires étrangères et du Développement international (Maedi), Agence française de développement (AFD), 2015.

AAU-CHR, Project STRACE Narrative Report, Dec. 2017-Sep. 2022.

Abdelhamid Ahmed, Ontological, Epistemological and Methodological Assumptions: Qualitative Vesus Quantitative, *online submission*, 2008.

Adane Dabissa, *Impacts of Joint Land Rights Titling on Women Empowerment: Evidence from Ethiopia* Master Thesis, University of Wageningen, 2013.

Adem Kassie Abebe, The Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia, Pretoria University (unpublished PhD Dissertation), 2012.

African Union, African Development Bank and Economic Commission for Africa, Framework and Guidelines on Land Policy in Africa: Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, 2010.

Alvarado, Gina *et al*., *Ethiopia Strengthening Land Tenure and Administration Program Follow-on Report: An Impact Evaluation of Second-level Land Certification*, USAID, 2022.

Alvarado, Gina, Linkow, Benjamin, and Heidenrich, Tasha, 'Ethiopia Strengthening Land Tenure and Administration Program: An Impact Evaluation of Land Certification in Four Regions in Ethiopia', *Pre-Analysis Plan*, Landesa USAID, 2020.

Amare Yaekob, 'Marketing Cultural Resources as Tourism Product' In *Tourism*, 2020.

AU Declaration on Land Issues and Challenges: A Review of Progress Made: A Report to the Conference of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment, 2017.

Augustinus, Clarissa et al., *Land Certification in Ethiopia - Early Impacts on Women Copyright*, United Nations Human Settlements Programme (UN-HABITAT), 2008.
Beken, Christophe Van der, *Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia* available on https://core.ac.uk/download/pdf/55826062.pdf (accessed on 1 June 2019)
Belachew Mekuria Fikre, *Rural land Rights in Ethiopia: Law and Policy Analysis*, Unpublished PhD theses, 2014.
Birhanu Nega, Berhanu Adenew and S. Gebre Sellasie, 'Current Land Policy Issues in Ethiopia' in *Land Settlement and Cooperatives*, Land Reform, 2003/3, Special Edition, Ethiopian Economic Policy Research Institute, Addis Ababa, Ethiopia, 2003.
Biseswar, Indrawatie, "The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality, 1974-2005.", PhD thesis, 2011.
Central Statistical Agency (CSA) [Ethiopia] and ICF, *Ethiopia Demographic and Health Survey 2016*, Addis Ababa, Ethiopia, and Rockville, Maryland, USA, 2016.
Central Statistics Agency, *Regional-Level gender Disaggregated Data Mining and Analysis Report*, 2019.
Chalachew Tadesse, 'Referendum in Ethiopia's Southern Region', *Brief paper*, 2023.
Crewett, Wibke, Ayalneh Bogale, and Korf, Benedikt, 'Land Tenure in Ethiopia: Continuity and Change, Shifting Rulers, and the Quest for State Control', *CAPRi Working Paper No. 91*, 2008.
CSA, *Agricultural Sample Survey of 2013/14*, 2014.
Dawit Bekele, 'Peasant Associations and Agrarian Reform in Ethiopia', *The IDS Bulletin* 13, no. 4, 1982.
Deininger, Klaus *et al.*, 'Rural Land Certification in Ethiopia: Process, Initial Impact, and Implications for Other African Countries', *World Bank Policy Research Working Paper 4218*, 2007.
Deininger, Klaus, Land Policies for Growth and Poverty Reduction, 2003, available on https://openknowledge.worldbank.org/handle/10986/15125 (accessed on 28 February 2022)
Doss, Cheryl & Meinzen-Dick, Ruth, *Women's Land Tenure Security: A Conceptual Framework*, Seattle, WA: Research Consortium, 2018.
Drucza, Kristie, *Ethiopian Gender and Agriculture Stakeholder Analysis*, 2018.
Egan, Sezanne, *The United Nations Human Rights Treaty System: Law and Procedure*, 2011, Bloomsbury Professional.
EHRC, EHRC Strategic Plan (2021-25).
El-Ghonemy, M. Riad, The Political Economy of Market-Based Land Reform, United Nations Research Institute for Social Development, 1999.
Ellsberg, M., *Researching Violence Against Women: A Practical Guide For Researchers And Activists*, 2005.
Emebet Mulugeta, *Report on Selected Practices on Gender Mainstreaming – Ethiopia*, UN-ECA, 2010.
Emezat H. Mengesha, *Women's Representation in Ethiopia's Political Parties, Issues of Inclusion and Diversity*, 2022, Institute for Security Studies.
Enyew Adgo, et al., 'Impact of Land Certification on Sustainable Land Resource Management in the Amhara Region, Ethiopia', *DCG Report No. 7*, 2014.
European Institute for Gender Equality, *Glossary of Definitions of Rape, Femicide and Intimate Partner Violence*, 2017.
FDRE, *FDRE National Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the 23th Special Session of the United Nation General Assembly*, 2015.
FIAN International, 'The Human Rights to Land', *Position Paper*, 2017.
Food and Agriculture organization of the United Nations, "Ethiopia Socioeconomic Survey 2018-2019", *RuLIS brief*.
Forum of Federation- Desk Review on Women's Land Inheritance Rights- the Right of Women to Access to Justice on Constitutional Adjudication in Ethiopia: With Focus on Access to Information.
Forum of Federation, Land Inheritance Rights of Women and Girls in Ethiopia: A Desk Review.
Forum of Federations, Policy Brief: Land Inheritance Rights of Women and Girls in Ethiopia, 2020.

