

EVALUATION OF CUSTOMARY PRACTICES AND INSTITUTIONS IN
RELATION TO WOMEN'S RIGHT TO RURAL LAND INHERITANCE IN
SNNPRS: EXPERIENCES FROM GAMO GOFA ZONE



LL.M THESIS

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RELATION TO WOMEN'S RIGHTS TO RURAL LAND INHERITANCE IN
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ADVISOR APPROVAL SHEET

This is to certify that the thesis entitled “Evaluation of Customary Practices and Institutions in relation to Women’s Right to Rural Land Inheritance in SNNPR: Experiences from *Gamo Gofa Zone*” submitted in partial fulfilment of the requirements for Master's degree of Laws (LL.M in Land and Environmental Law) has been carried out by Bilate Bisare Bitire *ID No ELLR/006/09* under my supervision. Therefore, I recommend that the student has fulfilled the requirements and hence hereby can submit the thesis to the school of Law.

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June/2018

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Date

DECLARATION

I (the researcher) hereby declare that this thesis entitled “Evaluation of Customary Practices and Institutions in relation to Women’s Right to Rural Land Inheritance in SNNPR: Experiences from *Gamo Gofa Zone*” is my original work through the professional guidance of my advisor. All source of materials utilized in it has been duly acknowledged, and to the best of my knowledge, this thesis has never been presented for any award of degree in any University.

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Date June/2018

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Right
ACRWC	African Charter on the Rights and Welfare of Child
AMZD	Arba Minch Zuria District
ACRWC	African Charter on the Rights and Welfare of Child
MAD	Mirab Abaya District
EPRDF	Ethiopian People Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FAO	Food and Agricultural Organization
FGD	Focus Group Discussion
GG	Gamo Gofa
GGZ	Gamo Gofa Zone
KLAC	Kebele Land Administration Committee
NGO's	Non-Governmental Organizations
ONRS	Oromia National Regional State
RLAUP	Rural Land Administration and Use Proclamation
SNNPRS	South Nations, Nationalities, peoples of Ethiopia
RFC	Revised Family Code
COHRE	Centre on Housing Rights and Eviction
LAC	Land Administration Committees
TGE	Transitional Government of Ethiopia

GLOSSARY

Awachach certain crime	Meeting of the people to pinpoint unknown person who committed
Avocado	a tree that bears edible avocado fruit
Asura December	Cropping season in which seeds plant in September and harvest in
Buch Woga	Customary law of Oyida Ethnic Group
Biita Woga	Customary law of Gofa areas
Biitant	Landlord
Biittine aaya isso	Land is equal with mother
Dabo	Lineage
Dere Biita	Communal land
Dega	Temperate zone (above 2,300 meters sea level)
Derge	Military regime that ruled Ethiopia between 1974-1991E.C
Enset	False banana
Gabba	Crop season in which crops planted in February and harvested in July
Gadha	Lowland
Gome/Chinchale	Curse or misfortune
Gult	Landowner based tenure
Gaba/Torch	Cropping season in which seeds plant in January and harvest in June
Kebele	Sub-district or an administrative unit division next to district
Kola	Tropical zone (low land between 500-1,500 meters above sea level)
Kawo Biita	Government land
Mayiza	Common ancestors
Mana	Social groups whose main livelihood is pottery
Mango	a fleshy yellowish-red fruit which is eaten when ready for use

Nuna dere xelitte	See us or see the community chiefs
Rist	Customary individual tenure
Soo asa Biita	Family land
Silla	Cropping season seeds planted in June and harvest in September
Silla January	Crop season in which crops planted in August and harvested in January
Tella	Local soft drink
Teff	Cereal crop used to make flour
Wola	a huge tree with elongated branches
Woga	Customary law
Woina-dega	Sub-temperate zone (between 1,500-2,300 meters above sea level)
Zone	Administrative division below region & above district/between the two

ABSTRACT

This thesis critically evaluates customary practices and institutions in relation to women's right to rural land inheritance in Gamo Gofa Zone (GGZ), southern Ethiopia. It also analyzes the legal frameworks stipulating women's rights to rural land inheritance in Ethiopia in general and in SNNPRS in particular. Women's right to land inheritance is well recognized under international human rights instruments. In Ethiopia, women's right to land inheritance is constitutionally recognized as well as in other land specific legislations. Assets like land gained through inheritance is essential to women's every day survival, economic security and so forth. Despite the legal recognition, women's right to rural land inheritance is not effectively implemented in GGZ primarily because of gender discriminatory customary rules and practices. Moreover, the elders acting as judges in customary institutions by applying already discriminatory customary rules deny women to inherit land. Thus, this study examines the customary challenges of women's right to land inheritance and the justifications behind the customary prohibition of women land inheritance in the study area. Its main objective was to evaluate customary practices and institutions, examine, and analyze legal instruments and identify gaps between the laws and the practices on the ground in relation to women's right to rural land inheritance in the study area. To answer the proposed research questions and attain its intended objectives, the researcher employed a qualitative research methodology. Moreover, to show the practices on the ground, the researcher used qualitative data collection methods such as in depth, key and informant interviews, focus group discussions and personal observations.

Thus, the finding of the study shows although there is legal recognition due to deeply rooted gender discriminatory customary practices and elders biased decision in some customary institutions in GGZ, majority of women are deprived of right to possess land through inheritance. To tackle these challenges awareness creation campaigns to the whole rural community, community chiefs/clan leaders and women are very important. Moreover, all three organs of the SNNPRS government should ensure the implementation and enforceability of laws that protects women's right to land inheritance. Furthermore, courts at the district level should take and apply the family member definition provided by the Region's rural land legislation so that women can access land through inheritance.

Key Words: *Inheritance, Women's Land Rights, Customary Practices, Customary Institutions, Gamo Gofa Zone.*

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The importance of land tenure and access to land for agricultural production, shelter, and housing is an undeniable fact for developing countries in general and for rural Ethiopia in particular. That is why the significance of securing property rights over land is a precondition for sustainable economic growth. Like other most developing countries, land for rural Ethiopians is the main source of livelihood for both men and women because their life totally depends on income from the land. Owning land contributes greatly to household welfare and consumption, especially in areas where the majority of the population is rural and depends on subsistence agriculture.¹ It remains as an asset that farmers have to accumulate wealth and transfer the same to the future generations.² Thus, it is not an exaggeration if we say land is the lifeblood for rural population in developing countries in general and in Ethiopia in particular.

Throughout the world, women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security.³ However, in many parts of the world, women have little or no access to land.⁴ The major reason for this is the worldwide prevalence of *patrilineal customary inheritance practices, which supports only men and sons to inherit the properties including land.*⁵ In African contexts, many laws including national Constitutions accords women equal rights with men to inherit properties including land.⁶ The case of Ethiopia is not different from this fact in a sense that many laws including FDRE Constitution recognize women's equality as far as land inheritance is concerned.

¹ Ephraim Nkonya et al Who shall inherit the land? Exploring gendered patterns of land inheritance in Nigeria (World Bank conference on land and poverty 2014).3.

² Daniel Weldegebriel, Land rights and expropriations in Ethiopia': School of Architecture and the Built Environment, Royal Institute of Technology (KTH); (Stockholm, 2013) 2 & 30.

³ Lorenzo Cotula et al. 'Better Land Access for the Rural Poor; Lessons from Experience and Challenges Ahead; (2006), IIED, FAO. ISBN: 1-84369-632-0, 26.

⁴ Ibid.

⁵ USAID, 'Women's Property and Inheritance Rights: Improving Lives in Changing Times: Final Synthesis and Conference Proceedings Paper' (2003) 11.

⁶ Ibid, 13.

In Ethiopia land is the common property of the state and the people and hence, it is not subject to sale, exchange, or mortgage.⁷ Accordingly, private individuals have no ownership right over land because ownership right over all rural and urban land is exclusively vested in the state and peoples of Ethiopia. However, this does not mean that they have no use right over the land, since they are permitted to exercise the *usufruct* right over the land for an indefinite period of time. In line with the Constitution, both federal and regional RLAUPs also state the public ownership of land principle. Despite the fact that land is a common property of the Nation, Nationalities and People of Ethiopia (NNPE) and the state, transfer of rural land use right through different mechanisms such as inheritance and donation/gift allowed provided that the legal conditions attached are fulfilled.⁸ These conditions are *permanent living with and sharing the livelihood of the peasant farmer*.⁹ As per the law, if any person permanently lives with and share the income of the landholder, then he/she can inherit land from the landholder. Although the Constitution and rural land laws rules out the *abusus right*, there are some legal rooms for peasants to transfer their use right through inheritance, lease/rent, and gift/donation.¹⁰

There is a conceptual controversy over the meaning of succession and inheritance. In addition, the controversy also extends to the important lifecycle when succession and inheritance come to picture. This to mean that in many Sub-Saharan African countries inheritance becomes effective upon the birth, death, marriage and divorce, but in Ethiopia inheritance of property takes place only up on the death of the property owner. In many Sub-Saharan African countries, inheritance is taken as a critical mode of property transfer.¹¹ It is a means for the transfer of property like land or exclusion from transferring physical assets.¹² Concerning the meaning of succession, Black's law dictionary defines succession as the

⁷ Federal Democratic Republic of Ethiopia Constitution, Proclamation No 1/1995; Negarit Gazeta Year 1, No 1(FDRE Constitution) art.40 (3).

⁸ The Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No.456/2005 Negarit Gazeta Year 11, No. 44 (FRLAUP), Article 2(5); The South, Nations, Nationalities and Peoples Regional State, Rural Land Administration and Utilization Proclamation No.110/2007; Negarit Gazeta Year 13, No. 10 (SNNPRS RLAUP), Article 2(7).

⁹ Ibid.

¹⁰ Daniel Behailu, *Transfer of Land Rights in Ethiopia: Towards a Sustainable Policy Framework*, (Eleven International Publishing, 2015) 58.

¹¹ Elizabeth Cooper, 'Inheritance Practices and the Intergenerational Transmission of Poverty: A Literature Review and Annotated Bibliography' [2008] (ODI and CPRC) 1.

¹² Elizabeth Cooper 'Women and inheritance in Sub Saharan Africa: Opportunities and challenges for policy and practice change' [march 2011], no.182, 2.

acquisition of property by inheritance under the laws of descent and distribution.¹³ Accordingly, succession is more related to acquisition of property than else.

In principle, laws of succession and inheritance are designed to counteract the disruptive effect of death on the integrity of the family unit.¹⁴ In other jurisdictions inheritance is conceptualized broadly to attend to intergenerational transfers of property that occur at different moments in lifecycles, including birth, death, marriage, divorce and retirement from work.¹⁵ However, in Ethiopia, inheritance as a basic mechanism of property transfer most often comes into picture upon death. The Civil Code of 1960 under Art 829 (1) simply classified succession as intestate or testate without defining what succession is. It defines testate succession as a succession in which the estate of the deceased person shall pass to his heirs and or legatees according to the order made in the will. Instate succession is when the deceased leaves no will at all or a court for various reasons invalidates the will made by him and the law conducts the deceased's succession.¹⁶ Although the terms *inheritance and succession* are often used interchangeably, they slightly differ from one another. Inheritance is the transmission of the right to property such as land and housing, while succession means the transmission of all rights, duties and powers of the deceased, including his/her social position.¹⁷

An asset gained through inheritance is essential to women's every day survival, economic security, physical safety, economic empowerment and their strength for equality in gender.¹⁸ Conversely, women disinheritance of property including land is a cause for poverty and vulnerability. In this regard, Elizabeth Cooper argued:

*The wealth that an individual or household inherits can enable them and their families to engage in productive livelihoods, invest and do well. The absence of inherited assets in the form of land, savings and other forms of capital can leave other individuals and families vulnerable and can contribute to both chronic and intergenerational transmitted poverty.*¹⁹

¹³ Bryan A. Garner, Black's Law Dictionary, (seventh ed. 1999).

¹⁴ Centre on Housing Rights and Evictions (COHRE), Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women (Alla Koullirina (tr) and Robert Stuart (ed) COHRE 2004) 11.

¹⁵ Elizabeth Cooper, 'Inheritance and the Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations' Working Paper no. 159 (2010 CPRC) 2.

¹⁶ Civil Code of Ethiopia 1960, art.829 (3).

¹⁷ COHRE (n 14) 11.

¹⁸ United Nations Centre for Human Settlements (UNCHS Habitat 1999) 18.

¹⁹ Elizabeth Cooper, 'Women and inheritance in Sub Saharan Africa: Opportunities and challenges for policy and practice change' (n 12) 9.

The central message of this statement is clear and it means that inheritance is a precondition for women's life sustaining and to eradicate poverty and at the same time lack of it is a cause for severe poverty and economic incapacity.

Although it seems no explicit stipulation under major international Human Rights documents, a close reading of those documents reveals that they impliedly recognized women's right to land inheritance. The UDHR states that everyone has the right to own property alone or in association with others.²⁰ Likewise, ICCPR states that all persons are equal before the law and are entitled to own property without discrimination of any ground such as sex, color, and so forth.²¹ Moreover, CEDAW prohibits discrimination against women in the inheritance of property.²² Regionally, the ACHPR guarantees women's right to property and states mandatory to eliminate discrimination against women and to protect women's right.²³ It also obliges state parties to the protocol, including Ethiopia to ensure that men and women shall have equal right to inherit of property including land.²⁴ The state parties to the Solemn Declaration on Gender Equality in Africa to which Ethiopia is a signatory actively promote the implementation of legislation to guarantee women's land, property, and inheritance rights, including their rights to housing.²⁵

In Ethiopia, taking the importance of land into account, various laws have afforded legal protection for a woman's right to equality with men and equal protection before the law. Among others, this is enshrined under the Federal Constitution of 1995, State Constitutions, family laws, and land laws.²⁶ The FDRE Constitution talks about women's right to acquire, control, use, and transfer property *including the right to inheritance (Emphasis added)*.²⁷ The principle of equality and non-discrimination is also enshrined. Thus, all persons are equal before the law and are entitled without any discrimination to the equal protection of law.²⁸ The Revised Family Code (RFC) of the country also uniformly recognize a woman's right to

²⁰ The Universal Declaration of Human Rights adopted and proclaimed by U.N. GA Res. 217A (III) of Dec. 10, 1948, art.17 (UDHR).

²¹ The International Covenant on Civil and Political Rights adopted by U.N. GA Res. 2200A (XXI) of Dec. 16, 1966, entered into force Jan. 3, 1976, art. 26 (ICCPR).

²² Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. G.A.O.R., 34th Sess., Supp. No. 46, U.N. Doc. A/34/36 (1980) (entered into force 3 Sept. 1981), art.1 (CEDAW).

²³ African [Banjul] Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 211.L.M. 58 (1982), entered into force 21 October 1986], Art. 2 and 14 cum art.18 (3) (ACHPR).

²⁴ Ibid, sub-art. 2.

²⁵ Solemn Declaration on Gender Equality in Africa declared by Africa Union General Assembly, July 2004, no.7.

²⁶ Hussen Ahmed, 'A Woman's Right to and Control over Rural Land in Ethiopia: The Law and the Practice' (2014) International Journal of Gender and Women's Studies June 2014, Vol. 2, No. 2, 137-165, 27.

²⁷ FDRE Constitution (n 7), art.35 (7).

²⁸ Ibid, art.25.

equal share of the common property; it also stipulates that spouses have a right to own personal property in addition to common property, which they own jointly.²⁹ Moreover, it states that an income from personal property is considered as a common property of spouses. Similarly the SNNPR's RFC states that spouses have equal rights to share common property upon divorce and also to take their personal property.³⁰ Federal RLAUP recognizes women's land right by saying women who want to engage in agriculture shall have the right to get and use rural land use right.³¹ Moreover, it adds that any person who is member of a peasant farmer, semi pastoralist, and pastoralist family having the right to use rural land may get rural land from his family via inheritance or donation. In addition, SNNPRs RLAUP likewise states that women who want to engage in agriculture shall have the right to get and use rural land free of charge and if they are family member of the peasant farmer they can inherit land equally with men.³²

In Gamo Gofa Zone (GGZ), despite the legal recognition, women's right to land inheritance is violated or not effectively implemented. This is so because of the prevalence of customary practices, which denies women's land inheritance right. Women are the most marginalized section of the society in relation to accessing and controlling rural land in Ethiopia.³³ As per the customary practice of the area, only boys have the right to inherit land which reflects patrilineal idea of inheritance, which places men and son in better position than women and daughters with regard to property inheritance.³⁴ In addition, women who claim their rights to land inheritance are likely to be socially stigmatized by the society. Both the family and community are pressuring women to give up their rights instead of supporting them because they assume that daughters get land use right when they get married. The main challenge to women's right to and control over rural land is the pessimistic attitude of the community towards women.³⁵ The common view among *Gamo Gofa (GG) society* is that daughters should not claim land from their natal family because they will have access to land in their marital families.

²⁹ Family Code of the Federal Democratic Republic of Ethiopia Proclamation No.213/2000, Federal Negarit Gazeta 1/1992, art.57-73 (FDRE RFC).

³⁰ Revised Family Code of SNNPRs, Proclamation No.75/2004, and art.75.

³¹ FDRE RLAUP (n 8), art.5(2)

³² SNNPRS RLAUP (n 8), art.5 (3) and cumulative readings of art.2(7) and 5(11)

³³ Hussen, (n 26) 1.

³⁴ Hizkale Banbire, 'Transfer of Rural Land Use Rights in SNNPRS: Experiences from Gamo Gofa' (LL.M Thesis, unpublished), (Hawassa University, 2016) 60.

³⁵ Cooper, 'Inheritance Practices and the Intergenerational Transmission of Poverty' (n 11) 28.

There are many publications on women's right to property inheritance in many sub-Saharan African countries. Cooper stated that gender discrimination in inheritance systems has been described as a violation of human rights, and linked to asset stripping, poverty traps and the intergenerational transmission of poverty.³⁶ Moreover, she explained that in many Sub-Saharan African societies, inheritance is one of the most common means by which physical property is transferred from one generation to another.³⁷ Finally, she concluded that inheritance is conceptualized broadly to attend to intergenerational transfers of property that occur at different moments in lifecycles, including birth, death, marriage, and retirement from work.³⁸ In addition, Centre on Housing Rights and Evictions (COHRE) explained that women's human rights to land and adequate housing are systematically denied-the majority of the well over one billion inadequately housed persons in the world are women.³⁹ Yet, the most blatant gender-specific violation of such rights is the denial of women's rights to own and inherit housing, land, and other property.⁴⁰

Nationally, lots of researches have been conducted on women's land rights such as Yonas Tafesse,⁴¹ and Hussein Ahmed.⁴² Even though these studies are somehow related to this investigation they are not specific to women's land inheritance and are in different areas of the Region. Daniel Behailu,⁴³ it indicated the shortcomings regarding national land policy in general and rural land use right transfers in particular including its practical challenges. It assessed and analyzed the existing challenges of land tenures and transfers of land use rights. Hizikel Banbire (not yet published)⁴⁴ this is a recent study in the study area and addresses transfer of rural land rights in general but not specific to inheritance. Yonass Mare and Gebrerufael Girmay⁴⁵ despite its focus on women's right to access productive resources in general, it is not about women's land inheritance right specific.

³⁶ Cooper, 'Inheritance Practices and the Intergenerational Transmission of Poverty' (n 11).

³⁷ Elizabeth Cooper 'Inheritance and the Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations' (n 15) 2.

³⁸ Ibid.

³⁹ COHRE (14) 8.

⁴⁰ Ibid.

⁴¹ Yonas Tafesse, 'Women and Land Rights in Rural Ethiopia: The Case of Wolaita' (MA Thesis), University of Tromso (2011).

⁴² Hussien, (n 26).

⁴³ Daniel (n 10).

⁴⁴ Hizkale, (n 34).

⁴⁵ Yohannes Mare and Gebrerufael Girmay 'Rural women access to productive resources: implications for poverty reduction- the case of Gamo Gofa' (2016) Afr.Agric.Res vol. 11 no.4, 221-227.

1.2. Statement of the problem

In spite of the contributions made by the aforementioned studies to the understanding of the women's rural land inheritance right in Ethiopia in general and in some zones of SNNPRS in particular, the present researcher still believes that certain issues needs further investigation. For instance, experiences of customary land inheritance, the experiences of customary institutions in land-related dispute settlement, and the impact of traditional dispute settlers in relation to women's land inheritance right. Moreover, the gaps between the law and the practice on the ground and courts handling of inheritance cases in the study area also needs further investigation.

Despite the fact that inheritance rights of women are recognized in the legal frameworks, their right is violated in the study area. Customarily land use rights transfers only to the sons of the deceased holder (patrilineal line), that affects women inheritance right. The discriminatory customary practices are contributing much for no or less implementation of women's right to rural land inheritance. These customary practices directly contradict with the statutory laws because they undermine women's land inheritance rights stipulated by the law. Moreover, local elders acting as judges in the customary institutions pass unfair decision in a sense that they do not favor women to inherit land because of the customary prohibition. Likewise in many Sub-Saharan contexts, inheritance is not administered in a formal and legalistic way, but rather adjudicated in a highly interpersonal manner.⁴⁶ Therefore, in many Sub-Saharan African countries including Ethiopia land dispute cases are first handled by local leaders, i.e., elders or chiefs. In this regard, both the federal as well as the SNNPRS's rural land laws provides that when dispute arises over rural land holding right, the case shall be first brought to KLACs and the committee shall let the dispute be resolved by negotiation or arbitration through local elders set by the choice of the two parties.⁴⁷ Although chiefs and elders do not have any legal authority to resolve disputes, they have both local social legitimacy and can act more quickly and cheaply than the official legal system. Worst of all, women themselves have no awareness about their right to land inheritance. These all are challenges for the enforcement of the rural land laws in the study area.

⁴⁶ UNCHS Habitat (n 18) 10.

⁴⁷ FDRE RLAUP and SNNPRS RLAUP (n 8); art.12 of both Proclamations.

Therefore, the present researcher has critically investigated the above-mentioned challenges for women's land inheritance right in the study area and the experiences of the society in GGZ and its implications on the life of women

1.3 The Research Questions

The study addressed the following main and specific research questions.

1.3.1 The Main Research Question

The general and overall research questions were:

- How do customary practices regulate women's right to rural land inheritance?
- Is there any gap between the statutory laws and rural land inheritance under the customary practices of GG people?
- If so, how can the laws and the practices can be synchronized?

1.3.2 The Specific Research Questions

In conducting the research, the writer focused on the following specific research questions:

- How do local elders/clan leaders of customary institutions decide land inheritance cases towards women?
- Do the laws regarding women's rights to rural land inheritance effectively implemented?
- How are courts handling land inheritance cases in the study area?
- What remedies can be forwarded to enable women to exercise their right to land inheritance?

1.4 Research Objectives

1.4.1 The General Research Objective

The overall objective of this study was to evaluate customary practices, examine, and analyze legal instruments and identify gaps (if any) between the laws and the practices on the ground in relation to women's right to rural land inheritance in the study area.

1.4.2 The Specific Research Objectives

The specific objectives of the study were aimed to:

- Examine how the local elders/clan leaders of customary institutions decide land inheritance cases towards women;
- Assess whether the laws regarding women's rural land inheritance effectively implemented or not;
- Describe the interface between statutory laws and the practices on women's right to rural land inheritance;
- Examine courts handling of land inheritance cases; and
- Forward recommendations for consideration so that women can exercise their legally recognized right

1.6 Research Methodology and Design

1.6.1 Research Methodology

To answer the research questions and attain its intended objectives, the researcher used qualitative (both doctrinal and non-doctrinal) methodology. The qualitative research was adopted because with qualitative approach, feelings and insights are considered important. It also investigates the 'what', 'why' and 'how' of decision making rather than just 'how many', 'how much.'⁴⁸ Unlike quantitative research, qualitative research relies on the reason behind various aspects of behavior. Qualitative approach is appropriate method when one needs to understand the perspectives of participants, explore the meaning they give to the

⁴⁸ Michael Quinn and Michael Cochran, A Guideline to Using Qualitative Research Methodology (2002) 5.

phenomena and observe a process in-depth.⁴⁹ The other importance of qualitative approach is that the chance to get information from information rich persons via face to face contact, focused group discussion or interview questions and the possibility to gather data through personal observation. Moreover, the researcher believes that the possibility of taking small-scale sampling for this investigation is another justification for qualitative research methodology because sample sizes are typically small in qualitative works.⁵⁰

Doctrinal legal research was used to analyze statutory provisions and judicial decisions in relation to women's right to rural land inheritance. Non-doctrinal research type also used to assess the extent of penetration of law into social reality. Since it involves empirical inquiry into the operation of the law, it helped the researcher to know to what extent certain legal rules work or have worked. The researcher believed that doctrinal legal investigation alone cannot verify the problem at hand in relation to women's rural land inheritance; and the empirical investigation through the non-doctrinal approach used the researcher to attain qualified data for problems in the study area.

1.6.2 The Study Design and Strategy

This research was based on a case study strategy. A case study is an empirical investigation that examines contemporary phenomena in its real-life environment, particularly when the limits between the phenomena and context, are not clearly evident.⁵¹ The case study allows or is invoked to study selected issues, cases, or events in depth and detail.⁵² This strategy also helped the researcher to exploit a diversity of sources, types of data and research methods including multiple data collection methods such as interviews, focus group discussion, and personal observation. The selected case study areas were the followings.

The first district the researcher selected was Arba Minch Zuria District (sample Kebele are Shelle Mela and Kola Shara) where the land was suitable for irrigation because of availability of water resources (like Lake Abaya and Chamo) and their respective contributing surrounding tributaries. As a result, there is a high cash crop production like Banana, Mango, and other fruits that make the land value very high. This district is selected purposefully as it is close to the Zone Administration seat where investment boom is significant and pressure on land is high as a result of urbanization and population explosion. Thus,

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Robert Yin, *Case Study Design and Methods* (2nd ed. Sega Publication 1994) 13.

⁵² Robert E. Stake, *the Art of Case Study Research* (Sega Publication 1995) 4-5.

high economic value of agricultural land there is the first reason which has led the present researcher to choose this as a research site. The other reason is the prevalence of deeply rooted customary practices and well-organized customary institutions. Due to homogeneity of the customary practices, the selected Villages could represent the other villages in the district.

The second selected district was Mirab Abaya District (sample kebeles are Omo Lante and Ankober). The district is also suitable for agriculture, especially for vegetable and fruit production because of water accessibility. Lake Abaya is situated in part of the district, and the feeding rivers of the lake run through this district. Fruits like Banana and Mango production are the mainstay of life. Thus, high economic value of agricultural land there is the first justification why the researcher chose this as a research site. Secondly, the presence of many customary institutions to solve land-related disputes also makes this district preferable for this investigation. The general customary practices of the district is not significantly different from one kebele to another, hence, the selected sample kebeles could to an extent representative of the other remaining villages in the district.

The third selected district was Zala District (sample kebele is Shambara Kankara kebele). Unlike the above two districts, this district is not much suitable for agricultural production due to lack of water accessibility. In this district crops like maize and sweet potato are common agricultural productions. The researcher purposefully selected this district on two accounts: one was to compare the issue with others high land-valued districts mentioned above and the other was the presence of well-organized customary institutions to solve land-related disputes. Moreover, the researcher believed that the site is thought to help investigate whether there are customary practices variation towards women`s rights to land inheritance in very remote areas. The customary practices within this district were identical due to nearness of the kebeles to each other, thus, the sample selected kebele could represent the other remaining kebeles in the district.

This qualitative study used data collected from both primary and secondary sources. Primary sources include focus group discussions, interviews, and personal observations whereas secondary sources include legislation, books, journals articles, published and unpublished theses/dissertations, and internet sources. The primary data was collected using multiple or mixed data collection methods such as focus group discussion, interview questions, and personal observation. The secondary data was collected by review of related literature and searching from internet websites.

1.6.3 Data Collection Methods

To undertake this study, the writer used the following data collection methods: Focus Group Discussion (FGD), interviews and personal observations.

1.6.3.1 Focus Group Discussion (FGD)

Focus group discussions were a very powerful method that has been used in this study to easily explore thought patterns, express feelings and allows to use various information about topics relevant to this study. Through this method, the researcher collected deep information about the customary practices and institutions and their impact on the realization of women's legal land inheritance rights among the GG people. Thus, inhere three FGDs were held: FGD among women, local elders and members of Land Administration Committee (LAC). To identify the target women the writer started from dead files in the courts. Thus, FGD was held among 44 women in six kebeles (8 from Shelle Mela kebele, 8 from Kola Shara kebele, 8 from Omo Lante kebele, 8 from Ankober kebele, 6 from Shabara Kankara kebele and 6 from Menan kebele).

