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An Inclusive Land Registration System for the Protection of Land Rights of Women: The Case of Ethiopia

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ACRONYMS

BPFA	Beijing Platform for Action
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CSA	Central Statistics Agency
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
FHH	Female Headed Household
FLLC	First Level Land Registration
GGTT	Good Governance Task Team
GoE	Government of Ethiopia
LGAF	Land Governance Assessment Framework
LIFT	Land Investment For Transformation
MHH	male headed household;
PIA	Public Information and Awareness
SDG	Sustainable Development Goals
SDO	Social Development Officers
SLLC	Second Level Land Certification
WLRTF	Women Land Right Task Force

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ABSTRACT

Key Words: Inclusiveness, Women, Governance, Registration and Certification

Land is owned by the state and peoples of Ethiopia. Rural farmers and pastoralists have landholding right which contains bundle of rights. Women have equal right to fully use their landholding. The paper is entitled as "An inclusive land registration system for the protection of land rights of Women: the case of Ethiopia." The country is implementing SLLC program with the assistance of development partners and through government funded projects. Some 15 million parcels are registered, of which about 80 % are owned by women either privately or jointly with their husband. Therefore, the main objective of this paper is to assess the inclusiveness of the land titling program for the protection of land rights of Women. The research is conducted in Ethiopia. The research used both primary and secondary sources of data. In this context, it discusses the problems and opportunities with regard to the land rights of Women in Ethiopia based upon a review of relevant literature, the existing legal frameworks and traditions and customs in property right definition; by taking in to account international, regional and national instruments. It is found that the legal frameworks are inclusive for Women, sometimes contain affirmative provisions; the land registration program is inclusive containing procedures for the protection of land rights of women; free legal aid services are being provided for women for their land right protection and there are institutions (SDOs; WLRTF and GGTT) exclusively responsible for the protection of the rights of women; which are very vital for the sustainability of the system. But still there are gaps on legal frameworks; the existence of gender negative customary systems; weak institutional arrangement; registration of land which is under Polygamous union; getting certificate does not mean that women have control power over their land. Based on this findings the research recommends for making the process of land registration and titling inclusive; assigning SDOs in the land administration system; conducting repeated follow up after women receive their certificates; and revising legal gaps.

1. BACKGROUND OF THE STUDY

The right to land, in Rural Ethiopia, merely gives farmers a possessory or holding privilege which include the rights to use and enjoy, rent, donate and inherit the land (Daniel, 2009). Even though it is the state which controls land ownership, rural peasants and pastoralists are guaranteed with lifetime “holding” right that gives all rights except sale and mortgage (Daniel, 2012). Individuals are not legally allowed to own land (to sale and mortgage). Despite the countries public ownership of land, the government has started titling rural land. Titling (Registration and certification) of rural lands, in its modern sense, has started some ten years before. The inclusiveness of the titling process is not assessed in a full-fledged manner on land right of women.

Most African countries are starting land titling. As a result, assessing the titling activity which is already started in Ethiopia visa vis its inclusiveness for the land right protection of women is very crucial to share experiences.

The main objective of the study is to assess the inclusiveness of the rural land titling program of Ethiopia for the land right protection of women. Specifically it is:

- ✓ To assess the inclusiveness of the rural land registration and certification program; and
- ✓ To share the experiences, opportunities and challenges which Ethiopia is facing.

In the study both primary and secondary sources are used. Primary data is collected through interviews (with experts working in land registration projects) and FGD (with federal land administration experts). The practical experience of the writer to the point at hand is used. Secondary data sources of information used include reports, policies, laws, reserachs.

2. RESULTS AND DISCUSSION

2.1. First Level Land Certification (FLLC) and Women Land Rights

The country has two types (not levels) of registration, FLLC and SLLC being conducted in different periods of time. The FLLC was very traditional and surveyed using local and traditional equipment. The participation of women during that time was minimal. It was conducted by a group of individuals (committees) assisted by local elders. Despite its traditional system, it served a lot in strengthening the land tenure security of landholders, especially for women. In some regions (some parts of SNNPR) it was registered by the name of the husband only. In some others by the name of the spouses and even by their picture. Almost 98 % of the whole land of the highlands of the country is covered by this FLLC. The share of women landholders compared with men is comparatively good.