Franco, Jennifer C., *A Framework for Analyzing the Question of Pro-Poor Policy Reforms and Governance in State/Public Lands: A Critical Civil Society Perspective*, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, 2008.

Galie, Alessandra *et al*., *Exploring Gender Perceptions of Resources Ownership and their Implications for Food Security among Rural Livestock Owners in Tanzania, Ethiopia and Nicaragua, Agriculture and Food Security*, 2015.

Geneva Academy, Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Academy In-Brief No. 5.

Geraghty, T. and Geraghty, D., 'Child Friendly Legal Aid in Africa' in UNICEF and UNDP, UNODC, *Child Friendly Legal Aid in Africa*, Executive Summary, 2011.

Getachew Diriba, 'The Evolving Question of Land in Ethiopia: Tenure Preferences, Property Rights and Land Governance, A Contribution to the Homegrown Economic Policy Reform to Accelerate Food System Transformation in Ethiopia", *Policy Working paper 03/2022*, Ethiopia Economics Association (EEA), 2022.

Ghebru, H., & Girmachew, F., 'Direct and Spillover Effects of Land Rights Formalization in Africa. A Case Study of the Second-Level Land Certification (SLLC) in Ethiopia', *IFPRI Discussion Paper 01968*., 2020.

Girmachew Alemu Aneme, The Coupling of State and Sharia Justice Systems in a Secular State: The Case of Ethiopia, *SFB- Governance Working Paper Series*, No. 75, 2018.

Graham, Critical Realism as Research Philosophy- Enlightened Common Sense? Available on https://www.grahamsquires.com/philosophy-of-critical-realism/ (accessed on 27 dec. 2023).

Heise, Lori L., *What Works to Prevent Partner Violence: An Evidence Overview,* 2012.

HiiL, *Justice Needs and Satisfaction in Ethiopia*, 2020.

Hirsch, Philip and Scurrah, Natalia, "Land Rights Recognition/Formalization/Titling/ Collective Tenure", Expanded Synopsis, 2020.

Holden, S. and S. Bezu, 'Joint Land Certification and Intra-Household Decision-Making: Towards Empowerment of Wives?' *CLTS Working Paper No. 13/2013*, Centre for Land Tenure Studies, Norwegian University of Life Sciences, Aas, Norway, 2013.