Moreover, FGD held with 48 local elders from six kebeles (8 from each kebele) purposefully selected, 30 LAC from five kebeles (6 from Shelle Mela, 6 from Kola Shara, 6 from Menana, 6 from Shambara Kankara and 6 from Omo Lante kebele). The data gathered from women participated in FGD helped the researcher explore the issue from their life experiences. Moreover, data gathered from local elders and LACs, enabled the writer understand how local elders see women's right to rural land inheritance from their customary law perspectives. All in all, data gathered through this method helped the researcher to understand how women's land inheritance rights are regulated through customary laws of the GG society and the positive and negative impacts of customary institutions in the study area. The participant members had chosen the discussion places and during the discussion, everyone was encouraged to speak. There was one note-taking person in all FGD activities.

1.6.3.2 Interviews

The researcher conducted face-to-face interviews (semi-structured, in-depth, expert and informant interviews) with many individuals such as with 29 local elders purposively selected from three districts, from six kebeles (6 from Omo Lante kebele, 5 from Kola Shara kebele, 5 from Shambara Kankara kebele, 4 from Ankober kebele, 4 from Menana kebele and 5 from Shelle Mela kebele) in order to know how they entertain land-related disputes in customary institutions and how they treat women as far as land inheritance is concerned. Moreover, interviews conducted with 16 women in four kebeles (4 from each kebele) in order to gather data from their life experiences. To identify the target women here, the researcher also used court cases and identified the women with inheritance problem for interviews.

In addition, interview also conducted with 18 LACs members in six kebeles (3 from each kebele), 8 Land Administration Experts from three districts (2 from Zala district, 2 from AMZD and 4 from MAD), 3 Women and Children Office Heads from 3 districts, 1 women capacity building expert from MAD, 1 Women and Children Affairs Department Head in GGZ, 1 Gender Mainstreaming Expert from AMZD, 3 office heads from Cultural and Tourism Office in 3 districts, 2 Land Administration Expert and 1 Cultural Development Study Expert from GGZ, 7 Judges (two from Mirab Abya district court, two from Gamo Area High Court, two from Arba Minch Zuria District Court and one from Zala District Court) and each agricultural extension and natural resource development experts in each sample selected kebeles. These all conducted to know how the customary practices and institutions in the study area regulate women's land inheritance rights, the justification behind the practices, women's legal awareness level towards their legal land inheritance rights and courts handling of land inheritance cases and their enforcement.

1.6.3.3 Personal Observations

By personal observations of selected research sites the researcher gathered data from the case histories. Some case histories were gathered from rural household women as of participant observation. In addition, through this method the researcher identified the presence of discriminatory customary practices in study area and informally talk with some women why they did not inherit land in the area. The data collected by these ways were taking notes, recording and in some cases simply listening talks.

1.6.4 Data analysis and Interpretation

To check the accuracy of data collected, the writer opted for triangulation data analysis technique. This is because triangulation is one method for increasing validity of findings, through deliberately seeking of evidence from a wide range of sources and comparing findings from those different sources.⁵³ Thus, data collected has been analyzed critically by using triangulation data analysis techniques. The data analyses made were guided by specific research objectives and research questions of the study.

1.7. Significance of the study

The researcher believes that this study is important in many ways.

Firstly, it may serve as a good starting point for further investigation on the same topic in the same area or elsewhere in the country having similar customary practices;

Secondly, it may inform the law making bodies of the SNNPRS about the contradiction between the law and the practice on the ground with regard to women's right to rural land inheritance in GGZ. Thus, by showing the existing gaps between the letter of the law and the practice, this study may inform the SNNPRS's Government to effectively implement existing laws;

Lastly, it may be taken as an input for government officials and NGOs working on women to work hard so that women can benefit from their legal land inheritance rights.

1.8 Limitation and Scope of the Study

The study was conducted in GGZ, which is one of 14 *Zones*, and 4 special districts that constitute Southern NNPRS. The GGZ covers a total land area of 12,581.4 square kilometer and consisted of 15 districts and two City Administrations.⁵⁴ As mentioned above, out of 15 districts the researcher selected three districts for this investigation because of above mentioned reasons. This study has evaluated only customary practices and institutions in relation to women's right to rural land inheritance from the perspectives of rural land laws of the country as well as international Bill of Rights. It has not discussed the customary practices from the other social sciences perspectives. Customary practices of the area are not

⁵³ Quinn and Chochran, (n 48) 28.

⁵⁴ An interview with Mr. Teshome Tesema, Land Information Expert in Gamo Gofa Zone Agricultural and Natural Resources Department (Arba Minch 05 March 2018).

documented; hence, it is difficult to assess them exhaustively. However, the researcher has tried his best to fully appreciate customary practices and institutions from the perspectives of International Bill of Rights and national rural land laws.

1.9 Organization of the thesis

The chapters of this Thesis are organized into five independent but inter-connected chapters that are to be logically presented from section to section.

The second chapter focuses on review literature, in particular, an overview of women's land rights in Ethiopia, women's land rights in the land tenure history of Ethiopia, importance of land for women and the challenges of women's rural land inheritance rights. To address these issues extensive written materials and laws have been used.

The third chapter introduces the legal frameworks of women's right to land inheritance. This chapter has two parts: part one discusses legal frameworks of women's right to rural land inheritance in Ethiopia. In here, women's right to rural land inheritance has been discussed from the perspectives of International Bill of Rights, Regional Human Rights Instruments, FDRE constitution, FDRE rural land laws and Civil Code of Ethiopia. Part two discusses the legal frameworks of women's right to rural land inheritance in SNNPRS including SNNPRS Constitution and the Region's land legislation.

Chapter four is all about evaluation of customary practices and institutions in relation to women's right to rural land inheritance in GGZ. It has introduced whether women has customary right to inherit land or not, the justification behind customary prohibition, customary institutions which involve in land-related dispute resolution, their impact on women's land rights, again it investigates the legal penetrations, awareness level of the society about women's land inheritance, and the impact of the customary practices on women. Moreover, it also includes courts handling of inheritance cases. The implication of women disinheritance of land has also been highlighted.

The fifth chapter includes the findings of the study, and from which conclusions have been drawn and recommendations that has suggested to fills the gaps between the laws and the practices are forwarded.

CHAPTER TWO

WOMEN'S LAND INHERITANCE RIGHTS IN ETHIOPIA

2.1 An Overview of Women's Land Rights in Ethiopia

In both developing and developed economies, rural land is an asset of the greatest importance because in the former, majority of the society highly depend on income from agriculture and other land-based activities.⁵⁵ In the latter, a high proportion of income, employment, and export earnings stem from agricultural production and other land-related activities.⁵⁶ Land is a primary source of wealth, social status, and power throughout history to those who have access to and control over it.⁵⁷ In the absence of economic diversification, access to land and other natural resources is of special importance for improving the livelihoods of poorer groups (including women) and providing greater security.⁵⁸ The importance of land in development in Africa is underlined by the fact that approximately 60% of the population derives its livelihood and income mainly from farming, livestock production, and related activities.⁵⁹ Furthermore, land is considered as an important economic and social asset where the status and prestige of people is determined. In Ethiopia too, it is undeniable fact that land constitutes the major source of livelihoods for the majority of rural mass population including women. Apart from its economic importance, land also has cultural, social and spiritual values.⁶⁰ To the vast majority of societies in Africa land is regarded not simply as an economic or environmental asset, but as a social, cultural and ontological (nature of existence) resource.⁶¹ In other words, land is crucial for the construction of social identity, cultural promotion, and religious life because of their inextricable linkage to the land.

⁵⁵ European Union (EU) Land Policy Guidelines; EU Guidelines for support to Land Policy Design and Land Policy Reform processes in developing countries, (November 2004) 5.

⁵⁶ Ibid.

⁵⁷ Almaz Woldetensaye, Women's Access to and Control over Land in the Current Land Administration System in 2 rural Kebeles in Ada'a Woreda of Oromia Region (M.A Thesis), (Addis Ababa University, December 2007) 22.

⁵⁸ EU Land Policy Guidelines (n 55).

⁵⁹ Framework and Guidelines on Land Policy in Africa; Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, (ECA Publications and Conference Management Section 2010) 25.

⁶⁰ Ibid.

⁶¹ Ibid, 26.

Given the high importance of land, legal recognition and protection of land rights is in the agenda of both international and national governments. Land rights may be defined as a set of legally guaranteed entitlements or privileges that an individual can get by being an owner or holder of the land.⁶² Depending on the type of land policy we have, land rights may be full ownership over the asset or only use right over the land. According to article 1204 of the 1960 Civil Code of Ethiopia, ownership is the widest right that may be had on a thing. If the land policy allows full ownership over the land, land rights refers to a wide range of rights pertaining to access, use, management, alienation, or exclusion of others and such rights may neither be divided nor restricted except for stipulation by the law.⁶³ However, in the case where public ownership of land policy is in place, land rights only include the rights to use and occupy the land as well as the right to collect and use fruits that accrue from the land.

Equal rights for both women and men to hold and use property including land are the cornerstone of social and economic gender equality.⁶⁴ Women's land rights require strengthening under both formal and informal systems of tenure, and constitutional and inheritance law has a role to play alongside land law and institutions.⁶⁵ Thus, the law has to establish women's rights to hold property including land in equal manner during marriage and the right to equal share at the time of divorce. Unless well stipulated land rights for women, it may be problematic to assure women's economic and livelihood security. For instance, to enable women to access credit and services requires evidence of land ownership.

2.2 Importance of Land Access for Women in Ethiopia

In rural Ethiopia, women constitute almost 50% of the population; as a result their contribution to Ethiopia's agriculture is paramount.⁶⁶ According to central statistical agency CSA (2013/14), of the estimated 54.6 million total population in agricultural households, about 27 are women.⁶⁷ For women access to land is greatly important to improve their livelihoods because land is the only viable source of their livelihood. Women's access to, use of and control over land and other productive resources are essential to

⁶² Ostrom, E., "Private and Common Property Rights", in B. Bouckaert and G. de Geest, (eds.), *Civil Law and Economics, Encyclopedia of Law and Economics, Vol. 2*, (Cheltenham: Elgar, 2000) p 339; Ostrom, E., and E. Schlager, "The Formation of Property Rights", in S. Hanna, C. Folke, and K.G. Mäler, (eds.), *Rights to Nature*, (Washington, DC: Island Press, 1996) 133.

⁶³ Ibid.

⁶⁴ EU Land Policy Guidelines (n 55) 5.

⁶⁵ Ibid.

⁶⁶ Teshome Yirgu, 'Socio-cultural and Policy Related Constraints to Women's Land Right: A Case Study from Gamo Highland, SW Ethiopia' (2015), *Humanities and Social Sciences*. Vol. 3, No. 4, pp. 149-154, 1.

⁶⁷ Ibid.

ensuring their right to equality and to an adequate standard of living.⁶⁸ The right to adequate standard of living such as the right to food, shelter, and work (socio-economic and cultural human rights) are intrinsically linked to the access to land. Hence, secured land access is a precondition to realize these human rights of women as well. Moreover, rights to access land make women to be economically strong, be less affected by shock or less susceptible to poverty.⁶⁹ Furthermore, land is a crucial economic asset for women in poor rural communities because of the following reasons: it is a key input for agricultural production; it can be used as collateral to access capital; and, it can generate income directly, if it were rented or sold.⁷⁰ Thus, among other benefits, for women who own land it is simple to access credit facilities and to invest more on their lands. Lack of access to rural land is an obstacle to agricultural productivity and to increase rural women's income, as they cannot access these resources without holding land and securing tenure.⁷¹ Again, land access can also play as a means for the social access because land access can raise women's status in their communities and its potential to change the attitude that women are not productive to their identity as productive members of the society. Therefore, strengthening women's land rights has many benefits for women themselves and even for their families and communities.

2.3 An Overview of Women's Land Rights within the Land Tenure History of Ethiopia

In Ethiopia, land use and tenure history can be traced back to the time of Christ but little is known about the land policies adapted and used by ancient kingdoms.⁷² However, it had been clear that control over land was equated with controlling of governmental power by ruling regimes. Understanding the land tenure history of the country has contributions to understand the present land governance including women's relation to land because, inter alia, it can better explain and evaluate the existing land governance in place in the face of all objections and resistance to it on one hand and its acceptance among many on the other hand.⁷³ Land tenure history of the county can be categorized into three distinct periods; land tenure systems of pre-1974, land tenure systems during Derge regime, and the present day land policy.

⁶⁸ UN Human Rights Office of High Commissioner, Realizing Women's Rights to Land and Other Productive Resources, (UN Women 2013) 7.

⁶⁹ Mebrat Gebreslassie, Breaking the Norms: Gender and Land Rights in Tigray, Ethiopia (MSC Thesis), (Norwegian University of Life Sciences 2011) 21.

⁷⁰ UN Entity for Gender Equality and Empowerment of Women, Gender and Land Tenure Security challenges and Barriers to Women's Entitlement to Land in India, (UN Women) 6.

⁷¹ Almaz (n 57) 35-36.

⁷² Daniel Behailu (n 10) 28.

⁷³ Ibid.

2.3.1 Women's Land Rights in pre-1974 Era

During Imperial era, land was not only economic asset but also political instrument, controlling of land was equated with controlling of governmental powers.⁷⁴ As a result, access to land was conditioned on loyalty to the crown and political status of individuals.⁷⁵ The land relations that prevailed in pre-revolutionary Ethiopia were both feudal and patriarchal, mediated through heredity and proximity to the crown or church.⁷⁶ Due to diverse landholdings that existed such as private or freehold (Gebbar tenures), church land (Samon), and state land (Maderia Mengest); land tenure system was a complex one. However, the dominant land tenure systems were Rist and Gult systems.⁷⁷ The north/south dichotomy was taken as a good way to understand the land regimes evolution during this period. The northern part had exercised both the Rist and Gult systems whereas the southern part was mostly under private ownership after the arrival of northern. In this regard, Daniel Behailu wrote that:

*The historical evolution of the land regimes in Ethiopia and the recent developments thereto must be analyzed in the north/south dichotomy where the northern part had exercised the rist system for thousands of years and the southern part lived under varied land regimes depending on the custom and social setting of nations and nationalities which later on, upon occupation by the northerners, were altered in majority of cases to private land ownership and tenancy.*⁷⁸

In the northern part, the major form of land tenure was a type of communal system known as rist. Rist by definition is the portion of land not to specific fields, since it is the right, which is inherited, not identifiable areas of land,⁷⁹ was dominant land tenure system in Northern part of the country including present day parts of Amhara and Tigray Regions. The rist, hereditary land rights, was considered as a birthright, for both men and women and it shows that one had ancestors and was a free and legitimate member of the community.⁸⁰ The other peculiar picture of Rist system was no sale of land, rather the descendants had hereditary right to use their ancestors' land and pass it to future generations within that particular family. Thus, rist

⁷⁴ Hadera Tesfa, 'Women and Land Rights in Ethiopia: A Comparative study of two communities in Tigray and Oromiya Regional States' [2002] Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI).