There is a general understanding that land registration and certification increases tenure security and reduce land related disputes which is very keen to protect the land rights of women. Different studies confirmed the positive impact of rural land registration and certification for tenure security and dispute settlement (Klaus Deininger, Daniel Ayalew Ali, Tekie Alemu, (2010), Hosaena Ghebru Hagos and Stein Holden, (2013), Klaus Deininger and et'al, (2003), Klaus Deininger and et'al, (2007), Klaus Deininger and et'al, (2007), Hosaena Ghebru, Stein T. Holden, (2015), Hosaena Ghebru1 and Stein Holden, (2013), Dessalegn Rahmato, (2004)).

Region	# of Household heads (MHH + FHH)	FLLC certificates issued			FHH share in %
		MHH	FHH	Total	
Amara	3500000	2191047	1133953	3325000	34%
Oromia	4014500	2598027	493138	3091165	16%
SNNPR	2778223	2100400	286419	2386819	12%
Tigray	695000	598604	89446	688050	13%
Total	10, 987, 723	7,488,078	2, 002,956	9,491, 034	21%

Table 1: FLLC issued by headship status and FHH share (Source: MOA, Rural land Administration and use Directorate, 2019)

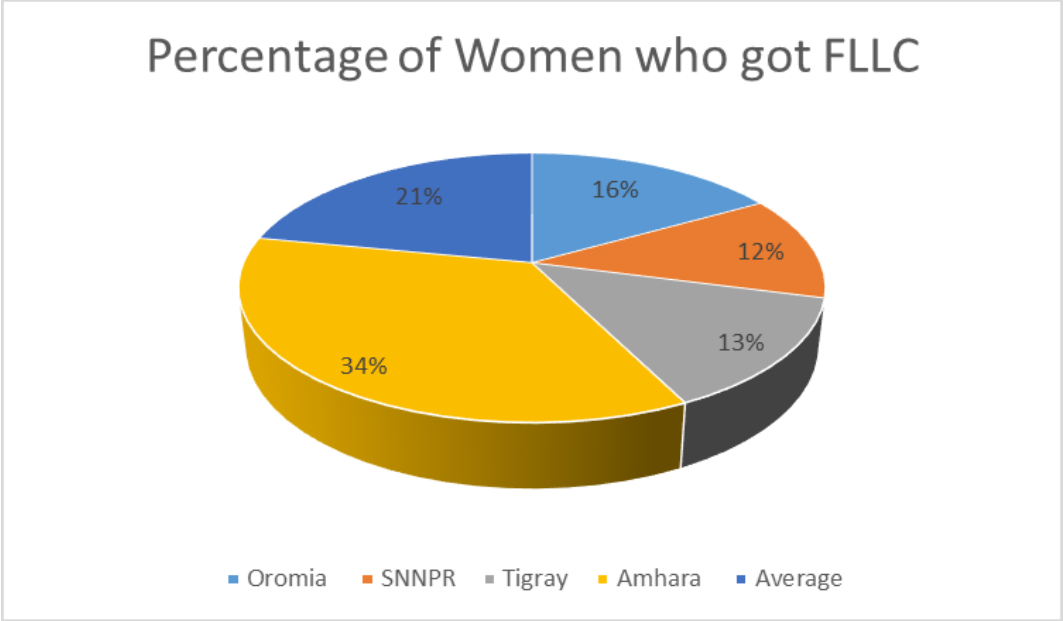


Figure 1: Percentage of women landholders who received FLLC

2.2. Second Level Land Certification (SLLC) and Women Land Rights

SLLC is being conducted by using modern surveying equipment which aims to modernize the FLLC data which was registered based on traditional equipment. This is meant to compensate the errors and drawbacks of the FLLC. Otherwise SLLC is dependent on the FLLC data. Some 15 million parcels from the total expected 50 million is registered and certificate given for landholders. From this data on average 25 % of the parcels are solely owned by women where as they jointly own 55 % of the parcels with their husbands. This means that only 20 % of the total parcels are under the holding of male land holders alone. This shows that women hold more number of parcels than their male counterparts jointly with their husbands and privately. The problem is the control over (decision making) power of women on their parcels. The following figure shows the share of women land holders who received landholding certificate in one of the projects called LIFT.

