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WOMEN'S LAND RIGHTS:

Customary Rules and Formal Laws in the Pastoral Areas of Ethiopia – Complementary or in Conflict?

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ABSTRACT

Land in Ethiopia is held by the state and the people; while landholders guaranteed a lifetime 'holding' right (any right except sell and mortgage per se). Women have equal rights to men in the formal legal system, despite, in pastoral areas, women's land rights are highly influenced by religious and customary systems: rights are meaningless unless they are socially recognized and effectively enforced. Studies on women's land rights comparing between formal and customary land laws are rare. The aim of this paper is to understand what land rights women have under formal and customary legal systems in pastoral areas of Ethiopia, how these are implemented and what their impact is, and to make recommendations for their convergence. It focuses on two pastoral regions of Ethiopia: Afar and Oromia. The research revealed that there is a high disparity between the formal law and what the practice in one hand, and the customary and religious systems, and the formal state system.

Afar society is patriarchal: women are still inferior to men in terms of use of and access to land. Customary and religious systems are applicable more than state laws. Women don't resolve disputes except in certain exceptional circumstances, they involve indirect. They cannot inherit property either from their husband or families through the customary system. Land titling is conducted in the region by considering the rights of women which brings improvements. Women have started to obtain private holdings from the government in villagization areas: accounted for 24% of the total, despite several challenges.

In Oromia pastoral areas, women have relatively equal rights: they have their own clear responsibilities according to custom. Transactions of matrimonial properties is not possible without the consent of the wife. In many places, women have their own private land, and they participate directly and indirectly in the management of communal lands. But there is discrimination for women as far as inheritance is concerned.

Inheritance of land and dispute settlements are common problems of the two study areas. It is not an easy task to converge the formal and informal systems on women land rights. Replacing the customary system with the formal is not the solution. Legal pluralism may be an option and advantageous.

The research recommends for promulgation of pastoral land administration laws acknowledging and incorporating customary and religious laws (one umbrella pastoral 'code' that bring together statutory, customary, and religious laws); awareness creation and legal empowerment of societies; certification of private holdings including photographs of both the husband and wife/wives; integration of the customary and religious systems into criminal law; a mobile free legal service; a thorough study to understand the pros and cons of polygamy for women and the society in general; and a process of cultural mapping and monitoring.

Keywords: Women, Land Rights, Pastoral, formal law, customary and religious law, convergence

1. INTRODUCTION

1.1. Background

Despite Protection of land rights takes place within a complex interconnected environment of constantly changing domestic institutions and organizations at the federal, state, and local levels of society (Witten, 2007), ninety percent of communal lands are unregistered in sub-Saharan Africa (Byamugisha, 2013).

Public decision-making bodies and property ownership tend to be dominated by men. Governments continue to try to change customary systems. Sedentarisation is encouraged and statutory individual land tenure promoted. Where the titles for land have been given to groups (such as for ranches in Kenya) women have lost out as titles have been given to the men. Alternatively, where women have been given titles, enforcement mechanisms for protecting women's rights may be weak leaving them vulnerable (Judy Odoko and Simon Levine (2009).

From the gender perspective laws must be gender sensitive (Borras and Franco, 2015): a pro-poor land policy is said to be one that at a minimum does not undermine, and at a maximum promotes the distinct right of women to their own land rights as farmers or rural laborers and as women. Supporting women's land rights needs deep understanding of how women currently access land and the relationship between legal and social recognitions as well as the relationship between legal provisions and enforcements. Women's land rights can be recognized in terms of access and control to ensure security of rights (Beatrice, 2004).

Ownership of rural and urban land exclusively vested in the State and the peoples of Ethiopia. Individuals have land use rights. These rights can be inherited, donated, leased, and rented, but not mortgaged. But it is said that government land administration policies often contravene the age-old pastoral customary institutions (Reda, 2014). The law gives little attention to the administration and use of pastoralist lands. The Proclamation was developed based on the highlands and sedentarised farmers' land use arrangements. In the past, rural land legislation has treated pastoral land synonymously with settled agricultural lands without seeking different instruments and provisions for securing pastoral land use rights. Securing pastoral land use rights requires serious investigation on the traditional modes of land use security and dispute resolution need fresh approaches that can accommodate new socio-economic developments (Bekure and et al, 2006). Commercial investment or expropriation by the government have had an impact on pastoral land rights generally and more specifically pastoral women's land rights.