⁷⁵ Ibid.

⁷⁶ Ibid, 11.

⁷⁷ Daniel Behailu (n 10) 28.

⁷⁸ Ibid.

⁷⁹ Allen Hoben, 'Land tenure Among the Amhara of Ethiopia: The Dynamics of Cognatic Descent' (1974)12(2) The Journal of Modern African Studies, 341, 342-343 as cited in Daniel Behailu (n 10) 30.

⁸⁰ Hadera (n 74) 16.

land was in the family domain forever. On the other hand, before the arrival of northerners onto the south land, the south part of the country was under the communal land tenure system. However, in 19th and 20th century gult (land grants by the crown) was introduced in the South, which is the right, normally non-hereditary, to all or part of the tribute ordinarily due from the occupant of land to the ruler.⁸¹ Gult is the ownership right to land acquired from the monarch or provincial rulers who were authorized to grant land. During that period, more than 70 percent of fertile land was concentrated in the hands of the 1 percent of property owners.⁸² Arguably, the introduction of gult system in south did not eliminate the existing indigenous land tenure systems and institutions in the south.

When we come to women's land rights before the 1974 era, there is no consensus among different scholars. For instance, Yonas Tafesse stated that the available literature, by no means, can provide comprehensive and detailed picture of Ethiopian women's status, their property rights in land, and other related matters.⁸³ Theoretically, under the Rist landholding system, women were allowed to inherit agricultural lands from their parents.⁸⁴ However, even during that period the customary practices and social organizations dictate that land and other more valuable properties should be transferred to only male than to female. In this regard, Hanna argues that in most cases because of social structures in Muslim and Christian families properties were usually transferred to male heirs in the family.⁸⁵ In a similar fashion, Hadera argues that in land tenure systems of the pre-1974, there was no concern for women's rights to access land and this was due to socio-cultural constraints that precluded women from exercising their rights.⁸⁶ Under Ethiopia's feudalistic land tenure system, women did not own land independently, but only had access to land (use rights) as wives and daughters.⁸⁷ Therefore, the majority of women were landless and this could be primarily justified by the existed discriminatory customary practices and institutions.

⁸¹ Ibid, 31.

⁸² Shimeles Tenaw et al, 'Effects of land tenure and property rights on agricultural productivity in Ethiopia, Namibia and Bangladesh: Sustainable Rural Development with Emphasis on Agriculture and Food Security within the Climate Change Setting' [2009] SARD-Climate, 13.

⁸³ Yonass (n 41) 66.

⁸⁴ Kifle Lemma Wolde-Semayat (1999): "Land Tenure: Legal Aspect and Its Impact on Sustainable Land Use and Food Security." As cited in Yonas Tafesse (n 45) 66.

⁸⁵ Hanna Kebede, 'Gender Relations in Mobilizing Human Resources in Ethiopia' (1990) 63.

⁸⁶ Hadera (n 74) 16.

⁸⁷ Donald Crummey, *Land, and Society in the Christian Kingdom of Ethiopia; from the thirteenth to the Twentieth Century*. Addis Ababa: (Addis Ababa University Press 2000) 11.

2.3.2 Women's Land Rights during the Derge Regime

After the overthrow of imperial, the Derge socialist government came to power in 1974 and profoundly altered agrarians' structure and mechanisms of land access. The socialist government primarily intended to solve the land question for the majority/mass of peasant farmers including women who were exploited much by the feudal land tenure systems. With this objective in mind, the Derge government accepted and implemented the 1970s students' movement slogan 'Land to Tiller'. To facilitate this goal, the government proclaimed a sweeping land reform in March 1975, which effectively destroyed the landlord-tenant relationship that had resulted in serious peasants' exploitation. The preamble of land reform legislation contained some of the lofty ideals such as increasing agricultural production, abolishing feudal system and narrowing the wealthy gap between/among the people. According to the Derge Proclamation No. 31/1975 all rural lands shall be the collective property of the Ethiopian people.⁸⁸ As a result, the land tenure system was shifted from feudal system to public ownership of land system.

No person or business organization or any other organization shall hold rural land in private ownership.⁸⁹ Hence, private ownership of the land was totally prohibited and individuals had only alienated use rights over the land. No compensation shall be paid in respect of rural lands and any forests and tree crops thereon; provided that fair compensation shall be paid for movable properties and permanent works on the land.⁹⁰ As far as transferability of land use rights was concerned, the proclamation stipulates that no person may by sale, exchange, succession, mortgage, antichresis, and lease or otherwise transfer his holding to another.⁹¹

⁸⁸ Derge Proclamation No. 31 of 1975; a Proclamation to Provide for the Public Ownership of Rural Lands, art.3.

⁸⁹ Ibid, art.2.

⁹⁰ Ibid, art.3.

⁹¹ Ibid, art.5.

A major breakthrough, at least in principle, happened in favor of women, because of the land reform of 1975.⁹² The Derge proclamation promised to equally treat women in relation to accessing of rural lands. As per the proclamation, without differentiation of the sexes, any person who is willing to personally cultivate land shall be allotted rural land sufficient for his maintenance and that of his family.⁹³ Moreover, the proclamation states that a woman would have the right to use the land of her deceased spouse.⁹⁴ Although the land reform enabled the distribution of available land to the peasantry on a relatively equitable basis, the land distribution process, which focused on households, has been criticized for being gender-biased and, therefore, failing to ensure equal land rights of women.⁹⁵ Again, family role assignment and status determination between men and women by custom was another challenge for women. Women did not generally plough land rather they were allowed to do jobs like taking care for children, food cooking, fetching water for household use and so forth and they were prohibited to hire others to do such type works.

As per Article 8 of the Proclamation, Peasant Association were formed and the distribution of land was the inherent task of Peasant Association established at both local and district levels. The distribution was based on household heads. According to the local custom, it was the male member of household who was considered as a household head. Accordingly, it was a male household who was entitled to get land registered in his name rather than females. In this line, Original argues that it was the male member of the household who was accepted as household head under the socio-cultural practices that existed during the reform, thereby allotting the land in his name.⁹⁶ From the reading of article 5 of the Proclamation, one can deduce that married women were not allowed to get land in their own name. However, women's rights to land depended on marriage and were, in most cases, not registered separately.⁹⁷

As far as divorcees, daughters and women in polygamous marriage is concerned, although the land reform legislation was silent, theoretically, it may be possible to interpret the phrase 'any person' under article 4 to include them, so that they had the right to acquire rural land

⁹² Yonas (n 41) 63-68.

⁹³ Proclamation No. 31 of 1975 (n 88), art.4.

⁹⁴ Ibid, art.5.

⁹⁵ Hadera (n 74) 17.

⁹⁶ Original Wolde-Giorgis (1999), "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, 203-213) 204.

⁹⁷ Wibke Crewett et al., Land Tenure in Ethiopia Continuity and Change, Shifting Rulers, and the Quest for State Control, (2008 International Food Policy Research Institute) 13.

provided that they were interested to personally cultivate it. However, the limited registration of marriages and divorces often intensified the tenure insecurity of polygamous wives.⁹⁸ Unlike the married women, widows who run the household were permitted to acquire land in their own name. However, women household heads found themselves at tail end of Peasant Association membership list and used to get unfertile or swampy lands.⁹⁹

The public ownership of land policy propagated by the Derge land reform legislation was consolidated by the 1987 PDRE Constitution. In this regard, the Constitution under article 13 (2) reads: ...natural resources, in particular land, minerals, water, and forest are state property. Hence, similar to that of land reform legislation, the then Constitution did not allow land sale, mortgage, and other means of exchange. Coming to gender issues, the Constitution under article 36 (1) recognized the equality rights of men and women. Moreover, under article 37 the Constitution stated that spouses should have equal rights in their family relations. Despite these provisions, the land rights of women, other than those heading households and registered in PAs, are only partial or even theoretical.¹⁰⁰ Moreover, women in polygamous marriages are negatively affected by the fact that men tend to register one wife only resulting in other wives not getting the right of access to land.¹⁰¹ Therefore, one may possibly argue that although women's right to rural land inheritance was secured by the PDRE Constitution, discriminatory customary practices had been an obstacle to implement the law.

2.3.3 Women's Land Rights under the Current Land Policy of Ethiopia

The current land policy is not more than the replica of Derge land policy. In the 1991, the Transitional Government of Ethiopia (TGE) introduced the Economic Policy of the country, which proclaimed that until the new constitution came into force, land to be remained as a public property devoid of private ownership over the land.¹⁰² During this period, many hoped that the land question, which has long stayed in the country, will get its answer when the new

⁹⁸ Hirut Girma and Renée Giovarelli, the Gender Implications of Joint Land Titling in Ethiopia, (Brief), (Landesa, May 2013) 3-4.

⁹⁹ Ibid.

¹⁰⁰ Hadera (n 74) 18.

¹⁰¹ Zenebwork Tadesse, (Ed) (2000). Revisiting Rural Development through a Gender Lens, Issues in Rural Development, and Proceedings of the Inaugural Workshop of the Forum for Social Studies, 18 September 1998, Addis Ababa, as cited in Hadera Tesfa (n 74) 18.

¹⁰² Tamirat Layne, Ethiopian Transitional Period Economic Policy. Addis Ababa: (Office of Prime Minister 1991) 12.

Constitution came to force.¹⁰³ However, the new Constitution came into force in 1995 with public ownership of the land policy not different from its predecessor. According to the Constitution, ownership over all rural and urban lands is vested in the hands of Nation, Nationalities and Peoples of Ethiopia and the government.¹⁰⁴ No private ownership right over all lands in Ethiopia but private individuals has only use right over the land.¹⁰⁵ The same Constitution provides that peasant farmers, pastoralists and semi-pastoralists have the right to get rural land free of cost and the right not to be evicted from their possession.¹⁰⁶

The FDRE Constitution stipulates the principle of equality and non-discrimination, which is all about equal treatment of all without discrimination on any grounds including sex. The Constitution accords women equal rights with men in regards to the use, transfer, administration, and control over land.¹⁰⁷ In particular, women are entitled to inherit property including land equally with men. Moreover, the Constitution provides women's equal right with men during marriage and at the time of divorce. Hence, women have equal right with men to share their matrimonial property at the time of divorce and after the death of their husbands. To remedy the discriminatory customary practices against women, the Constitution explicitly prohibits laws and customary practices that discriminate against women.¹⁰⁸ To facilitate the implementation of these gender specific provisions of the Constitution, the country enacted other national legislation such as the Rural Land Administration and Use Proclamations and the Family Codes of both Federal and Regional governments. FDRE and SNNPRS Rural Land Administration and Utilization Proclamations provide that women have equal right with respect to the transferring and bequeathing of holding rights.¹⁰⁹ Furthermore, again FDRE and SNNPRS's Revised Family Codes recognize community property among spouses and women have equal right to equal share of their matrimonial property including land.¹¹⁰

¹⁰³ Daniel Weldegebriel, *Land Rights and Expropriation in Ethiopia* (PhD thesis) Royal Institute of Technology (KTH 2013) 78.

¹⁰⁴ FDRE Constitution (n 7) art.40 (3).

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, art. 40(4).

¹⁰⁷ *Ibid.*, art. 35 (7).

¹⁰⁸ *Ibid.*, art.35 (4).

¹⁰⁹ FDRE RLAUP No.456/2005 (n 8) and SNNPRS RLAUP No.110/2007 (n 8).

¹¹⁰ FDRE RFC (n 29) and SNNPRS RFC (n 30).

2.4 The Challenges of Women's Right to Rural Land Inheritance

The obstacles which prevent women from effectively enjoying their legal land rights are complex and to a large extent context specific. The followings could be taken as the challenges of women's land rights realization: socio-cultural constraints, localized arbitration and knowledge and information gap.

2.4.1 Socio-cultural constraints

There is increasing recognition among countries in the developing world that land reform and pro-poor property rights are integral to economic growth and poverty alleviation.¹¹¹ Women's access to land has direct relation to their economic empowerment and poverty reduction. Given such interconnectedness between land access and women's economic empowerment, women's land right has been recognized in formal legal regimes of numerous countries. In addition to formal laws in many communities, access to land is regulated under the customary laws of the many communities. By their very nature, customary laws are social norms that emerge from unwritten social rules derived from shared community values and traditions.¹¹² To say certain customary practices as customary law, the practices should be deep rooted, widely practiced, and accepted by the general community. As per the customary practices of many communities in Sub-Saharan Africa, women have no right to inherit land at the time of divorce and even unmarried women have little access to land. In other words, it means that wives have relatively better access to land at least temporary land use rights. Thus, getting marriage becomes the precondition for their access to land use rights and the right by itself is a secondary one conditioned on marriage. In general, men control household land because community customs and traditions support land allocation to male.¹¹³

In Ethiopia, though FDRE Constitution art.35 (4) clearly prohibits customary practices that discriminate against women in relation to their land rights, still there are very active and pervasive customary practices in many parts of the country including the study area operating alongside with statutory laws. These customary practices are considered as challenges for the realization of women's land inheritance rights in the country especially in GGZ. In this

¹¹¹ Cheryl Doss, Women, Marriage and Asset Inheritance in Uganda Paper presented at the CRPC/ ODI Roundtable 'Inheritance and the Intergenerational Transmission of Poverty' (2010 ODI Chronic Poverty Research Centre October) 3.

¹¹² Almaz (n 57) 36.

¹¹³ Ibid, 36-37.

regard, Teshome points that because of the customary influences, daughters are prevented from inheriting family land in Gamo highland areas and the justification given for is the expectation that after marriage young women become part of another family.¹¹⁴ The gender neutral clear provision of the law contradict with the age-old patriarchal view of the community that a woman cannot inherit land unless via her man or father.¹¹⁵ Among the socio-cultural factors patriarchy is the most pervasive one. *Patriarchy* is socially accepted and in which land has to be passed to only male line and women's right to land neither considered important, nor is valued. Furthermore, social gender role assignment between men and women may also be another serious socio-cultural constraint for the women's land rights realization. It is needless to state here that women's role is socially determined, doing household chores and taking care of the family than engaging in farming activities by having their own independent farming lands.