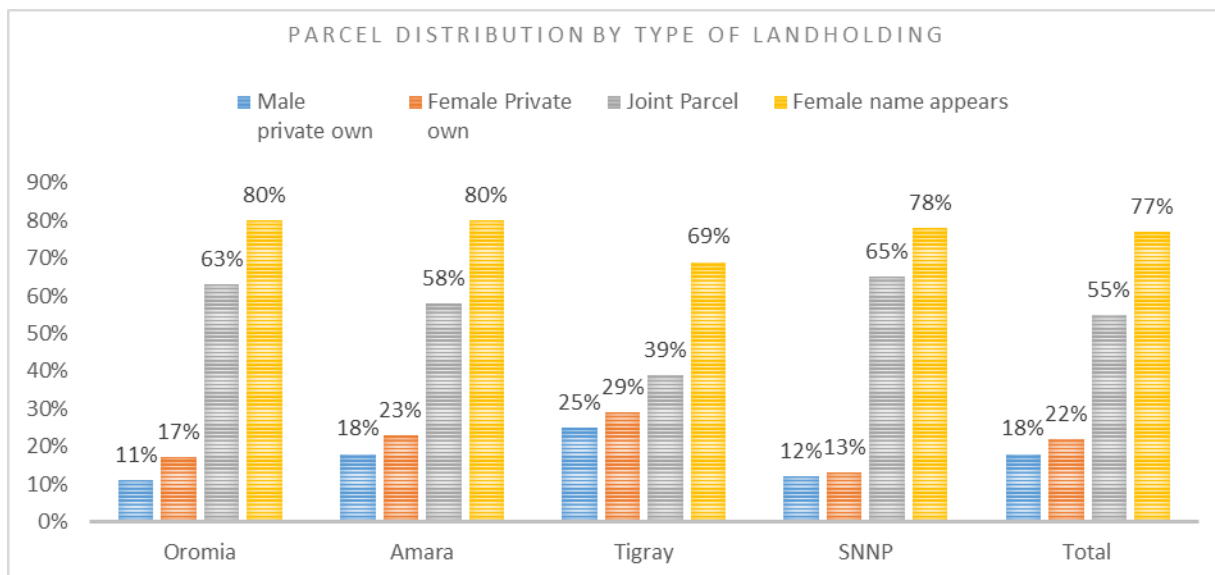


Figure:2 Parcel distribution by type of landholdings (Source: LIFT Program)

2.3. Inclusiveness of the SLLC titling Process for Women

The SLLC land titling process in the country is inclusive for women. Women are treated equally and have support from the society as a whole for securing their land right. This can be shown at different stages of the titling.

Participation of Women during PIA Activities: - It is mandatorily enshrined in our SLLC manual that before the commencement of any SLLC and even during the process, awareness creation should be given. Separate PIA is given for women. PIA experts have been assigned to lead the process. PIA strategy is developed by the federal government in consultation with the regions which shows why, who, how, when and what PIA activities should be conducted. Practically this PIA activity increases the awareness and knowledge of landholders about the importance of registering and getting landholding certificate. Without PIA activity women have a greater chance of losing their land right than other landholders since their awareness on their land right is much lower than others.