Harmful customary practices and stereotypes of women are still prevalent, and this continues to limit women's access in practice (Hussein, 2014). Women can be a highly marginalized group in society including in relation to accessing and controlling rural land. Moreover, often women do not have a customary right to inherit land from their family; and the control of land during marriage falls chiefly under the control of their husband. For these, the Government of Ethiopia has tried to protect the land use right of women by enacting/promulgating different laws (including the adoption of international and regional instruments; the country's Constitution; federal and regional land administration and use laws; family laws and so on) and establishing institutions for the implementation of those laws. Despite such a firm commitment of the government in recognizing a woman's right to possess and use rural lands, the customary laws and practices that can deny women's equality, appear to be persistent in different communities of the country (Witten, 2007).

Ethiopian land law has many provisions which advocate for the equality of women with men as far as land use rights are concerned (for example, art.5. the right to access and use rural land; art 6(4). registration and certification of rural land whether private or communal is pivotal in the protection of land use rights of women (Romano, 2013, Deressa and Boru (2015)). In Oromia access to land for women is showing improvement in some parts of the region while it is subject to serious limitations in other areas due to customs that do not recognize women's rights to land. (Tesfaye et al, 2013). It is said that customary laws do not allow women to inherit land, and statutory laws have not yet challenged community customs and traditions (Woldetensaye, 2007).

Mekuria (2009) and Woldetensaye (2007) also argue that women are discriminated before religious and customary dispute resolution mechanisms when they submit disputes over land. Customary law remains the dominant and viable source of decision making at the local level. In Borana, information is discussed and exchanged at meetings (*cora*) often held under a sycamore fig tree. Only men are allowed to participate in these meetings; women may attend, but they may not actively participate. However, they can make their feelings and ideas known indirectly (Tefera and et al, 2016).

In Afar regional state, customary institutions tend to be gender insensitive and fail in protecting the land rights of women (Reda, 2014). Pastoralist women can be marginalized twice from the rest of society, first as pastoralists and second as women (Flintan et al, 2011). Afar women can be forced to marry their cousins (a culture called *absuma*), with priority being given to the father's sister son. Except the very few farmlands that are under private holdings, in Afar, natural resources, land and water resources are accessible for both male and female as part of the communal resource-sharing system. In Afar, it is totally forbidden for a woman to be part of the customary system as a judge or as an elder which is reflected in the traditional Afar sayings, such as;

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

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

Looking at "the other side of the coin" is also very important. We cannot say that customary systems are always and anywhere bad. Customary rules have their own reasons for existence. It is stipulated in FAO Land Tenure Studies that traditional laws and religious laws often protect women and provide for wives, widows, and female children through for instance, land shares on inheritance. Under Islamic law, for example, daughters may receive half the land that sons receive on the death of their father. This is in effect their dowry to bring to a marriage. The sons on the other hand have the responsibility to provide for unmarried sisters and their mother and in theory require more land. Other religions or cultures have had similar traditional laws (FAO, 2002).

Besides, the traditional system can be accessible in terms of location and the passing of timely decisions for women who will bring their case before the customary judges. Customary leaders live within the community, and they see and hear unjust acts, know the context, understand the culture and claims of women, and may be better placed – than often- detached external judges – to make decisions. Local leaders will talk to local stakeholders to better understand the situation, which formal judges will not do. Moreover, if a woman wants to bring her case to a formal court in a town or city, she may face challenges in affording the transportation or be worried about the length of time

that will take. Often women feel more comfortable talking to a customary leader that they know rather than a stranger in whose presence they might be shy or lack confidence.

The main objective of this study is to understand how pastoralist women access land and resources through both statutory and customary and/or religious laws, and the points of convergence and divergence between these. The study examined and analysed formal and informal policies, programmes, legal instruments, and cultural practices that have an impact on women's access to and use of land and identified factors that constrain women from exercising their land use rights in two regional states of Ethiopia - Oromia, and Afar) and tried to identify mechanisms for the different laws to converge. Primary data was collected through key informant interviews (KIIs) and focus group discussions (FGDs). In addition, documents were accessed from land administration offices at regional and woreda levels, together with courts. In Afar research was undertaken in Chifra woreda, and in Borana, research was undertaken in Yabello woreda. FGDs were carried out with government personnel (including representative from offices of environmental protection, rural land administration and use, and women and children's affairs, and pastoralists/agro-pastoralists from the area including customary leaders. KIIs were undertaken with judges, lecturers in land laws, pastoralist women and others. The data collected from the field was triangulated with KIIs, and secondary sources.