Holden, S. and T. Tefera, *From Being Property of Men to Becoming Equal Owners? Early Impacts of Land Registration and Certification in Southern Ethiopia*, UNHABITAT, 2008.

Holden, S. and Teferra, T., *Land Registration in Ethiopia: Early Impacts on Women: Summary report*. UN-HABITAT, 2008.

Holden, S., Deininger, K. and H. Ghebru, *Impact of Land Registration and Certification on Land Border Conflicts in Ethiopia*, 2010.

Holden, Stein and Sosina Bezu, *Joint Land Certification, Gendered Preferences, and Land-Related Decisions: Are Wives Getting More Involved?*, *Nordic Conference in Development Economics*, Helsinki, Finland, 2014.

Holden, Stein, and Tewodros Teferra, *Land Registration in Ethiopia: Early Impacts on Women: Summary report*. UN-HABITAT, 2008.

Hussein Jemma, 'The Politics of Land Tenure in Ethiopia History: Experience from the South', *Paper Prepared for XI World Congress of Rural Sociology*, Trondheim, Norway, 2004.

Hyde-Nolan, Maren E. and Juliao, Tracy, "*Theoretical Basis for Family Violence Family violence: What Health Care Providers Need to know"* 2012.

Institute for Democracy and Electoral Assistance (IDEA), *Women Constitutional-Makers: Comparative Experiences with Representation, Participation and Influence: First Annual Women Constitution-Makers' Dialogue*, Edinburgn, 2019.

Kabeer, Naila, *World Survey on the Role of Women in Development: Women's Control over Economic Resources and Access to Financial Resources, including Microfinance*, 2009.

Kiguru, G., *A Critical Discourse Analysis of Language Used in Selected Courts of Law in Kenya*, Ph.D. thesis, 2014.

Kolben Waaranperä, U. Histories of land: Politicization, Property and Belonging in Molo, Kenya. [Doctoral Thesis (monograph), Department of Political Science]. Lund University, 2018.

Kumar, Neha and Quisumbing, Agnes R., Policy Reform towards Gender Equality in Ethiopia: Little by Little the Egg Begins to Walk, *International Food Policy Research Institute, USA.*

Land Portal, Progressing Digitalization in Land Administration in Ethiopia (8 Dec. 2023) https://landportal.org/news/2023/12/progressing-digitalization-land-administration-ethiopia (accessed on 1 January 2024).

Lastarria-Cornhiel, S. and Garcia-Frias, Z., 'Gender and Land Rights: Findings and Lessons from Country Studies' in *Gender and Land Compendium of Country Studies*, Gender and Natural Resources Management, FAO, 2005.

Leulsegged Kasa *et al*, Patterns of Agricultural Production Among Male and Female Holders: Evidence from Agricultural Sample Surveys in Ethiopia, 2015.

Markos Tekle, *State-Society Relations and Traditional Modes of Governance in Ethiopia: A Case Study of Sidaama*, A PhD Dissertation Submitted to the Department of Political Science and Internation.

Maya Misikir, Sidaama's Statehood Quest, Beyond Recognition, *Ethiopia Insight,* 2021 available on https://www.ethiopia-insight.com/2021/06/17/Sidaamas-statehood-quest-beyond-recognition/ (Accessed on 27 Sep. 2022).

Mekonen, W. *et al., Strategy for Preventing and Mitigating Land Certification Related Violence against Women and Vulnerable Groups,* 2020.

Mersha Gebrehiwot, *Gender Mainstreaming in Forestry in Africa: Ethiopia*, 2007.

Mintewab Bezabih and Degye Goshu, 'Land Issues in Ethiopia: Trends, Constraints and Policy Options', *Policy Working paper 06/2022*, Ethiopia Economics Association (EEA), 2022.

Mintewab Bezabih and Holden, Stein, 'The Role of Land Certification in Reducing Gender Gaps in Productivity in Rural Ethiopia' in *Environment for Development, Discussion Paper Series*, 2010.