Participation of Women during Demarcation and Surveying: - During demarcation and surveying landholders and neighboring landholders participate. If the land belongs to women or spouses, they should come to their land and participate. This has dual purposes. (1) It gives the chance for women to claim their land rights (2) it can develop the knowledge and capacity of women on their land rights. Women will have a chance to know more as a result of their interaction with the surveying team and the society. PIA activities are also an integral part of demarcation and surveying. Despite this principle, there is still limitation in making women fully participated in the land titling. The customary systems limit women's participation.

Participation of Women during Public Display: - It is also mandatory for women to attend public display to correct errors that might exist at the time of demarcation and

surveying. But women’s participation at public display stage of rural land registration and certification process is not at the level expected because of the customary influence.

Participation of Women during Certificate Collection: - After the registered and surveyed data are displayed for the general public for corrections, complaints from landholders will be corrected at back office and the corrected certificates printed and ready for distribution. During distribution of the landholding certificates, women themselves should come and collect the titles. If the land belongs to the spouses jointly, both should come together and collect the certificates by putting their signature. This is a very important step in creating a sense of ownership and equality in the minds of women landholders.

Participation of Women during Subsequent Transaction: - This is transaction made on rural land after the land is registered and holding certificate provided. When rural land is transferred through, lease, gift, succession, sharecropping, collateral, exchange, consolidation, and others the consent of all joint holders is mandatory for the validity of the contract, if the land is the joint holding of spouses. This is to avoid misleads which are being made by husbands without the knowledge of wives, which is based on the principle that joint land holdings should be administered and managed by both spouses.

Land Governance Assessment Framework (LGAF): - Different indicators have been developed at global level to measure the countries land governance statuses. Among other things, LGAF measures the status of countries in land governance as far as land right protection of women is concerned. Based on this assessment Ethiopia’s status is shown below on some indicators.

Dimensions	scores				Scores Description
	A	B	C	D	
Women’s property rights in lands as accrued by relevant laws are recorded					More than 90% of the cases are effectively recorded
Women’s property rights to land are equal to those of men					Equality of women's property rights to those by men is established by law, but there are considerable limitations to exercising such rights in practice.
Conflict resolution mechanisms are accessible to the public					Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities

Table 2: Land Governance Assessment Framework Results on the Land Use Right of Women

2.4. Opportunities

There are many opportunities for women in Ethiopia for the protection of their land rights in general and registering and securing their land rights in particular. Among them are the following:

Legal Frameworks: - There are many international and national legal documents as far as women land right is concerned. According to Article 9(4) of the FDRE constitution all

international agreements ratified by Ethiopia are an integral part of the law of the land. Among the international and regional instruments are CEDAW, SDG 2030, African (Banjul) Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol), Beijing Platform for Action (BPFA), Solemn Declaration on Gender Equality in Africa, Agenda 2063 and the like. These all instruments urge countries to recognize, respect and make to be respected the equal land right of women by documenting their rights.

The GOE has promulgated different land related laws which have provisions for the land right protection of women. The FDRE Constitution recognizes gender equality and accords equal rights with men in regards to the use, transfer, administration, and control over land (Arts. 25, 34, 35 and 40); and prohibits laws and customary practices that discriminate against women.

Under article 5(1(c)) of proclamation 456/2005, enacted based on article 51(5) of the FDRE constitution, it is clearly stipulated that women who wants to engage in agriculture shall have the right to get and use rural land. Similarly article 6(4) enshrined that where land is jointly held by husband and wife, the holding certificate shall be prepared in the name of all the joint holders, which give an absolute equal right for women. Besides, the regional land laws, enacted based on article 52 (2(d)) of the same constitution, have gender neutral provisions in one hand and affirmative provisions on the other for women. For instance, 20% affirmative action is accorded at the time of distribution of land for women. The federal rural land proclamation is under revision, which contains new provisions for women to strengthen their rights and established systems for the implementation of those rights. Among other things are provisions for the registration of land holding found under polygamous union; representation of women before the court of law.