1.2. Ethiopia's commitment to international and national laws on women's land rights

Ethiopia is committed to international, regional and national laws on women's land rights. CEDAW, Sustainable Development Goals for 2030, African (Banjul) Charter on Human and People's Rights, The Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol), Solemn Declaration on Gender Equality in Africa, Agenda 2063, The Federal Democratic Republic of Ethiopia (FDRE) Constitution, Rural Land Administration and Use Proclamation Number 456/2005, Expropriation Proclamation Number 1161/2019, Family Code (Law) of the Federal and Regional, Criminal Code of Ethiopia, regional rural land administration and use laws are among the legal frameworks governing women land right issues in the country. Though commitment on paper is made, the implementation of these commitments in practice is inconsistent.

2. FINDINGS AND RESULTS

2.1. Land Rights of Women and their status in the customary system

In Afar pastoral women have rights to access and use communal grazing lands. According to the customary system pastoralists including women can move from one zone to the other to graze their animals, depending on negotiations and agreement between pastoralists. Women are part and parcel of this movement. Women are increasingly being part of decision-making processes about communal land management, which was unheard of in the past. In the more sedentary areas agropastoral women rights to land are also improving and women can inherit land and receive as a gift or if issued by government (something very uncommon in the past). Today, around 2,000 women in Chifra woreda, for instance, have their own registered private land holdings issued by the government.

In Borena zone of Oromia, women have equal rights to men as far as using grazing land is concerned. There is not any restriction or difference in using the grazing land between men and women. They can equally move within and beyond their normal grazing areas – the latter being negotiated and agreed with neighboring Dheeda leaders. Failure to get this permission can result in a fine of five cattle which are confiscated from the perpetrator: normally being returned once the person has left

the area. In recent years there has been agricultural land distributed (0.85 ha plots) and women received almost half of the land that was distributed. During polygamous marriage all wives have their own clear private properties. When the husband concludes marriage with a new wife, the husband is obliged to give her some cattle (usually somewhere between 4 -16) redistributed from those held by his preceding wives. She is expected to touch each cattle she received with a stick (traditionally called *siquee*), a system of establishing the property as her own. Until these cattle start reproducing themselves, she has the right to use the other wives' cattle. In addition to these cattle, she also receives cattle from her relatives, maybe 10-20 or more, based on the number of cattle her relatives own.

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

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

In Borena areas the enclosure of communal land for private use is highly practiced these days and mostly by men. There are however some women who are enclosing communal lands for their private. Now a days, in some parts of the zone, individuals who have enclosed communal holdings for their private use are paying land use fees for the government, which legitimizes this land use. It seems that the government has an intention to legalize their holding through certification in the future. In these areas land is administered through the Geda system. The largest unit is the grazing area or Dheedas. There are 5 Dheedas in this *area* (Borena Zone). In this customary system, women equal rights and privileges to the grazing land without any discrimination. There is a clear division of work between women and men. Women are responsible to do work around their home, like feeding and milking cows. Even livestock cannot be slaughtered without women's consent.

Women have the power to decide on which cow should be sold. Administering domestic activities is their responsibility. The husband cannot sell anything, including milk, goat, cow and the like, without the consent of his wife. This is enshrined under the customary system. Women also have a pivotal role in agricultural activities and in dispute resolution in this area. When women get in between the conflicting parties at any time and in any dispute, the disputant parties are customarily at obligation to stop their dispute. This shows that the customary system gives respect for women.

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

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

A woman can take a complaint to a meeting of the customary male leaders and the meeting will be stopped to hear her complaint and offer a solution, if possible, with the meeting resuming after this. This shows the great respect the customary system has for women. However, there are issues – for example, women cannot inherit property. The customary system on inheritance is totally against the right of women on the basis that men are better able to protect the assets of the clan. Even though, a woman brings inheritance cases to the court of law or other institutions, it is nearly impossible to find any evidence of them: no one wants to be noted as a witness for a woman's inheritance case. When a woman divorces, she cannot enter into another new marriage, whereas a man can. On marriage a woman becomes a member of her husband's clan and will remain so even after divorce. When someone asks women what her clan is she will say clan of her divorced husband. When she gives birth to a new child from another man, the child uses the name of the former husband of the mother as his/her family name. The pastoralist woman explained the case as: -

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

Afar community has a customary system of governance. The community is also governed by sharia law, and there is less influence of the formal system. Women are not allowed to access and use land and are 'inferior' to men. They may not be allowed to make decisions and have little power in resolving disputes. This is highly related with illiteracy and the influence of the customary system. Afar society is 'uneducated' and women are unable to claim their formal rights because 'custom' prevented them from doing so. The literacy of Afar women is significantly below that of men, though increasingly girl children are going to school. Indeed, a study by ILRI looking at education figures amongst other showed that the number of girls registered at school was close-to-equal in primary school though inequity increased as children got older (Flintan et al, 2018). Changes in land management, use and the pastoralist system itself has created greater opportunities for women as individuals to access land. For example, with villagization schemes (where people are voluntarily moved to consolidated settlement areas, sometimes connected to a large-scale agricultural scheme such as sugar cane) women are accessing land with a land certificate (which has their name and photo).