Mintewab Bezabih, Holden,Stein and Mannberg, Andrea, 'The Role of Land Certification in Reducing Gender Gaps in Productivity in Rural Ethiopia', *CLTS Working Paper No. 1/12*, Centre for Land Tenure Studies, Norwegian University of Life Sciences, 2012.

Misganaw Addis Moges, 2014, Practice of Self-governance in the Southern Nations, Nationalities and Peoples' Regional State: The Case of Segen Area Peoples' Zone, Center for Federal Studies (Unpublished MA Thesis), 2014.

Monterroso I, Enokenwa O and Paez-Valencia AM, Women's Land Rights in Ethiopia: Socio-legal Review. Securing Women's Resource's Rights Through Gender Transformative Approaches *Project Brief*. Bogor, Indonesia and Nairobi, Kenya: CIFOR-ICRAF and International Fund for Agricultural Development (IFAD)., 2021.

Muñoz, Jorge , VGGT: The Global Guidelines to Secure Land Rights For All available on https://blogs.worldbank.org/voices/vggt-global-guidelines-ensure-secure-land-rights-for-all (accessed on Jan. 20, 2022)

Muradu Srur, *State Policy and Law in Relation to Land Alienation in Ethiopia,* PhD Thesis (unpublished), University of Warwick, 2014.

Mustefa Nasser, Methods of Constitutional Interpretation in Constitutional Dispute Settlement in Ethiopia, (unpublished LL.M thesis), School of Law, Addis Ababa University, 2018.

Namubiru-Mwaura, Evelyn, 'Land Tenure and Gender: Approaches and Challenges for Strengthening Rural Women's Land Rights' in *Women's Voice, Agency and Particpation*, Research Series No. 6, 2014.

Ndedi, Alain Aime, and Kingsly, Mau, *The Role of the Rule of Law in a Developmental State in the African Context,* 2017.

Netsebrak Tamene, *Yakk*a: The Sidaama Women's Customary Institution and Its untold Power, 2022 CARD.

OECD, 'Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All', *Issues 2016 Brief,* 2016.

Persha, Lauren, Greif, Adi and Huntington, Heather, Assessing the Impact of Second-Level Land Certification in Ethiopia Paper prepared for presentation at the "*2017 World Bank Conference on Land and Poverty*" The World Bank—Washington DC, March 20-24, 2017.

Pope, Lucille and Ferraro, Kathleen, 2006, The Duluth Power and Control.

Reporter published on Dec. 17, 2023 "በገጠር መሬት አስተዳደር ዙሪያ የሚውጡ ህጎች ለፈዴራል መንግስት ብቻ እንዲተው ተጠየቀ" available on https://www.ethiopianreporter.com/125006/ (accessed on 2 January 2024).

Romano, Chiara, Land and Natural Resources Learning Initiative for Eastern and Southern Africa (TSLI-ESA), Case Study Report: Strengthening Women's Access to Land in Ethiopia, 2013.

Scholz, Birte and Gomez, Mayra, *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa*. 2004. The Centre on Housing Rights and Evictions (COHRE).

Sisay Kinfe Gebrewold, Design of Integration of Customary Justice System with the Formal System and Women's Empowerment in Oromia, Ethiopia, Unpublished, 2024 (filed with the author).

Stein, Howard and Cunningham, Samantha, 'Land Grabbing and Formalization in Africa: A Critical Inquiry', *ASC Working Paper 124/2015*, 2015.

Steinzor, Nadia, *Women's Property and Inheritance Rights: Improving Lives in a Changing Time; Development Alternatives*, Inc. 2003.