2.4.2 Localized arbitration of inheritance

As highlighted in chapter one of this study, in many Sub-Saharan contexts, inheritance is not administered in a formal and legalistic way, but rather adjudicated in a highly interpersonal manner. In Ethiopia too, customary courts operating at local Kebele level are loaded with many inheritance cases compared with formal courts of law. The members of customary courts usually elected not because of their legal knowledge and experience rather due to their upholding their community's good and common sense. In this vein, one scholar argues that they often resolve the disputes by applying *common sense*, which does not necessarily coincide with laws or with the principle of equality between women and men.¹¹⁶ Moreover, research shows that competing inheritance or property claims are most often first addressed through interpersonal negotiations, possibly involving the mediation of heads of families' or clans or local customary leaders.¹¹⁷ Although chiefs and elders do not have any legal authority to resolve disputes, they have both local social legitimacy and can act more quickly and cheaply than the official legal system.¹¹⁸ To resolve inheritance cases, the customary institutions in rural areas of the country including the study area most often apply their own customary practices. But the customary practices of the many communities in Sub-Sahara

¹¹⁴ Teshome Yirgu (n 66) 4.

¹¹⁵ Daniel Behailu (n 10) 80.

¹¹⁶ Ibid, 11.

¹¹⁷ Ibid, 10.

¹¹⁸ Ibid.

Africa countries preaches patriarchal idea of inheritance, which lonely favor male line property transfer including land by denying women's land rights.

Due to the discriminatory nature of customary practices and institutions many states in Sub-Saharan Africa critically engaged with giving paralegal training for local elders or clan leaders to achieve equitable inheritance outcomes. For instance, the Mozambican government is considering legislation that would bring community courts within the formal legal framework and to provide for appeals from the community courts to the district and provincial courts, which would require the regular courts to reconcile inconsistencies between customary law and statutory law.¹¹⁹ Yet, there are no such kinds of good initiatives undertaken by the Ethiopian Government to integrate customary practices with formal legal systems with a view to avoid discriminatory customary practices against women.

2.4.3 Knowledge and Information Gap

For rural women, only legal recognition of land rights may not be sufficient requirement to make them beneficiary from their legal rights. Given high illiteracy rate in rural areas of Ethiopia, in addition to legal stipulation, much needs to be done to aware rural population especially women about their recognized legal land rights. This is because creating awareness for women about their land rights is a precondition for them to exercise their recognized rights. For women access to information is vital to access their property rights, including land rights. Thus, it is very important to identify the knowledge level of women on land laws, stipulating their land use rights. Therefore, lack of knowledge and information about the land rights acts as a significant challenge to women's land inheritance rights realization. Women's ability to assert their land rights and to benefit from land certification depends on women's awareness of their land right, their ability to invoke such rights.¹²⁰ Study conducted in Oromia and SNNP Regional States found that women have limited knowledge of their property rights under the legal system and that gaps in the legal system prevent the inheritance and co-ownership of property acquired in marriage.¹²¹

¹¹⁹ Ibid, 11.

¹²⁰ Teshome Yirgu(n 66) 3.

¹²¹ Holden Stein and Tefera Tewodros, 'From Being Property of Men to Becoming Equal Owners? Early Impact of Land Registration and Certification on Women in Southern Ethiopia' [2008] UNHABITAT as cited in Teshome (n 66) 4.

CHAPTER THREE

LEGAL FRAMEWORKS OF WOMEN'S RIGHT TO RURAL LAND INHERITANCE

3.1 SECTION ONE LEGAL FRAMEWORKS IN ETHIOPIA

Introduction

Although the right to access land specifically is not explicitly mentioned under International Bill of Rights, still the phrase '*property*' indicated in many international legal regimes includes land as well. Moreover, the realization of many other human rights i.e. the right to adequate standard of living such as the right to food, shelter, water and the right to work largely depends on access to land. Thus, land right can be conceptualized in international and regional human rights discourses. Women's right to land has been clearly stipulated under various international and regional human rights instruments. The right to have access to land as a human rights imposes three obligations upon states. These are: duty to respect, meaning duty to refrain from interfering with the enjoyment of the right, duty to protect, meaning the state obligation to prevent others from interfering with the enjoyment of the right and finally, duty to take appropriate measures to fully realize the right. States are also required to ensure equal access to land, housing, property and other productive resources for both women and men.¹²² Various legal instruments recognized women's right to land in Ethiopia. But in this chapter, the writer has tried to list and analyze only those basic international and regional human instruments which have been ratified and become integral part of the law of Ethiopia as per article 9 (4) of the FDRE Constitution. The lists of international and regional legal regimes presented in this chapter are not exhaustive but aims to offer a general overview of the legal frameworks regarding women's rights to rural land inheritance. Moreover, the national legal regimes on women's land rights are also critically analyzed.

¹²² UN Human Rights Office of High Commissioner (68) 10.

3.1.1 Basic International Human Rights Instruments

3.1.1.1 Universal Declaration of Human Rights (UDHR)

Among the international human rights instruments, UDHR contained provisions which impliedly related to women's right to land. For instance, it provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.¹²³ Among the rights stated in this declaration is the right to own property alone or in association with others.¹²⁴ From this provision, one can safely argue that women have the right to own land independently and they can jointly own their matrimonial property including land with their husbands. Moreover, the declaration provides that spouses be entitled to equal rights during marriage and at the time of divorce.¹²⁵ Hence, married women have equal right to own land, which is their common property and they have equal right to equal share of land at the time of dissolution of their marriage. Everyone has the right to an adequate standard of living for health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹²⁶ As pointed above, the realization of these socio-economic and cultural rights depend on enjoyment of land right because without access to land it may be difficult to avoid food insecurity and housing problems.

3.1.1.2 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR also recognized women's land rights. It states that "each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status".¹²⁷ Moreover, it provides that state parties by legislative

¹²³ UDHR (n 20), art.2.

¹²⁴ Ibid, art.17 (1).

¹²⁵ Ibid, art.16 (1).

¹²⁶ Ibid, art.25 (1).

¹²⁷ ICCPR (n 21), art.2 (1).

measures shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹²⁸ More importantly Human Rights Committee clearly stated that equality of right between men and women in a sense that women should have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.¹²⁹ Accordingly, gender-specific discrimination in all situations including in customary tenure governance is prohibited by this convention.

3.1.1.3 International Convention on Social, Economic, and Cultural Right (ICESCR)

The other type of Bill of Rights, which immensely related to women's land right, is ICSECR. As mentioned before, the realization of many social, economic and cultural rights depend on secured land rights. This convention, inter alia, states that the states parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.¹³⁰ The convention calls for equal treatment of men and women as far as the enjoyment of all economic, social, and cultural rights stated in the convention are concerned.¹³¹ Moreover, the convention obliges states parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.¹³²

Furthermore, the Committee on socio-economic and cultural rights in its general comment on article 11 of the covenant explicitly stated women's vulnerability in relation to property ownership including land. The committee stated that women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination, which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when

¹²⁸ Ibid, art.26.

¹²⁹ United Nations Human Rights Committee General Comment No. 28 on Article 3 (Equality of Rights between Men and Women.

¹³⁰ International Covenant on Economic, Social and Cultural Rights Adopted by U.N. GA Res. 2200A (XXI) of Dec. 16, 1966, entered into force Jan. 3, 1976, Article 2(2).

¹³¹ Ibid, art.3.

¹³² Ibid, art.11 (1).

they are rendered homeless.¹³³ According to the committee's view, gender-specific discrimination in relation to property ownership is not only sourced from customary practices but also from gender discriminatory legislations. This is to mean that certain statutory provisions of some countries support men property ownership than women. For instance, in Cameroon there is no legal provision for women to own property.¹³⁴ The committee in another General Comment also stated that women's right to inheritance and ownership of land should be protected and recognized.¹³⁵

3.1.1.4 Convention on Elimination of all forms of Discrimination against Women (CEDAW)

Again, we have women specific international human rights instrument called CEDAW. The very essence of this convention is to eliminate all forms of discrimination against women including socio-cultural discrimination in relation to women land inheritance. As per this convention, state parties are required to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and immediately a policy of eliminating discrimination against women. States parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.¹³⁶ State parties, inter alia, should take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices, which constitute discrimination against women.¹³⁷ In addition, states parties are also required to modify the social and cultural patterns of the society with a view to avoid discriminatory customary practices and institutions against women. In this regard, the covenant states that state parties shall take all appropriate measures: (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the

¹³³ United Nations Committee on Economic, Social, and Cultural Rights General Comment No. 7 on the Right to Adequate Housing (art. 11), Forced Evictions Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction.

¹³⁴ COHRE (n 14) 220.

¹³⁵ United Nations Committee on Economic, Social and Cultural Rights General Comment No. 12 on the Right to Adequate Food (art. 11) [National strategies] should give particular attention to the need to prevent discrimination in access to food or resources for food.

¹³⁶ CEDAW (n 22), art.2.

¹³⁷ Ibid, art.3.

superiority of either of the sexes or on stereotyped roles for men and women.¹³⁸ Furthermore, women's equality in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration is also recognized by the convention.¹³⁹

The UN Committee established to follow up the implementation of the rights contained in the CEDAW forwarded general comment concerning women's status in property inheritance. The committee identified the gaps between the law and the practice as far as property including land inheritance is concerned. It has been mentioned that there are many countries where the law and practice concerning inheritance and property result in serious discrimination against women.¹⁴⁰ Because of this uneven treatment, women may receive a smaller share of the husband or father's property at his death than would widowers and sons.¹⁴¹ This unequal treatment between men and women is because of the customary norms, which supports patrilineal inheritance systems. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property.¹⁴² Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage.¹⁴³

3.1.2 Basic Regional Legal Frameworks

3.1.2.1 African charter on Human and Peoples' Rights (ACHPR)

Regionally, Ethiopia is a party member to many human rights instruments, which guarantee women's right to land inheritance in Africa. ACHPR is the most significant regional human rights instrument in the protection of human rights in Africa. It stipulate that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, *sex*, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.¹⁴⁴ Moreover, it is the essence of the Charter to ensure the elimination of discrimination against women and the protection of the rights of women as stipulated in

¹³⁸ Ibid, art.5.

¹³⁹ Ibid, art.16 (1) (h).

¹⁴⁰ United Nations Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 21 on Equality in Marriage and Family Relations.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ ACHPR (n 23), art.2.

international declarations and conventions.¹⁴⁵ Women's right to land inheritance has been recognized under many international human rights instruments as mentioned above and this Charter obliges state parties including Ethiopia to ensure that no discrimination against women and effective implementation of their rights at regional level.

3.1.2.3 African Charter on the Rights and Welfare of the Child (ACRWC)

This Charter is intended to govern the welfare of child in Africa due to the fact that situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity.¹⁴⁶ Among others, one obligation of state members to this Charter is the obligation to nullify the customary practices, which are inconsistent with the fundamental rights of children mentioned in this Charter. In words of the Charter, any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties, and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.¹⁴⁷ Since daughters/unmarried girls land inheritance rights is also the focus of this study, it seems sound to assess the legal frameworks set up for them. As per ACRWC, every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, color, *sex*, language, religion, political or other opinion, national and social origin, fortune, birth or other status.¹⁴⁸ Moreover, states parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular those customs and practices discriminatory to the child on the grounds of *sex* or other status.¹⁴⁹

¹⁴⁵ Ibid, art.18 (3).

¹⁴⁶ African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999, preamble Para 3.

¹⁴⁷ Ibid, art.1 (3).

¹⁴⁸ Ibid, art.3.

¹⁴⁹ Ibid, art.21 (1).

3.1.3 Domestic Legal Regimes

3.1.3.1 FDRE Constitution

In Ethiopia, since 1974, land reforms have been adopted by the government with a view to have a robust land policy that, inter alia, intended to ensure women's equal access to and control over productive resources such as land. Although the country lacks a comprehensive and integrated land policy, the core idea of the current land policy of the country has been included under article 40(3) of the FDRE constitution. According to the provision, the right to ownership of all rural and urban land, as well as of all other natural resources, is exclusively vested in the State and in the peoples of Ethiopia.¹⁵⁰ Land is a common property of the Nation, Nationality and People of Ethiopia (NNPE) and the state and shall not be subject to sale, exchange or mortgage.¹⁵¹ Hence, since land is common assets of the NNPE and the government, private individuals have no full ownership right over all lands but what they have is only use right. The same Constitution under sub-article 4 states that Ethiopian peasant farmers, semi-pastoralists and pastoralist have right to obtain land without payment and the protection against eviction from their possession. As generality is known feature of countries constitution including our constitution, it does not in detail talk about rural land accessing mechanisms. However, rural land accessing mechanisms are mentioned in the FDRE RLAUP as well as in the Regional land legislations. These are explained below under separate section.

As far as gender equality is concerned, the FDRE Constitution provides all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.¹⁵² The law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, *sex*, language, religion, political or other opinion, property, birth or other status.¹⁵³ Thus, it is clear that the principle of equality and non-discrimination on any grounds including sex has been stipulated in Ethiopia. Besides, the rights of women are specifically enumerated in Article 35, which guarantees women's equality with men. Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.¹⁵⁴ Women have the right to acquire, administer, control, use and transfer of property equally with men and they

¹⁵⁰ FDRE Constitution (n 7), art.40 (3).

¹⁵¹ Ibid.

¹⁵² Ibid, art.25.

¹⁵³ Ibid.

¹⁵⁴ Ibid, art.35 (1).

shall enjoy equal treatment in the inheritance of property.¹⁵⁵ Importantly the state is constitutionally assigned with the duty to guarantee the right of all women: to be free from the influence of discriminatory customary practices.¹⁵⁶

3.1.3.2 FDRE Rural Land Administration and Use Proclamation (FDRE RLAUP)

3.1.3.2.1 Rural land accessing ways

As discussed above, both the FDRE and SNNPRS's RLAUPs stipulate rural land accessing mechanisms.¹⁵⁷ Accordingly, rural land use right can be accessed through the following mechanisms: Government grant, inheritance and/or gift, rent and/or lease. The law attached some conditions to each of the mechanisms as discussed below. Thus, the followings are rural land use rights accessing mechanisms in Ethiopia in general:

Government Grant

The Federal framework legislation provides women's right to access rural land. Pursuant to this Proclamation, rural land can be accessed via government grant, inheritance and/or gift, and rent and/or lease. The principle of free access to rural land is a constitutionally creed principle in Ethiopia. FDRE Constitution provides that Ethiopian peasants and pastoralists have the right to obtain rural land for free or without payment as well as the right not to be displaced from their possession except for sake of public purpose.¹⁵⁸ FDRE RLAUP also stipulates that Peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge.¹⁵⁹ However, the law has put some mandatory conditions that need to be satisfied to get rural land use right free of charge. These conditions are *attaining the age of minority i.e. 18 or above years old and choosing agriculture to be the only business for livelihood*.¹⁶⁰ The conjunction 'or' between the two conditions stated by the said provision seems to refer that the two conditions are cumulative i.e. missing of one element amounts to lack of right to get rural land free of charge. Importantly the reading of the said provision also reveals that women have been included in the eligible list to access rural lands meant for

¹⁵⁵ Ibid, art.35 (7).