In Borana there is, comparatively, greater equality between men and women. They have relatively equal status with their male counterparts. Women have their responsibilities including care of weak animals which live around residential areas and contribute to crop farming. They have the power to decide, together with their husband, about educational issues of their children. In the past, women were not allowed to attend schools as it was believed that it would lead to inappropriate behavior, but this has changed now. In the past it was said that the husband makes this decision about selling livestock, but now it is impossible for a husband to sell any property including livestock without the consent and decision of the wife: the wife has the power to decide on the type of animals to be sold and has the power to reject the proposal of the husband to sell any property. Women tend to look after money better than men: if a husband sells some properties he is expected and obliged to deposit the money with his wife.

2.2. Women's Role and Participation in Land Use Planning, Certification, and Expropriation

In Afar the participation and role of women in land use planning, certification and expropriation is increasing. Previously, women were unable to participate in such activities. Once women reach 18 years of age they are entitled to land for their livelihood, as per the Constitution. In pastoralist areas, there is no limitation to use of the grazing land, and women can use equally to men. Private lands tend to be provided with compensation if appropriated, however there is no compensation payment by government for communal lands. Men, let alone women, are not participating in the expropriation activities.

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

2.3. Land Administration Committee Membership

In Afar 40% of committee members at the time of land distribution, and 30 % in the land administration committee¹ at kebele and sub-kebele level is meant to be made up of women (Art. 20(4) of the regional proclamation). But practically, women's participation is not that much, you cannot find more than one woman in most committees. In recent times. However, the number of women committee members has been increasing, due to, at least in part, awareness creation activities being conducted.

In Borena women were not participating in committees established by the government, or within customary institutions. However, today, there are women who are actively participating in the management of communal lands. They bring cases to the leaders where a person is illegally using the communal lands including private enclosures mainly established by men. There are also some women customary leaders, serving as Aba olla (head of the olla) as in Gomelle dheeda – though it was said that women are not able to become an Abba Dheeda. Women's role and involvement in

¹ Land Administration Committees are committees whose members are voluntarily chosen by the community whose responsibility is to administer land (especially by solving land related disputes amicably) at lower level.

customary systems is very high and they have a strong influence on decisions made. Land Administration and Use Committee is established in each kebele where women are also members. However, though establishing the committee (including women) is a good move, its functionality is very weak. This is mainly because its establishment does not consider the realities found in pastoral areas, with most pastoralists move from one place to another. As such it is very difficult for the members to meet regularly and discuss issues pertaining to such as their powers and responsibilities.

2.4. Land Transactions

In farming areas, men and women are allowed to participate in land transactions. The Afar land laws allow landholders to rent $\frac{1}{2}$ of their holding and to exchange without limitation. However, these provisions and limitations are not respected, and institutions are not strong enough to implement these provisions. There is no expert who is assigned to register these transactions or contracts, and there is no logging or listing of them. Where farming land has been distributed as part of a villagization process, most distributed lands are not being (fully) utilized and there are no land rental contracts in these areas. Some contracts were found in Chifra woreda, but these contracts are not fixed rent, and rather are sharecropping for only one season. There is no input sharing arrangement. The contract is solely concluded between the contract parties orally. There is no written contract and the woreda is not registering the contracts, even though, it has been given power to do so. Spouse's approval of the contracts is also not being sought out, though it was understood that no disputes have been raised on the subject.

At the time of dissolution, the law obliges spouses to divide their holdings in half, if the size of it is not below 1 hectare. However, this is rarely implemented as divorce is very rare in the region. If there is divorce, then it is the husband who is expected to leave the house. Moreover, should a husband die, the surviving woman spouse has the right to use the private land holding of the deceased until getting another piece of land from the government, and/or to become a holder if the deceased's plot of land, if there is no legal heir (though no case was found on this topic). When a husband dies, the widow is expected to marry the brother of the deceased to ensure that the children are well taken care of.

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

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

2.5. Land Registration

With land in Afar mainly being held as common property there is little registration of land. In some of the areas where pastoralists and other land users are more sedentarised some first-level land holding certificates have been given with the name and photo of both husband and wife. In pastoralist

grazing areas the plan is to give certificates by the name of the community. The USAID-supported LAND project in collaboration with the Ministry of Agriculture and the regional agency, is attempting to demarcate and register the communal grazing land of Amibara woreda as pilot, which if successful will be replicated in other areas. The plan is to give one certificate for the Amibara woreda community in the name of the community. As a member of the community women have the right to use the grazing land with men equally.