Sunmon, Abiola, *Gender Inequality, Legal Pluralism & Land Reform in South Africa*, unpublished thesis, 2005, (A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements for the degree of Master of Arts, Department of Law, Carleton University, Ottawa, Canada)

The Gender Gap in Land Rights, *FAO Information Brief* available at https://www.fao.org/3/I8796EN/i8796en.pdf

The World Bank, Gender data portal – Ethiopia, available on https://genderdata.worldbank.org/countries/ethiopia/ (accessed on 26 November 2023)

Tigist Shewarega Hussen and Teguadda Alebachew Sete, 'Women's Rights and Ethiopia's Future Social Contract: The Need to Adopt an Intersectional Approach' in Abadir Ibrahim and Kokebe Wolde, *Between Failure and Redemption: The Future of the Ethiopian Social Contract*, Proceedings of a Convening of Scholars on Ethiopia's Constitutional Future, 2022.

Tronvoll, Kjetil, Boroje, Filata and Kairedin Tezera, 'The Sidaama's Quest for Self-Rule: A Study of the Referendum on the regional Statehood', *European Institute of Peace*, 2020.

Tsegaye Regessa, 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia', *Mizan Law Review*, Vol. 3 (2), 2009.

UN Women and United Nations Office for Human Rights, Realizing Women's Rights to land and Other Productive Resources, 2013.

UN Women, *Preliminary Gender Profile of Ethiopia*, 2014.

UN Women, *Women's Land Rights and Tenure Security in the Context of the SDGs Situation Anlaysis Report Ethiopia* (final draft), 2019.

UNDAF, *Ethiopia Joint Programme on Gender Equality and Women's Empowerment: Phase 2*.

UNDP, *Access to Justice: Practice Note*, 2004.

United Nations Office of the High Commissioner for Human Rights (UNOHCR), *Land and Human Rights: Standards and Applications*, 2015.

United Nations Office of the High Commissioner for Human Rights (UNOHCHR) & UN Women, *Realizing Women's Rights to Land and Other Productive Resources*, 2013.

USAID, *Ethiopia Land Policy and Administration Assessment*, 2004.

Workwoha Mekonen *et al.*, *Strategy for Preventing and Mitigating Land Certification Related Violence against Women and Vulnerable Groups*, Paper prepared for presentation at the 2020 World Bank Conference on Land and Poverty the World Bank- Washington DC, March 16-20, 2020.

Workwoha Mekonen, Ziade Hailu, Leckie, John, and Savolainen, Gladys, 'Protecting Land Tenure Security of Women in Ethiopia: Evidence from the Land Investment for Transformation Program', *Development Alternatives Incorporated DIA Global,* Land Investment for Transformation Programme (LIFT), 2019.

Yigremew Adal, *Rural Women's Access to Land in Ethiopia*, 2005, Addis Ababa, Ethiopia Forum for Social Studies.

Yohanan Yokamo, 'Commentary: The Sidaama People, the False Marriage with Nations and Nationalities and the Need for Legal Divorce', *Addis Standard*, 2019, available on https://addisstandard.com/commentary-the-Sidaama-people-the-false-marriage-with-nations-nationalities-and-the-need-for-legal-divorce/ (accessed on 20 Sep. 2023)

Yonas Tafesse Qoricho, "Women and Land Rights in Rural Ethiopia: The Case of Wolaita." Master's thesis, Universitetet i Tromsø, 2011.

የኢትዮጵያ ፌዴራላዊ ዲሞክርሲያዊ ሪፕብሊክ ጠቅላይ ፍርድ ቤት እና የኢትዮጵያ ሴቶች ማህበራት ቅንጀት፤ የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ከሴቶች መብትና ጥቅም እንዲሁም ሴቶች በተከራካሪነት ተሳታፊ የሆኑበት የህግ ትርጉም የተሰጠባቸው የተመረጡ ውሳኔዎች (FSC and NEWA, Decisions of the Cassation Division of the FSC Concering Women's Interst and Litigants.)

UN and Regional Documents, and Cases

African Charter on Human and Peoples' Rights, Adopted in 1981.

African Commission on Human and Peoples' Rights, 262 Resolution on Women's Right to Land and Productive Resources, *ACHPR/Res. 262(LIV)*, 2013.