¹⁵⁶ COHRE (n 14) 51.

¹⁵⁷ FDRE RLAUP (n 8); and SNNPRS RLAUP (n 8), art. (5) of both proclamations.

¹⁵⁸ FDRE Constitution (n 7), art.40 (4) and (5).

¹⁵⁹ FDRE RLAUP (n 8), art.5 (1) (a).

¹⁶⁰ Ibid, art. 5 (1) (b).

farming free of charge. In this regard, the law says that women who want to engage in agriculture shall have the right to get and use rural land use right.¹⁶¹

Inheritance and Donation

Among rural land accessing ways, inheritance is one important means in Sub-Saharan African countries including Ethiopia. However, in Ethiopia, to access rural land through inheritance one is expected to be *family member* of peasant farmer or landholder. Any person who is a member of a peasant farmer, Semi pastoralist, and pastoralist family having the right to use rural land may get rural land use rights from his family by donation, inheritance or from the competent authority.¹⁶² The definition of *family member* stated in this framework legislation is different from succession law definition of family member as can be understood from article 842 the 1960 Civil Code. As per the FDRE RLAUP, *family member* means *any person who permanently lives with holder of holding right and sharing the livelihood of the later*.¹⁶³ Accordingly, living under the same roof and sharing the livelihood of the peasant farmer automatically makes *any person* even outside from blood relatives to inherit rural land use right of the landholder. This provision enables any person who has no blood or marital affinity with the holder to have inheritance right if he/she permanently lives and share livelihood with the deceased by the operation of the law. Donation is also another way of accessing rural land in Ethiopia. As can be evidenced from article 2(5) and 5(2) of the proclamation to get rural land use rights via donation or gift being family member is also mandatory legal requirement. It is not uncommon to witness parents in the rural Ethiopia to grant a piece of land out of their holding to their children coming of age as far as they can do so.¹⁶⁴

Lease and Rent

Apart from the above mentioned mechanisms of rural land access, lease and rent are the other important ones. The law has categorization as far as rural land access is concerned; meaning priority is given to peasant farmers, semi-pastoralists, and pastoralists. Subject to giving priority to peasant farmers/semi-pastoralists and pastoralist, private investors, governmental and non-governmental organizations, social and economic institutions shall have the right to

¹⁶¹ Ibid, art.5 (1) (c).

¹⁶² Ibid, art.5 (2).

¹⁶³ Ibid, art.2 (5).

¹⁶⁴ Daniel (n 10) 82.

use rural land in line with their development objectives.¹⁶⁵ Rural land can be leased both from government and from peasants. Nowadays, government is attracting foreign and domestic investors to invest in low land areas of the country by giving rural land through lease contract.¹⁶⁶ Peasant farmers, semi-pastoralist and pastoralist who are given holding certificates can lease to fellow farmers or to investors from their holding of a size sufficient for, the intended development in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions.¹⁶⁷ Hence, the conditions attached are *not to displace the holder and for only specified period of time*. Any investor who has leased rural land use right may present his use right as collateral.¹⁶⁸ However, such kind of right is not extended to peasant farmers or pastoralists and the rationale for this could be justified by the very principle of public ownership of the land.

3.3.3 National Policy on Ethiopian Women

The Transitional Government of Ethiopia by considering the fact that women constitute proportionally a large group of the labor force in various economic sectors and they are both producers and procreators, as well as active participants in the social, political and cultural activities of their communities, has formulated the National Gender Policy. This policy intended to achieve the following main objectives:¹⁶⁹

1. Facilitating conditions to the speeding of equality between men and women so that women can participate in the political, social and economic life of their country on equal terms with men and ensuring that their right to own property as well as their other human rights are respected and that they are not excluded from the enjoyment of their fruits of their labor or from performing public functions and being decision makers;
2. Facilitating the necessary condition whereby rural women can have access to basic social services and to ways and means of lightening their work-load; and

¹⁶⁵ FDRE RLAUP (n 8), art.4 (a and b).

¹⁶⁶ Ibid, art. 6 (6).

¹⁶⁷ Ibid, art.8 (1).

¹⁶⁸ Ibid, art.8 (4).

¹⁶⁹ National Policy on Ethiopian Women, (Transitional Government of Ethiopia The prime Minister's Office Women's Affairs Sector September 1993), 14.

3. Eliminating, step by step, prejudices as well as customary and other practices that are based on the idea of male supremacy and enabling women to hold public office and to participate in the decision making process at all levels.

Moreover, National Gender Policy calls for ensuring full development and advancement of women and guaranteeing them the enjoyment of their democratic and human rights so that they can participate in the economic, social and political life of their country on equal basis with men. Furthermore, the policy intended in modifying or abolishing existing laws, regulations, customs and practices which aggravates discrimination against women and creating a situation whereby society's discriminatory attitude toward women and women's complacency about it are eliminated through an elevated awareness.¹⁷⁰

3.1.3.4 Women's Land Inheritance Rights under Customary Laws of Ethiopia: Towards Comparing Some Regions

As tried to mention somewhere in this study, the importance of land access especially for the rural communities in developing countries cannot be underestimated. This is because land serves as a primary source of shelter, food, and wealth in areas where the majority of the population is rural and depends on hand-to-mouth type of agriculture. Access to land can greatly improve women's livelihoods and social status. It is needless to mention here that secured land rights can also result in improved welfare, productivity, equality, and empowerment for women. Furthermore, women's access to land has a role in additional bargaining power not just in the household, but also in their communities and other public arenas.¹⁷¹

The land, which is important for both men's and women's everyday survival, can be acquired through a number of ways. In many Sub-Saharan African countries including Ethiopia, among the ways of land rights acquisition, inheritance is considered as a common mechanism.¹⁷² Yet, inheritance practices, regulated through both or either statutory and customary laws in African societies, can exclude individuals, particularly widowed women

¹⁷⁰ Ibid.

¹⁷¹ Carmen Diana Deere and Cheryl R. Doss, *Gender and the Distribution of Wealth in Developing Countries*, (2006), United Nation University (UNU)-World Institute for Development Economics Research (WIDER); Research Paper No. 2006/115, 4.

¹⁷² Ibid.

from rights to property that they were able to access during the lives of their husbands.¹⁷³ As one means of land right acquisition, inheritance is highly connected to the social norms and customary practices of particular communities. Customary practices of land inheritance differ from communities to communities due to variation of customary practice of each community. In many Sub-Saharan African countries, inheritance cases are not the business of the formal justice machineries because mostly they are resolved in interpersonal manner. Hence, inheritance issues are usually depends on the social legitimacy of the particular community.

In Ethiopia, despite legal recognition of women's equal land inheritance rights with men, discrimination against women was most acute in rural areas, where 85 percent of the population lived.¹⁷⁴ Different ethnic groups have, for the most part, continued to apply their own norms,¹⁷⁵ and these customs are most often Gender sensitive, in a sense that they do not allow women to inherit and own land independently. The 1995 FDRE Constitution, under article 25 accords women the right to equality and non-discrimination based on sex. Outside the major cities, customary law continues to govern intra-family relations including inheritance; this is especially true in the Muslim-dominated areas, and in certain other parts of the country (the Roomier, Gamo Gofa, and Shoa regions).¹⁷⁶ In patrilineal customary tenure systems, both lineage and property are traced through the male line and, most often, land is transferred from father to son.¹⁷⁷

Literature shows that according to customary tradition of Oromo society, when a husband died, his brother 'inherited' the wife (i.e. *Widow Inheritance*) and the justification is because they think that his brother will take better care to the children and the wife of his brother than a stranger could.¹⁷⁸ Similarly, the customary practices of South Omo community consider adwoman as a property of her husband and her husband's brothers or other relatives can inherit her in case where she had children. In this line, COHRE stated that:

In the Southern Omo area, if a woman's husband dies, she is 'given' to his brother. If her husband does not have a brother, she is given to his nearest male relative. She is considered as property and is thus passed on like property. If the woman is unable to

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ COHRE (n 14) 53.

¹⁷⁶ Ibid, 54.

¹⁷⁷ Ibid

¹⁷⁸ Strategic Initiative for Women in Africa (SIHA), Building Universality from Below: A project on customary laws and practices, which impede access to rights for women and girls in Oromia, Ethiopia, March 2011, 46.

*bear children during the marriage, she is 'given back' to the father, and all dowries must be returned.*¹⁷⁹

At the time of divorce, even though women have their own legal rights to partition their common property, in Oromia women generally allowed taking what was given to them on their marriage day, but access to land is rare.¹⁸⁰ Women have to go to a husband that their clan or family has identified for them, i.e. after marriage, they move to the home of their new husband and inherit no land from their parents.¹⁸¹

In Amhara region, relatively, the women's land right is better protected under the customary practices.¹⁸² The customary practice states that if one of the couples dies, the other automatically inherits the land but there is a difference in the inheritance rights of men and women.¹⁸³ This difference in inheritance rights between men and women is because of natural phenomena of having children or not.¹⁸⁴ If the husband passes away and they had children during their marital life, the women can automatically inherits all marital property including land, but if they had no children, she will share half of the marital property with her in-laws.¹⁸⁵ However, the customary law indicates that in the case of divorce, except for the land and the house, a woman can share all other property they owned during the marital life, unless otherwise stated in the marriage agreement.¹⁸⁶ Thus, it can be said that although the customary practices recognize and protect widows land rights, it denies the divorced women's right to share their marital property including land and house.

¹⁷⁹ COHRE (n 14) 55.

¹⁸⁰ SIHA (n 178) 43.

¹⁸¹ Ibid.

¹⁸² Askale Teklu and SOS Sahel, Research Report 4 Land Registration and Women's Land Rights in Amhara Region, Ethiopia, SMI (Distribution Services Ltd 2005) 14.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Askale and SOS (n 182) 12.

3.2 SECTION TWO LEGAL FRAMEWORKS IN SNNPRS

Introduction

Although the power to legislate on natural resources including land is constitutionally given to Federal government, the regional governments have the right to administer natural resources including land in accordance with the frameworks laid down by the framework legislation.¹⁸⁷ Whether the phrase *'to administer'* stated under article 52 (2) (d) of the FDRE Constitution includes the regional governments power to legislate on land and other natural resources or not is debatable issue that one can raise in this regard. On the other hand, the Federal rural land framework legislation authorizes the regional governments to enact their own land laws suitable to administer their context specific situations.¹⁸⁸ Up to date, four major regional states (Tigray, Oromia, Amhara and SNNPS) have enacted their own rural land legislation. Besides its land legislation and implementing regulation, like other regional state governments in Ethiopia, SNNPRS's government has its own Revised Family Code which governs the matrimonial status of spouses during and after divorce of their marriage. Thus, this chapter discusses the legal frameworks of women's right to rural land inheritance in SNNPRS including the SNNPRS's Revised Constitution and the Rural Land Administration and Utilization Proclamation.

3.2.1 The SNNPRS's Revised Constitution

Similar to FDRE Constitution, SNNPRS's Constitution under article 40 (3) provides ownership of all rural and urban land, as well as all other natural resources is exclusively vested in the hands of State and in the people. Land is a common property of peoples of regional state and shall not be subject to sale or to other means of exchange. Hence, private individuals are alienated only *usufruct* right over the land. The Constitution condemns customary practices which contradict with the Constitution by saying *any customary practices which is inconsistent with this constitution shall be of no effect.*¹⁸⁹ It obliges the state to enforce the rights of women mentioned in the Constitution and to eliminate

¹⁸⁷ FDRE Constitution (n 7) art.55 (2) (a) and 52 (2) (d).

¹⁸⁸ FDRE RLAUP (n 8) art.17 (1).

¹⁸⁹ Revised Constitution, 2001, of the Southern Nation, Nationalities and Peoples Regional State, Proclamation No.35/2001, 7th year No.1 Awassa 12th November 2001, art.9 (1).

discriminatory customary practices that oppress women.¹⁹⁰ It also stipulates the right of equality between men and women in the enjoyment of the rights and protections provided by the Constitution. For instance, it states that all persons are equal before the law and are entitled without any discrimination on grounds of race, nation, nationality, or other social origin, color, *sex*, language, religion, political or other opinion, property, birth or other status.¹⁹¹ Moreover, it recognizes that women and men have equal rights during and at the time of dissolution of the marriage.¹⁹² Furthermore, the Constitution states that women have the right to acquire, administer, control, use and transfer property and *they shall also enjoy equal treatment in the inheritance of property (Emphasis added.)*¹⁹³

3.2.2 The SNNPRS's Rural Land Administration and Utilization

Proclamation (SNNPRS RLAUP)

As per the preamble of this proclamation, it is believed that ensuring women's land holding right is necessary for agricultural production and productivity and to speed up the environment development.¹⁹⁴ There are other important provisions which ensure the land rights of women in the Proclamation. It also states that peasant farmers, pastoralists, and semi-pastoralists engaged in agriculture shall have the right to get rural land use rights free of charge.¹⁹⁵ It seems that this provision only regulates the situation of peasant farmers and pastoralists who are already engaged in agriculture. Nevertheless, the next sub-article makes clear that peasant farmers who want to engage in agriculture shall have the right to get and use rural land.¹⁹⁶ Women can access rural land use rights through inheritance from the land holder or parents provided that they are family members of the right holder. Similar to the Federal rural land framework legislation being the family member of the landholder is requirement to get land via inheritance or donation. In this regard, the law provides that any person who is a member of a peasant farmer, semi-pastoralist, and pastoralist family have the right to get rural land use right from his family through gift or inheritance or from the competent authority.¹⁹⁷ Unlike Oromia National and Regional State (ONRS) rural land proclamation,¹⁹⁸ which defines 'family member' as children of the landholder or dependents

¹⁹⁰ Ibid. art.35 (4).