Amibara woreda has also seen a villagization program with the regional state allocating land for both men and women pastoralists: 7,000 first-level land use holding certificates have been given. The certificate has a place for the name of the husband and wife including a photo of both. Of the 7,000 landholding certificates, 5382 are given to male-headed households and 1,695 given to female-headed households. Though the name of the husband and all wives are included on the certificate, the photos of the wives are not there.

Agro-pastoralists in Chifra woreda have irrigable farmland along the Mille River. The area is called Bolelie farm area. The farm was started in the 1960s by Germans'. Today. The farmers are cultivating maize, onion and tomato. Women play a prominent role in the cultivation process. Land holders have land holding certificates. If the land belongs to a husband and wife it is certified in both names, but only the photo of the husband is posted on the certificate.

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

The land registration activities are being conducted in a participatory process, with a land administration committee set up and with whom consultations were carried out. The committee members share information with community members. It is after these processes that certification activities are conducted. The community including women are provided with awareness-raising on their land use rights. Adjudication activities were carried out looking at available evidence about who has been using the land for the past 15-20 years. Around 400 certificates were issued to Chifra woreda agro-pastoralists. Respondents said that there is a well-known saying about the importance of land registration and certification:

"A woman without a husband and a woman without uncertified land are similar."

Indeed, in the absence of landholding certificates, there is no evidence to protect women from "encroachment."