African Commission on Human and peoples' Rights: Center on Housing Rights and Evictions (COHRE)v. Sudan, Communication No. 296/2005 (29 July 2010).

African Commission on Human and peoples' Rights: The Social and Economic Action Center and the Center for Economic and Social Rights v. Nigeria. Communication No. 155/96 (27 May 2002).

African Commission on Human Rights and Peoples' Rights, "Advisory Opinion the United Nations Declaration on the Rights of Indigenous Peoples," (Banjul- Gambia), 2007.

American Convention on Human Rights, adopted on November 22, 1969, 9 I.L.M. 673 (1970).

Beijing Platform for Action (1995).

CEDAW and ILO Convention 169.

CEDAW Recommendation on women's access to justice, 2015.

CESCR, General Comments (GC) No. 4 on the right to adequate housing, No. 7 on forced evictions, No. 12 on the right to adequate food, No. 14 on the right to the highest attainable standard of health, No. 15 on the right to water, No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights and No. 21 on the right to take part in cultural life.

Commission on Human Rights, Preliminary Report of the Special Rapporteur on the Right to Food, Jean Ziegler, *UN Doc. A/56/210* (Jul. 23, 2001).

Commission on Human Rights, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, p. 41, *U.N. Doc. E/CN.4/2005/48* (March 3, 2005).

Commission on Human Rights, Report of the Special Rapporteur on the right to food, Jean Ziegler, *U.N. Doc. A/57/356* (Aug. 27, 2002).

Committee on Economic, Social and Cultural rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12 (Twentieth session, 1999) on the Right to Adequate Food (art. 11), E/C.12/1999/5.

Committee on the Elimination of Discrimination against Women [CEDAW], *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/ETH/CO/6-7, United Nations, 2011.

Declaration on Land Issues and Challenges in Africa, *Assembly/AU/Decl./ (XIII) Rev. I*, 2009

General Comment No. 15 on the Right to Water by the Committee on Economic, Social and Cultural Rights (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), at 7, U.N. Doc. E/C.12/2002/11 5 (Jan. 20, 2003).

General Comment No. 16 of the Committee on Economic, Social and Cultural Rights, 2005.

General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, 2009.

General Comment No. 6 on the Protocol to the African Charter on Human and peoples' Rights on the Rights of Women in Africa (Maputo Protocol): The Right to Property During Separation, Divorce or Annulment of Marriage (Article 7 (D)), 2020.

General Comment No.7, Forced Evictions, and the Right to Adequate Housing, *UN Doc. E/1998/22,* 1997.

General Comment of the Human Rights Committee on article 27 of ICCPR, 1994.

General Recommendation No. 34 on the Rights of Rural Women of CEDAW Committee adopted in 2016.

General Recommendation No. 21 on Equality in Marriage and Family Relations (1994) of CEDAW Committee, 1994.

Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, *A/HRC/7/5*.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III. 1952.

Special Rapporteur on the Promotion and Protection of Human Rights, Realization of the Right to Drinking Water and Sanitation, U.N. Economic and Social Council, Commission on Human Rights, Sub commission on Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2005/25 (July 11, 2005).

Special Rapporteur on the Right to Adequate Housing, Basic Principles and Guidelines on Development-based Evictions and Displacement, *U.N. Doc. A/HRC/4/18* (2007).

U.N. Special Rapporteur on the Right to Food, Rep. of the Special Rapporteur on the Right to Food, 65th Sess., transmitted by Note of the Secretary-General (by Olivier De Schutter), *U.N. Doc. A/65/281* (Aug. 11, 2010)

U.N. Special Rapporteur on the Right to Food, Rep. Submitted by the Special Rapporteur on the Right to Food, 16th Sess., (by Olivier De Schutter), *U.N. Doc. A/HRC/16/49* (Dec. 17, 2010)

United Nations Human Rights Committee, General Comment No. 13: Administration of Justice, Thirty-first session, 1984.

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

WG Discrimination against Women in Law and Practice, Access to Justice, HRC Mandate Holder, Frances Raday.