Our family law contains provisions for the joint management of common properties including land (Art. 50). The agreement of both spouses is mandatory to exchange, rent out, pledge or mortgage or alienate in any other way (donate, inherit ...) a common immovable property (land) to confer a right to third parties on such property. The FDRE criminal law has a lot to do with the land use right protection of women. By putting criminal sanctions for land use right infringements. Among them are bribery, false testimony, causing damage on the property of another including land with animals, possessing the land of another without just cause, Changing or destructing boundary demarcations of the land holding and others.

Social Development Officers (SDOs), Women Land Rights Task Force (WLRTF) and Good Governance Task Team (GGTT): - To protect the land rights of women the government assigned SDOs in selected pilot districts and the result is very positive. The purpose of introducing this position is to enhance the existing low participation of women in SLLC and prevent potential land right violation by their power full allies (husbands, renters, care givers, guardians, etc.). These SDOs have the power to map vulnerable groups and their potential problems and assist at the time of titling and subsequent transaction.

If women already lost their land, sometimes by court decision, they bring the case to the GGTT established in the Woreda. This task team has the power to bring the case before the court of law and even seek judicial review to be conducted. It is the public prosecutor office, who is a member to the task team, who took the case before the court of law and represents those vulnerable groups. The GGTT is a real help to the women who are experiencing diverse form of land right violation. The GGTT comes across different cases decided by courts, even by the Federal Court of Cassation. After gathering all the evidence including by going to the kebeles, the Task Force resolves cases within its jurisdiction. Cases beyond its jurisdiction will be sent to the Court for re-examination based on Article 6 of the civil procedure code. If the case cannot be treated by the Court, the GGTT then plays mediation role between the parties, in order to protect women from a complete loss of their land use right. As a result of the establishment of SDOs some 195 (59 male and 136 women) vulnerable land holders who lost their land because of different reasons have regained their lands back. In each and every district where rural land registration is concerned, there should at least be one SDO. The role of the experts is very important for the equity and inclusiveness of land titling. WLRTF is also established at federal and regional level to conduct studies and advise law legislating bodies to include provisions which better protect the land rights of women.

Free Legal Services for Women: - There are a lot of institutions providing free legal services for women as far as their land rights is concerned. Justice; university law schools; Women affairs; grievance hearing; land administration and use; good governance task team; and the like. The problem is coordinating these institutions to avoid duplication of effort and making the service uniform and sustainable.

2.5. Problems and Challenges that Women Face in Exercising their Land Rights

Customary Systems: - Land administration in Ethiopia is being governed by the formal and informal institutions. Religious and customary institutions as an informal system have a great impact on the land governance system. Women cannot inherit land according to most of the customary systems in the country. They cannot become landholders either. The customary rules are more of patriarchal giving the land holding right for men.

Weak Institutional arrangement: - The absence of strong land administration institution plays its role for the least implementation of the land laws which disproportionately affect women by giving more chance for those who break the laws and infringe the land rights of women (Solomon and et'al, (2006)).

Legal gaps: - Some legal gaps exist when the formal laws are interpreted thoroughly. For instance, it is only "family members" who can inherit land. Family members are defined in the laws as those who live permanently with the landholder by sharing the income of the same. In the culture of most of the rural areas women marry someone and go to the residence of their husband. In this case they will no more be family members since they are not living together with their inheritor and will not have a chance to inherit. Even though

this provision seems gender neutral, it disproportionately affects women and needs revision.

Polygamy: - Bigamy and polygamy are prohibited by the law of Ethiopia. As per the 2016 Ethiopian Demographic and Health Survey result, eleven percent of currently married women report that their husband has multiple wives. Despite the existence of this much number of polygamous marriages, there is no law and system for the registration and certification of land which is under the holding of spouses' living in such union. This disproportionately affects women since there is a greater chance that the second and consequent wives could be disregarded during divorce. There are practices of registering spouses living in polygamous union despite the fact that the legality of this practice is questionable.

Corruption: - is another problem that disproportionately affect women in their land use right. Sometimes women who got landholding certificate may lose their land because the same certificate is given by the name of another person. Because of this and the less capacity which women have to prove the allegation they have to the court they are losers of court cases. These problems is now being resolved by the National Rural Land Information System (NARLAIS) which contains clear information on the land and landholders.