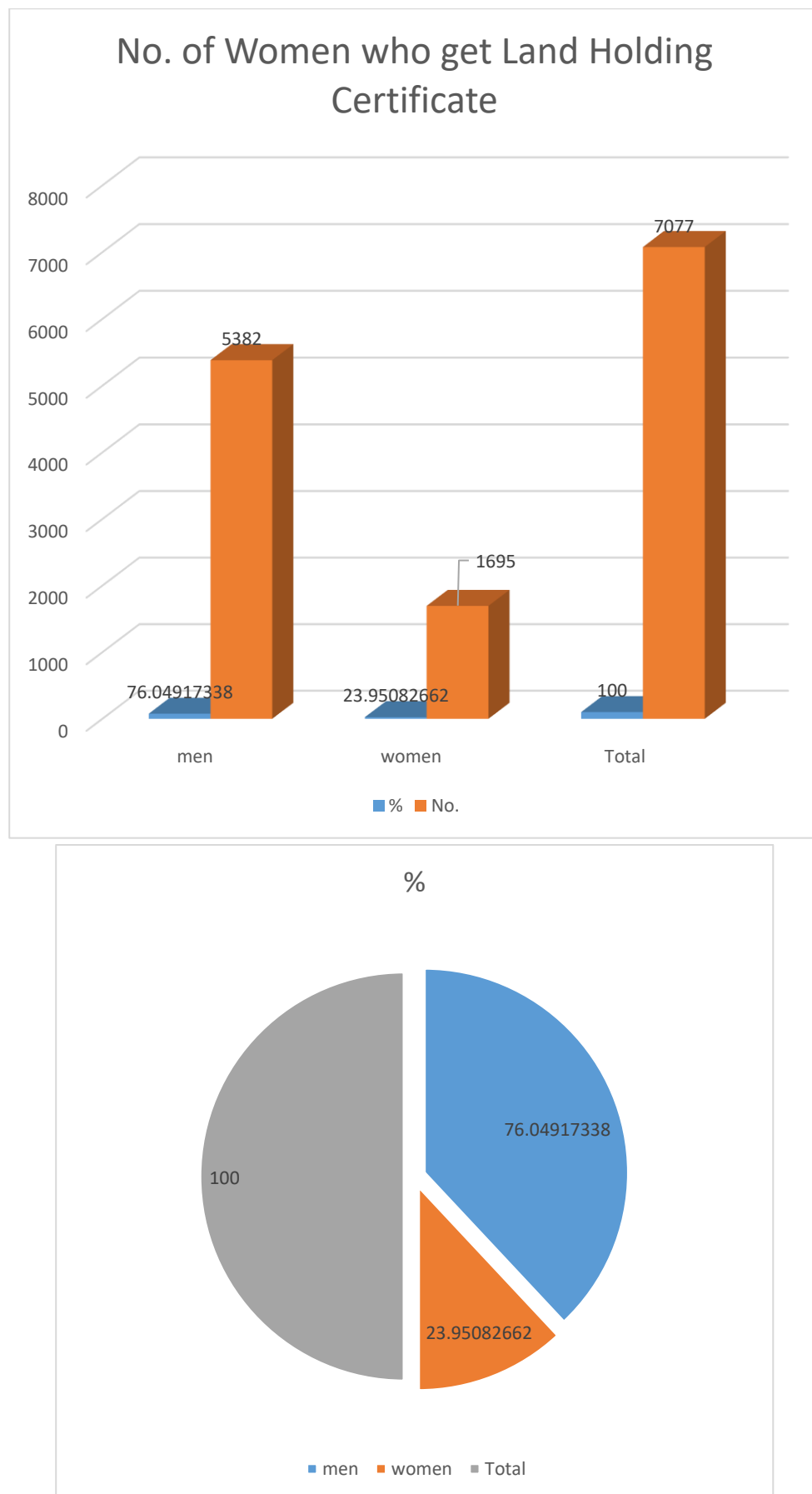


Figure 1: Proportion of households who received a land holding certificate that are female

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

Polygamy is allowed by the religious and customary systems. Any man can marry up to 4 wives if he has the physical, mental and financial capacity. Even though polygamy is not provided for under federal law the regions have made accommodations for it – the husband is registered as head of households with one of his wives, and the other wives will be registered in their own names. Normally wives get on and work together, however this is not always the case and first wives can take advantage of younger, less powerful ones. Though such an arrangement of land registration may give the women more autonomy, a lot of women do not like it and would prefer to be registered with their husband because they consider themselves to be better and more strongly protected when registered with their husband.

Offices of women and children affairs in the region have their own legal experts, who are expected to support women in the protection of their rights and the combating of harmful traditional practices. They sometimes work with the regional land administration and use institutions, justice, and the sharia court as well as free legal aid centers found at such as in the law department of Semera University. It would be beneficial to make such collaboration more regular. It provides training on business development and economic empowerment, believing that if women can improve their economic status, it will also improve their social status. It is when women are economically empowered that they can claim their rights, and without such economic status it is impossible for women to claim equal status with men including in such as decision-making processes. As such, there is a need for the economic empowerment of women, so that women can be more powerful in claiming their rights. Economy is power.

In Borena area, there has been no formal registration of individual or communal land in the kebele and indeed across Gomolle Dheeda. They added that such registration is needed to decrease land related conflicts in the area. Increasingly men in particular are enclosing lands for their private use influenced by regular losses of livestock to drought and are being allowed by local government to pay land use fees, securing their right to this land: it is believed that if there is land registration then this will be prevented. Also, because there is no land registration no compensation is paid for communal lands when expropriated. Customarily Oromia society helps women land holders to help women work together to cultivate their lands. As mentioned above no compensation is given to expropriation of communal lands. In the kebele land was taken for the construction of a road by the federal government. Compensation was paid for houses and private holdings, including to women.

As in Afar regional state, in Borena zone, Oromia polygamy is customarily allowed, but polyandry, marrying more than one husband, is strictly forbidden by the customary system. Religious rules and systems rarely predominate. Some individuals married up to 8 wives: wealth status of the husband being a key factor. One female respondent said that she is the 4th wife for her husband: all the previous wives consented to their husband marrying again. It is normal practice for a husband to ask the wives before marrying again, without this permission under customary law additional marriages are forbidden. All the four wives live in separate places. A key incentive for the husband to marry

additional wives is an increase in the number of cattle as a wife has limits on the number of cattle (and other resources) that she can manage and commonly she/they will ask her/their husband to marry another wife. More cattle mean the need for more wives. In this area polygamy is concluded with the free and full consent of women. As such, prohibiting and criminalizing polygamy without understanding the customary system is dangerous. It is recommended that a thorough study is undertaken to understand the pros and cons of polygamy for society in general and women. It is also common for women to be married below the age of eighteen, despite this being against the law however this is changing due to continuous awareness creation activities conducted by the government as well as customary leaders. Now every community member clearly knows that, concluding marriage below the legal age is crime though it may still happen.

2.6. Institutions Affecting the Right of Women

In Afar regional state, there are three separate, independent and most of the time contradictory institutions as far as women land rights are concerned. These are formal or state, religious and customary institutions. Semera University School of Law has a free legal service section. This section is intended to give legal services for free to those who are not able to pay, including women. However, the service of the school is limited to urban residents. Women pastoralists and agro-pastoralists are not able to access the service, since the section is in Semera, Asaita, Awash and Abeala and it is difficult for rural women to travel there. Now other centers in are opening.