¹⁹¹ Ibid, art. 25.

¹⁹² Ibid, art.34 (1).

¹⁹³ Ibid, art.35 (8).

¹⁹⁴ SNNPRS RLAUP (n 8), preamble paragraph 6.

¹⁹⁵ Ibid, (n 8), art.5 (1).

¹⁹⁶ Ibid, art. 5 (3).

¹⁹⁷ Ibid, art.5 (11).

¹⁹⁸ ONRS Land Proclamation No. 130/2007, art.2 (16).

that do not have other income for their livelihood, the family member definition of SNNPRS's rural land legislation is a replica of the Federal framework legislation. Accordingly, *family member* means any person who permanently lives with the landholder and sharing the income of the later.¹⁹⁹

The rural land accessing methods of this region is also a verbatim copy of the Federal framework legislation. When a rural land transferred by inheritance, it shall be accomplished in such a way that the size of the land to be transferred is not less than the minimum size of holding.²⁰⁰ The minimum size holding determined by this law is a hectare if the plot meant for rain fed agriculture and if it is irrigable land constructed by the expense of the government which is to be given to peasants the size shall not be larger than half a hectare.²⁰¹ With a view to protect women's land rights, the proclamation prohibits further subdivision of landholding which less than the required minimum size holding. In this vein, the law states that if possession of the divorced spouses is less than a minimum holding size, they shall use their holding by any means other than subdivision.²⁰²

In the case where land is the joint property of the spouses, the law accords them equal rights to use their common land holdings.²⁰³ Legal speaking, the equality rights of spouses during their marriage also extends to the time of divorce. In other words, women shall have equal rights to share their matrimonial land holdings at the time of divorce. Where the land is jointly held by husband and wife, the holding certificate shall be prepared in the name of all the joint holders.²⁰⁴ Women whose husbands are found being engaged in government services or in any other activities shall have the right to use rural lands.²⁰⁵ A woman shall get a land use right certificate prepared in her name even her husband is found being engaged in government services or in and others services.²⁰⁶ A household head woman shall be given a landholding and use right certificate in her name.²⁰⁷

¹⁹⁹ SNNPRS RLAUP (n 8), art.2 (7).

²⁰⁰ Ibid, art.11 (2).

²⁰¹ Ibid, art. Art.11/1 (a, b).

²⁰² Ibid, art.11 (3).

²⁰³ Ibid, art.5 (5).

²⁰⁴ Ibid, art.6 (4).

²⁰⁵ Ibid, art.5 (7).

²⁰⁶ Ibid, art.6 (6).

²⁰⁷ Ibid, art.6 (5).

CHAPTER FOUR

EXPERIENCES OF WOMEN’S RIGHTS TO RURAL LAND INHERITANCE IN GAMO GOFA ZONE (GGZ)

Introduction

This chapter generally discusses the customary practices and institutions in relation to women’s right to rural land inheritance in *Gamo Gofa Zone (GGZ)*. In this chapter, the researcher widely discussed the practices how *GG* society informally inherit land holding rights, for whom they inherit, the reasons why they adhered to such discriminatory customary practice. Moreover, it tries to discuss the customary institutions and their mechanisms of rural land-related dispute resolution and its impact on women’s right to rural land inheritance, the courts handling of rural land inheritance cases, the tension between the formal land laws and the practices on the ground, and the consequences of women’s land disinheritance, all are supported by case studies.

4.1 Description of the Study Area

This study was conducted in *GGZ*, which is one of 14 *Zones*, and 4 special districts that constitute SNNPRS. Formerly, *GGZ* was part of North Omo Zone, which was established based on the belief that the four ethnic groups Gofa, Gamo, Wolaitta and Dawro all speaks the same language with minor variants of their cultures.²⁰⁸ Nonetheless, around 1992 because of consequent conflict among the ethnic groups, the former North Omo Zone has divided into three different new zones *GG*, *Wolaitta*, and *Dawro* and two special districts of *Basketo* and *Konta*.²⁰⁹ Today *Gamo Gofa Zone* is the homeland for five different ethnic groups *Gamo*, *Gofa*, *Oyda*, *Zayse* and *Gidicho* with related languages and cultures.²¹⁰ The largest ethnic groups reported in the zone *Gamo* (70%), the *Gofa* (23%) of the population, as a result, *Gamo Gofa* is named for the *Gamo* and *Gofa* peoples, whose homelands lie in this zone.²¹¹ Geographically, it located in the South and Southeast by *Segen Area Peoples’ Zone*,

²⁰⁸ Elias Awato et al, “Marriage, Child and Burial Rites among Semen Omo People”, (Birhan and Selam Printing Press, 1990), 19.

²⁰⁹ An interview conducted with Mr. Diakon Chollo, Cultural Development Study High Expert, GGZ Cultural and Tourism Office, (Arba Minch 29 February 2018).

²¹⁰ Ibid.

²¹¹ Defaru Debebe and Tuma Ayele, ‘Land Use Patterns and its Implication for Climate Change: The Case of Gamo Gofa, Southern Ethiopia’ [2013] International Journal of Scientific Research and Reviews, 155-173, 4.

Southwest by debub Omo Zone and Basketo special district, Northwest by Konta special district, North by Dawro and Wolayita Zones, and on the Northeast by Lake Abaya which separates it from the Oromia region.²¹²

The Zone has a total area of 12,581.4 square kilometre from which, 482,129.59 hectare is arable land and now 413,783.37 hectare has been held by farmers with average holding size of 0.5 hectare, while 68,346.22 hectare is non-occupied arable land in the Zone land bank.²¹³ The general elevation of the GGZ ranges from 680 to 4207 meters above sea level and the highest point is called *Mount Gughe*, which is 4207 meters above sea level and the highest Mountain peak in the zone as well as in the SNNPR.²¹⁴ The total population of the zone is estimated to 1,597767 with a population density of 80 inhabitants per kilometre square.²¹⁵ The Zone consisted of 15 districts and two City Administrations namely AMZ, Demba-Gofa, Kucha, Kamba, Boreda, Chench, Daramalo, Dita, Zala, Melokoza, Bonke, Ubadebretsehay, Mirab-Abaya, Oyda, Geze-Gofa districts and Arba-Minch and Sawla town administrations.²¹⁶ Arba-Minch town is the administrative centre of the Zone and is located at 505 km from Addis Ababa and 275 km Southwest of Hawassa. Arba Minch Zuria, Mirab Abaya and Zala districts are three districts the researcher purposively selected from 15 districts of GGZ for this investigation.

Arba Minch Zuria District (AMZD) is one of the 15 districts in GGZ and is surrounding area of Arba Minch town (Zonal main city) and includes 29 rural *kebeles*.²¹⁷ It bordered on the South and Southeast by Segen Area Peoples' Zone, on the West by Bonke district, on the North by Dita and Chench districts, on the Northeast by MAD, and on the East by the Oromia region.²¹⁸ The district includes Lake Chamo and Abaya, which makes the surrounding rural land value very high. Ecologically ten (10) *kebeles* are in tropical (Kola)

²¹² Ibid.

²¹³ An interview conducted with Mr. Teshome Tesema (n 54).

²¹⁴ Defaru and Tuma (n 211).

²¹⁵ Daniel Shiferaw et al, 'Indigenous Practices of Ganta Community in Protecting Natural Resources, Gamo Gofa Zone Ethiopia' (2017) International Journal of Environmental Resource Development Office, (AMZD 23 February 2018).

²¹⁵ Ibid.

Protection and Policy. Vol. 5, No. 5, 74-83, 2.

²¹⁶ An interview conducted with Mr. Diakon Cholle (n 209).

²¹⁷ An interview conducted with Mr. Mardikiyos Kerba, Head, Cultural and Tourism and Government Communication Office (AMZD, 06 March 2018).

²¹⁸ Ibid.

zone and irrigable, while nineteen (19) kebeles are non-irrigable temperate (Dega) and sub-temperate (Woine-dega) zones.²¹⁹ They comprise 28%, 30.6% and 41.4% respectively.²²⁰

Most farmers live in highland area and practice substance agriculture. And the major crops cultivated in the highlands parts are barely, wheat, peas, beans and cabbage and Utha (false banana).²²¹

The district experiences three cropping seasons locally named as ‘Asura’ ‘Gaba’ and ‘Silla’ seasons.²²² Asura is one type of cropping season seeds sown in the beginning of September and harvest in December and usually by irrigation system.²²³ From the beginning of January to the end of June is called ‘Gaba’ season whereas from June end to September 15 is known as ‘Silla’ season.²²⁴ The total cultivable land in the district is 32064.74 hectare, from these now 87% i.e. about 27896.3238 hectare hold and cultivated by farmers and 6,803.26 hectare is in the land bank of the district.²²⁵ The farmer’s average landholding size of the district is 0.4 hectare.²²⁶ Shelle Mela Kebele is one purposefully selected kebele for this investigation based on its high economic value of agricultural land there. The total cultivated land of the kebele is 1890 hectare and average land holding size of farmers in this Kebele is relatively more than that other kebeles in the district (1 hectare).²²⁷ Ecologically the Shelle Mela Kebele is purely tropical zone and the main agricultural products of the area are Banana, Maize and other fruits 65%, 20% and 15% respectively.²²⁸ Kola Shara kebele is the second purposefully selected kebele from this district based on its nearness to the Zonal seat town. The total cultivated land of this kebele is 5800 hectare and average landholding size of the farmers is 0.5 hectare.²²⁹ Ecologically it is purely tropical zone and the main agricultural products of the area are Banana (60%), Maize (30%), and Teff (10%).²³⁰

²¹⁹ An interview conducted with Mr.Teshome Eshetu, Coordinator, Land Administration and Utilization core-processing unit, Agricultural and Natural Resource Development Office, (AMZD 23 February 2018).

²²⁰ Ibid.

²²¹ Zelalem Zewudie, Woga: An Ethnographic Study of Customary Law among the Gamo of Ethiopia, (MA Thesis), Addis Ababa University 2016, 32.

²²² An interview conducted with Mr.Teshome Eshetu (n 219).

²²³ Ibid.

²²⁴ Ibid.

²²⁵ An interview conducted with Mr.Teshome Tesma (n 54).

²²⁶ An interview conducted with Mr.Teshome Eshetu (n 219).

²²⁷ An interview conducted with Mekoninn Amogna, Plant Science Expert and Agricultural Office Coordinator, Shelle Mela Kebele (AMZD 24 February 2018).

²²⁸ Ibid.

²²⁹ An interview conducted with Mrs. Roman Teshome, Head, Agricultural Office, Kola Shara Kebele (AMZD 03 March 2018.)

²³⁰ Ibid.

Mirab Abaya District (MAD) is the second case study area for this investigation. Administratively, the district is also within GGZ of SNNPRS and includes one of the five ethnic groups in GGZ called *Gedicho*. Geographically, it bordered on the North by Humbo district, South by AMZD, West by Chenchu district, and on the East by the Oromia region.²³¹ It is 50 km far apart from Arba Minch Town and includes 23 rural kebeles. The district includes lower part of Lake Abaya, which makes the surrounding rural land value very high. Ecologically 15 *kebeles* are in tropical zone and irrigable, while 8 *kebeles* are in non-irrigable *dega* (temperate) zones.²³² There are four known cropping seasons in the district locally named as '*Gaba*' '*Silla*' '*Masino*' and '*Tefases*'.²³³ Mesino season starts from October and ends in December whereas Tefases season begin from January and ends in February end. Gaba season is relatively long season from March to June end whereas Silla season is from July to September end. The total cultivable land in the district is 23317.95 hectare, from these now 87% or about 20286.6165 hectare hold and cultivated by farmers and 2617.1 hectare is in the land bank of the district.²³⁴ Average land holding size of the district is 1 hectare.

Ankober and Omo Lante kebeles are randomly selected kebeles from this district based on their high economic value of agricultural land there. Moreover, the researcher purposefully selected Menana Kebele from the highland part of the district with the aim to have comparative study of the issue at hand in areas of both high and low value of land. In Ankober Kebele, the total cultivated land is 1565.9 hectares, from the total cultivated land Banana 952 hectare, Mango 6.14 hectare, Coffee 2.85 hectare, and Avocado 0.43 hectare.²³⁵ Average land holding size in Ankober kebele is 0.25 hectare and the main agricultural products are Banana (75%), Maize (20%) and other fruits (5%).²³⁶ In Omo Lante kebele, total cultivated land is 256.975 hectares and farmer's average land holding size is 0.5 hectare.²³⁷ Main agricultural products are Banana (50%) and Mango, Avocado, Coffee and papaya together constitute (40%).²³⁸ Ecologically the kebele is 75 % tropical zone and 25% sub-temperate.²³⁹ In Menana Kebele, the total cultivated land is about 182 hectares and the

²³¹ An interview conducted with Mr. Gezahegn Gambore, Land Administration Expert, Mirab Abaya district Office of Agricultural and Natural Resources Developments, (MAD 07 March 2018).

²³² Ibid.

²³³ Ibid.

²³⁴ An interview conducted with Mr. Teshome Tesma (n 54).

²³⁵ An interview conducted with Mr. Shinkut Getachew, Animal Science Expert and Head of Agricultural, Ankober kebele (MAD 08 March 2018).

²³⁶ Ibid.

²³⁷ An interview conducted with Mrs. Aster Molla, Seble Expert, Omo Lante kebele, (MAD March 10/2018).

²³⁸ Ibid.

²³⁹ Ibid.

average landholding size is 1 hectare.²⁴⁰ Unlike Ankober and Omo Lante kebeles, this kebele is situated in highland part of the district where the land value is very low. The most common agricultural products are Millet, Wheat, and Potato.²⁴¹ Ecologically the area is temperate and land has low value, where people exercise substance agriculture.²⁴²

Zala district is the third case study area purposefully selected for this investigation. It located at about 240 km from Zone city (Arba Minch Town), 295 km far from Hawassa city and 518 km from Addis Ababa and surrounded by 34 rural *kebeles*.²⁴³ It bordered on the Southwest by Ubadebretsehay district, on the Northwest by Demba-Gofa district, on the Northeast by Kucha/selamber district, on the East by Deramalo district, and on the Southeast by Kemba district. Ecologically the district has two zones: tropical (locally Gadha) and sub-temperate zone constituting 84% and 16% respectively and is at 1200-1500 above from sea level.²⁴⁴ In Gadha area, where majority of people live by exercising mixed farming system (crop farming and livestock rearing). This mixed farming systems preferred by farmers because of irregularity and deficiency of rainfall in the area.