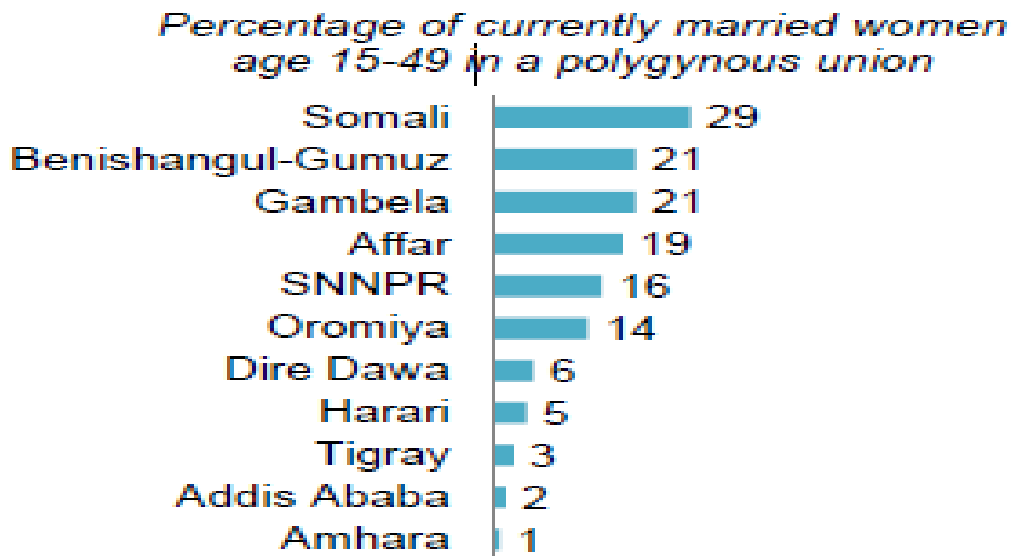


Figure 3: Percentage of Married Women Living in Polygamous Union (Source: - 2016 Ethiopian Demographic and Health Survey)

Having Certificate VS Control Power: - Having land holding certificate does not necessarily mean that they have control power over their land. The certificate is one means to exercise the land use right. There are women who have got holding certificate but unable to exercise their right over the land. Continuous awareness creation and legal enforcement is crucial. Wrong doers should be penalized so as to deter themselves and the society from doing similar acts in the future.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1. Conclusions

Even though it is the state which controls land ownership, rural peasants and pastoralists are guaranteed with lifetime “holding” right that gives all rights except sale and mortgage. Women have equal right to utilize rural land. FLLC was conducted to secure the land use right of land holders. FLLC had drawbacks and SLLC came to compensate those problems. Because of the inclusiveness of the registration and certification process, the share of women private landholders is about 25 % of the total landholders. Their name appears on about 80% of the total certificates either jointly or privately.

Inclusiveness of women in rural land titling in Ethiopia can be manifested by their participation during PIA; demarcation and surveying; public display; certificate collection; and subsequent transaction. But still there are gaps on the ground to make the process fully inclusive for women. The more women participate in the process, the better their land right protected.

Existence of legal frameworks which treat women positively; establishing SDOs, Women Land Right Task Force and Good Governance Task Team; free legal aid services; and the like are opportunities for the land right protection of women. But still there are many challenges that women face in exercising their land rights like gender negative customary systems; weak institutional arrangement; legal gaps; unclear law on how to register land belonging to those living in polygamous union; those who have land titles might not have control power over their land.

3.2. Recommendations

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

- Making the process of land registration and titling inclusive for women to best protect their land rights.
- Assigning SDOs in the land administration system especially for the registration of land to better protect the land rights of women and subsequent awareness creation is vital.
- Subsequent follow up after women receive their certificates is very keen since having landholding certificate does not mean that they have control and decision making power over their land.
- Revise legal gaps (on how to register land belonging to those living in polygamous union and family membership).

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