In Borana the customary system was highly and deeply implemented in past times. Nowadays these things are changing, and women are looking to the formal state structure to solve issues they have in relation to property including land. Women are not allowed to be Abba Gedda or Abba Dheedha (Abba means 'father'); however some women are becoming kebele administrators, which gives women confidence to take their cases to the state legal structure. As to the customary leaders the formal/state system is very strong and is harsh. The state law is not based on a win-win solution rather win-lose. But the customary system is based on a win-win strategy. For instance, if a member of one clan commits a crime, it is the clan which is expected to bring sheep for the damaged clan to make reconciliation after which the wrongdoer and the victim live together in peace without any resentment. It is not possible to solve homicide cases by the state law peacefully, but it is possible via the customary system. As a result, customary leader's plea to be allowed to continue using the customary system as far as dispute settlement system and institutions are concerned. The FGD conducted with women pastoralists also said that the customary system is better for the protection of their right since it is cheap, friendly and very accessible to them. But they added that the state system should also be there in order to appeal on decisions rendered by the customary system if felt necessary.

2.7. Land Related Dispute settlement

In Afar women do not participate in dispute resolution processes. According to custom, disputes are resolved by clan leaders, and women are not allowed to be clan leaders. They are not allowed to bring their cases to dispute resolution institutions directly on their own and they must use representatives to do so such as their husbands, brothers, or fathers. Further, they are not allowed to be witnesses in the same way as men are. Testimonies of two women witnesses equal a testimony of one man i.e., a woman can only be a witness if another woman joins her. This is also the case under Sharia law. It was said that this is because it is believed that a woman's ability to memorize things is lower than a

man. So, if they are two it can create a chance to cross check their statement. But this does not mean that women do not have an influence on dispute resolution systems. A prominent Afar saying in this regard: -

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

These shows the indirect influence women have on dispute settlement: they influence their husband judges. This indirect influence can be powerful, sometimes even more than more formal ways of influence. Similarly, in the Afar customary system one of the disputant party may say the following to show the inferiority of women witnesses, meaning that when a person is very sure that the other party is not able to present a witness, s/he may confidently say 'just bring one witness even a woman, then I can consider that I am defeated':

"I will consider as though you present 1000 men if you present only one-woman witness."

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

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

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

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

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

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

concluding marriage, the husband is obliged to send customary leaders to the families of the wife holding twenty items of clothes, soft drinks, sheep, and cattle for mediation. Sometimes, the families of the women may not be keen about the marriage: in this case they have the right to cancel the marriage. As far as Keda'a marriage system is concerned, the man is expected to plea to the families of the woman for 2-5 years before the conclusion of marriage. He must follow the customary steps and should convince all her relatives. If a man denounces a marriage after the birth of a child, the woman cannot marry again and face stigma and discrimination from the society.

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

Cases brought to the woreda court can include property disputes, inheritance, marriage disputes, and the like. Parties to such disputes are mostly town residents. Sometimes women request their share of land at the time of dissolution of a marriage. For instance, in this year two women made a plea to the court to have their share of land when they dissolved their marriage. The court decided the divorced couple should divide the land equally as well as the cattle and camels. But there are challenges to such a decision – if a woman marries again, she will take the land to a new husband, which is a taboo in the customary system and will likely cause a dispute. As a result of this, the court advocates for mediation using the customary system.

Land rental transactions are almost nonexistent. Husbands tend to rent out their private holdings without the consent of their wives. Most of the time women do not participate in land rental transactions.

2.8. Can the formal and informal women land rights systems converge?

It is not an easy task to converge the formal and informal systems as far as land rights of women. Trying to replace the customary system by the formal system in the short time is not an ideal solution. The formal system is not coined by taking in to account the customary system. On the other hand, blindly following the customary system will affect the interest and rights of women.

Legal pluralism is also an option and is advantageous. It gives double or more avenues for land users including women. Land holders will have an option about where to go. Both systems have their own pros and cons and the government should identify the pros and cons of both systems and look at their convergence. Recognition of the customary system is crucial though due concern should be given to protect the rights of women.

Converging the customary system in to the formal one is not a one-night task and will take a long time. First the formal laws must be enacted by considering the customary and religious systems. The formal laws must consider the realities and context found in the region. Discussion on this and thorough investigation to this effect is very important. An inventory of the customary system is necessary to know the pros and cons of it on the land use rights of women.

For convergence of the two (three) legal systems in the long run legal empowerment and awareness raising for the whole community is very important. Women can be made aware of their formal land

rights and obligations via different communication campaigns. It is when women and the community can get legal information that they can have the ability to invoke the land rights of women. For this purpose, strengthening free legal aid service centers established under law schools would be important. Creating an enabling environment for women is the most important thing when developing new laws. It is when we create an enabling environment that women can claim and defend their rights and execute their obligations. In addition to creating legal empowerments for women and the community, awareness creation on the land rights of women for executive/implementing bodies is necessary.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1. Conclusions

In Afar, systems that govern women land right are three: customary, religious, and formal state systems. In Afar, the majority of land is held communally, and women can use grazing lands without limitation and discrimination. Even though things are changing, women are still inferior to men in terms of use of and access to private land. Polygamy is prevalent in the region, which can be encouraged by women themselves. Customary and religious systems are applicable more than state laws, even in homicide and other grave crimes as well as conflict resolution. Women have started getting their own private holding from the government in villagization areas, but still, they have lower decision-making powers.

Women do not actively participate in land administration committees even though the law enshrines it. The Afar law has provisions on land transactions, but it is not practiced. Even though private holdings are being given to women, there is a huge gap in utilizing the same. Land administration institutions are not strong enough to implement women land rights. Women can't inherit property either from their husband or families through the customary system. Even, the religious system discriminates against women during inheritance. Land registration and certification is being conducted in the region for villagization areas by taking in to account the right of women. 24 % of the total land holders who received land through villagization are women. The Afar customary and religious systems highly discriminate women in dispute settlements: their involvement is only indirect.

Unlike Afar, in Oromia Borana, the state formal law and the customary system governs the land use right of women. There is no religious system here predominating land issues. Women have relatively equal status with their male counterparts. It is not possible to make transactions with matrimonial properties without the consent of the wife. Women have their own private land. Women in the region are participating directly and indirectly in the management of communal lands. In exceptional cases, they serve as traditional leaders (Abbaa Olla). But there is discrimination for women as far as inheritance is concerned. Polygamy is practiced, but with the full consent of former wives. Even land and other property transactions are conducted with the consent of the property owner's wife. The role of women in dispute settlement is dual, unlike in Afar.

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

or more avenues for land users including women. Recognition of the customary system is very crucial, but due concern should be given to protect the human rights of women. Convergence of the systems is the long run task of the government. For this, legal empowerment, and awareness not only for women but for the whole community is very important. Convergences of the formal and informal systems must come by their own, in the long run.

3.2. Recommendations

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

- ⇒ There is a significant gap between the formal laws on one hand and the informal ones on the other. Customary systems are more applicable than the formal laws. The formal law sits in a vacuum. Most of the provisions, not all, of the regional land laws are meant for settled agriculturalists not for pastoralists: the laws are pastoralist blind. As a result, promulgating pastoral land administration laws is very important by bringing it closer to the customary and religious systems by taking in to account the regional realities.
- ⇒ For the convergence of those different systems, it is not only awareness creation for women in particular and the society in general, but also legal empowerment of women is crucial.
- ⇒ Society in the Afar regional state is governed by the 1960 Civil Code of Ethiopia for family matters. This Civil Code is too patriarchal: governing the society by the 1960 Civil Code encourages patriarchy and affects women negatively. As a result, the enactment of family law for the region by considering the regional realities should be conducted as soon as possible.
- ⇒ In Afar regional state, even though the regional land agency claims that certification is conducted with the photo of the husband and the wife, the reality on the ground is not like that and it is the photo of the husband only that appears. Therefore, certification should include the photo of both the husband and wife/wives.
- ⇒ The customary system in both regions is more effective in solving disputes and even serious crimes. Integration of the customary and religious systems into criminal law is very important.
- ⇒ Free legal services are being given for urban residents since the legal service centers are opened in big towns of the region. Besides urban residents, legal service should also be given to pastoralist residents with special emphasis for women. By considering the mobile nature of pastoralists, mechanisms should be devised to establish mobile legal aid services. Like mobile health care services, there should also be mobile legal services and awareness creation activities for the pastoralist communities.
- ⇒ Polygamy is a crime under the criminal law of Ethiopia but is highly practiced in rural areas of Ethiopia including in the study areas but with the consent of wives. Prohibiting and criminalizing polygamy without understanding the customary system on one hand and the feeling of women on the other is dangerous. A thorough study should be made to understand the pros and cons of polygamy for women in particular and the society in general.
- ⇒ Registration of communal and private lands in both regions should be conducted as far as possible since the absence of registration is the cause for land related disputes, which often affect women more than other segments of the society.

⇒ Cultural mapping and monitoring to identify those cultures which are relevant for the development of societies and those which are against the rights of women in particular and other societies in general should be made and then be promulgated in formal laws.

4. ACKNOWLEDGEMENT

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6. AUTHORS' CONTRIBUTIONS.

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8. KEY TERMS AND DEFINITIONS