There are two cropping seasons in this district. One is locally called Gaba/Torch season (from February to June), which is the main season for low land farmers to produce Maize and the other is Silla season (starting from June up to end of October), which is the season, in which especially those farmers who have not harvested more work hard to harvest.²⁴⁵ The main agricultural products are Maize (90%) in low land part of the district and Teff and Groundnut together comprises (10%) in upper part of the district.²⁴⁶ The total cultivable land in the district is 20,515.85hectare from these now 90% or about 18,464.265 hectare hold and cultivated by farmers and 14599.21 hectare arable land is in the district land bank.²⁴⁷ The average farmer's landholding size in this district is 0.5 hectare.²⁴⁸ Due to lack of water access and very fluctuating rainfall seasons, the district has very low land value. From the total 34 kebeles in the district, the researcher purposefully selected Shambara Kankara kebele for this

²⁴⁰ An interview conducted with Mr. Tekeste Tema, Natural Resources Development Expert, Menana kebele, (MAD 13 March 2018).

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ An interview conducted with Mr. Tadel Aho, Head, Road and Transport Office (Zala District 17 March 2018).

²⁴⁴ An interview conducted with Mr. Sintayehu Zinabu, Coordinator, Natural Resources Development Office (Zala District 17 March 2018).

²⁴⁵ The Researcher personal observation in the study area, in 2009 E.C.

²⁴⁶ An interview conducted with Mr. Yaikob Zekaias, Head, Agricultural Office (Zala District 17 March 2018).

²⁴⁷ An interview conducted with Mr. Teshome Tesema (n 54).

²⁴⁸ An interview conducted with Mr. Kawte Kaysha Rural Land Administration and Utilization Core-processing unit Coordinator, Zala district Agricultural and Natural Resource Development office (Zala District 19 March 2018).

investigation on the basis of well-organized customary institutions. In this kebele, the total cultivated land is 2041 hectares but average landholding size of farmers is 0.25 hectare and there is 285 hectare arable land in the kebele land bank.²⁴⁹ Ecologically the kebele is 80% tropical and 20% sub-temperate.²⁵⁰ Annual rainfall of the area is between 90-110mm and the main agricultural product is Maize.²⁵¹

4.2 Land Tenure in GGZ before 19th Century

Until the establishment of unitary form of government i.e. before land became state property in Ethiopia, land was mostly under the customary land tenure system in which each ethnic group had its own customary system of land administration. At that time, the tenure system of the area was characterized by government land or (locally called *Kawo Biita*), communal land (*Dere Biita*) and family land (*Soo Asa Biita*).²⁵² *Kawo Biita* means uncontrolled lands, which was under the control of government. *Dere Biita* means locally demarcated land permitted for common grazing of cattle and in which people had free right to use. *Soo Asa Biita* means the land under the control of a particular family and transfer from one generation to other through inheritance or donation that totally depends on the will and interest of the family members. The land, which was given to a given family always stay in the hands of that particular family and no other people could settle on that land.²⁵³ Sale of family land to another family member was prohibited by the custom but sale within the same family was allowed and the basic rationale behind was to prevent land off from the family.²⁵⁴

Before the 19th century, to administer land in each ethnic group there were customary land administration bodies locally called '*Kawo*' '*Danawoch*' '*Rashawoch*' '*Biitante*'.²⁵⁵ The respondent also explained that *Kawo* was the governor of the area assigned by the then government but *Danawoch* and *Rashawoch* were the family members of the *Kawo*. The *Kawo* families were not involved in administration issues in general and land administration in particular because they were respected families. To simplify administration, the *Kawo* assigned *Biitanates* in each kebele within the administrative territory of the *Kawo*. *Biitant* (landlord) was nominated in each kebele and allocates land to people when the *Kawo*

²⁴⁹ An interview conducted with Mr. Akalu Ayele, Agricultural Office Head, Shambara Kankara Kebele (Zala district 18 March 2018).

²⁵⁰ Ibid.

²⁵¹ An interview conducted with Mr. Tariku Tinsae, Seble Expert, Shambara Kankara kebele, (Zala district 18 March /2018).

²⁵² An interview conducted with Mr. Diakon Chollo (n 209).

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

permitted to do so.²⁵⁶ Though the Biitante was obliged to observe the command of Danaw, he was the chief administrator of land in his own territory.²⁵⁷ In the case, where land-related dispute arise a Biitant had a role to solve the dispute and put demarcation on the boundary.²⁵⁸ After solving disputes between the neighbors Biitant slaughters Goat or Sheep as the sign of avoiding grievances between the people.²⁵⁹

4.3. The Customary Law (Woga) in Gamo Gofa Zone

Like many other ethnic groups in Ethiopia, Gamo Gofa society has its own customary rules and practices owing to its unique history and tradition. As stated before, GGZ is the home land for five different ethnic groups (Gamo, Gofa, Oyida, Zayise and Gedicho). From these ethnic groups Gamo and Gofa constitute about 93%.²⁶⁰ Historically, Gamo and Gofa ethnic groups stemmed from the same common ancestor locally named '*Aba Goda*'.²⁶¹ Although there is prefix designation difference in each ethnic group, the customary rules and practices of the study area are related. For instance, in Oyida ethnic group, the customary law is named as '*Bucha Woga*', in Gofa ethnic group it is known as '*Biitta Woga*' in Gamo and Gedich and Zayise ethnic groups it simply named as '*Woga*'. Thus, here the writer prefers 'Woga or customary practices' to mean the customary laws in the study area. As the writer observed from the respondents responses, there is no a single and all inclusive definition of customary law and they explain it from the perspective of role it play to them.²⁶²

Woga guides all types of relationship within society, which means it regulates the social, political, economic and even the spiritual life of the people.²⁶³ The woga does not allow free marriage between all existing social groups in the area. In GGZ, there are three social groups, *Maala* (the dominant social group), *Ayile* and *Mana* (the dominated social groups).²⁶⁴ According to respondents, as per the woga, marriage between *Maala* with *Ayile* or *Mana* is considered as unacceptable act.²⁶⁵ For instance, if one from *maala* social group marry from

²⁵⁶ An interview conducted with Mr. Mardikiyos Kerba (n 217).

²⁵⁷ Ibid.

²⁵⁸ An interview conducted with Mr. Diakon (n 209).

²⁵⁹ Ibid.

²⁶⁰ Defaru and Tuma (n 211).

²⁶¹ An interview conducted with Mr. Diakon Cholle (n 209).

²⁶² For instance, respondents defined woga as '*nu wogay nuna ayiseyisa bay*' or '*nu wogay nu ooshsha gigiseyisa bay*' which literally means 'our woga administer us or resolves disputes among us'. Hence, there is no a single definition attached to it rather they explain woga from a view point of its role to the society.

²⁶³ Zelalem (n 221) 37.

²⁶⁴ Ibid.

²⁶⁵ An interview conducted with Mr. Albene Ayele, local elder, Shambara Kankara kebele, (Zala district March 18/2018).

ayile or mana social groups, he could be ostracized from his family and his father could deny to give certain plot of land to him by any means.²⁶⁶ In other words, marriage between *Maala and Maala, Mana and Mana, and Ayile and Ayle* is allowed by the customary law of the area. However, because of expansion of protestant religion which preaches all persons are God's creation and all are equal to the area altered this customary law considerably.²⁶⁷ Among the roles of *woga*, defining burial places, market places, defining and regulating communal lands, the relationship between young and their elders are the peculiar ones.²⁶⁸ According to respondents, there are many customary institutions locally established by each community to resolve disputes among/between the people. While solving the disputes, the elders in these institutions use the *woga* to resolve the disputes. These institutions and their mechanisms of dispute resolution have been discussed in detail in separate title below.

4.4. The Experiences of Women Rural Land Access through Inheritance in GGZ

Access to rural land use rights through inheritance is a common practice among GG people. Inheritance as a basic means of access to rural land use right is an old-aged and still dominant among the society.²⁶⁹ Legally women have equal right to inherit land with their counterparts (men). However, in the study area, land inheritance practice is widely *patrilineal one*, meaning inheritance system, which only supports men to inherit property including land, and discourages women not to inherit property at all.²⁷⁰ They also explained that land is always inherited to *only male line*, which clearly denies women's right to inherit and own land.²⁷¹ Moreover, interview with community chiefs in *Shelle Mela kebele* reveal that, the only chance in which daughters can have access to land through inheritance is, *in the case where there is no son born to inherit land*.²⁷² As to informants, the custom prohibits them not to inherit land because the societies believe that they will have access to land from their marital families after the marriage. In a similar fashion, Deere and Doss wrote:

For women in Africa, the most common way to gain access to land is through marriage. This land, however, does not necessarily become a woman's asset when she

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Zelalem (n 221) 9.

²⁶⁹ Hizkale (n 34) 72; interview conducted with Diakon (n 219).

²⁷⁰ Interviews conducted and FDG held with divorced women and widows, Shelle Mela, Kola Shara, and Omo Lante (AMZD and MAD 24 February and 08 March 2018 respectively).

²⁷¹ Ibid.

²⁷² Interviews conducted with community chiefs/elders, Shelle Mela kebele, (AMZD 25 February 2018); interviews conducted with community chiefs, Shambara Kankara kebele, (Zala District 22 March 2018).

*marries; she may only be allocated use rights to it by her husband, and thus will lose the land in the case of death or divorce.*²⁷³

Thus, one can deduced from above saying that because of the society belief that women after marriage would access land use right from her marital family, majority women denied land inheritance from their parents in the study area. However, the land use rights they accessed after marriage by itself are not durable, meaning they can use the land so long as their marriage persists and they lose land use rights after divorce or death of their husband.

The SNNPRS's Constitution and both Federal and SNNPRS's RLAUP does not make any discrimination based on sex while entitling land inheritance right to men and women. But FGD held with women in Shele Mela, Kola Shara and Omo Lante kebeles reveal that, women can inherit their parent's land if and only if there is no any son born for parents, meaning in the case where the parents born only daughters, then the daughters can inherit parents land because customarily land inheritance is allowed to the sons than daughters.²⁷⁴ However, the other respondent stated that if a father has only daughters and they get married, they keep their father's land by representing their blood relatives who can use the land but whatever the land is productive, it cannot be ploughed by their husbands, because it is locally taken as '*Gome or Chinchale*' i.e. curse.²⁷⁵ Although sons in law have no customary right to plough the land of wife's parents, the women representation of their blood relatives to plough the land may led one to argue that they have inherited land use rights from their parents. Hence, it could be said that as per the custom, in the case where only daughters born to the father, they can inherit their parent's land.

Moreover, FGD held with local elders' in Shelle Mela kebele shows that only sons have customary right to inherit their parents land and daughters have no right to inherit their parents land because they considered as outsiders, meaning after maturation they would marry husband.²⁷⁶ Similarly, FGD held with local elders in Kola Shara kebele also indicates that, there is difference between inheriting land and other movable properties, which means other properties such as Cows, Goats and Sheep can be inherited to women but land

²⁷³ Deere and Doss (n 171) 17.

²⁷⁴ FGD held with women in Shelle Mela , Kola Shara Kankara and Omo Lante Kebeles, (AMZD and MAD districts 28 February and 12 March 2018 respectively.

²⁷⁵ An interview conducted with Mr. Daikon (n 233); an interview conducted with Mr. Dalaye Shonga, local elders in Shambara Kankara kebele, 23March 2018.

²⁷⁶ FGD held with Local Elders in Shelle Mela kebele, (AMZD 29 February 2018). The names of local elders mentioned at the back of this thesis (under Bibliography).

inheritance customarily permitted only to men.²⁷⁷ The elders further mentioned that, the main reason behind the customary prohibition is that they considered women as outsiders and physically weak to plough the land. However, one community chief said that despite the customary prohibition, women could inherit land if their father by will entitle them to inherit certain plot of farming land.²⁷⁸ He also stated that although there is will left by the deceased, women's right to inherit land is depend on the role played by women during the lifetime of the deceased. In other words, it means that a woman who utmost take care of her parents during their lifetime may inherit land by will. From this, one can infer that, except by will, even though women's right to land inheritance has legal base under the SNNPRS's Constitutions and RLAUP, majority of women does not inherit land at the time of death of their parents because of discriminatory customary practices.

As explained in chapter 4 above, the SNNPRS's Constitution states that women have equal right to acquire, administer, control, use and transfer property and they shall also enjoy equal treatment in the inheritance of property.²⁷⁹ Nevertheless, inheriting land by women is immoral among the GG people, especially in the high land areas.²⁸⁰ If a woman inherits land customarily, it is considered as a transgression of customary rule and it feared that she will not give birth to child or her fertility will dry up.²⁸¹ Because of this fear, in the study area, women by themselves are usually reluctant to inherit land. In this regard, one woman in FGD stated that '*rather than receiving curse to my future life and children, I choose to live in poverty.*'²⁸² Moreover, the other basic reason behind the customary prohibition is the social belief that if a woman inherits land, marries a husband; her family's richness goes to the husband's family.²⁸³ They also said that the other reason behind the custom is that, if the land is inherited to woman, when she marry husband, the land of her family transfer to another family which is locally considered as 'Gome' which means misfortune or curse because '*family land must always stay within that family*'. The quotation by itself indicates that, the land, which received from the grandparents and transferred to parents, be transferred to sons (patrilineal line transfer). In some exceptional case, it is common that some women

²⁷⁷ FGD held with local elders, Kola Shara kebele, (AMZD 07 March /2018).

²⁷⁸ An interview conducted with Mr. Ayigida Ankute, local community chief, Shelle Mela Kebele, (AMZD 27 February 2018).

²⁷⁹ SNNPRS Constitution (n 189).

²⁸⁰ FGD held with women in Menana Kebele, (MAD 14 March 2018); interview conducted with women in Shambara Kankara kebele, 22 March 2018/

²⁸¹ An interview conducted with Mr.Diakon (n 219).

²⁸² FGD held with Mrs. Ufayise Uncha, Kola Shara kebele, (AMZD 07 March 2018).

²⁸³ FGD held with community chiefs, Ankober kebele, (MAD 13 March 2018). Their names are listed at the back under Bibliography.

lack getting marriage opportunity, in that situation even, the custom not allow them to inherit land. In this regard, one respondent pointed out that in such a case, the custom dictates her brothers to provide maintenance throughout her life but she cannot inherit land.²⁸⁴

Divorce is a common practice in GGZ because of three most important reasons. One is absence of children born within the marriage and the other is what locally called ‘Gome’ or curse as mentioned above and the last cause is bigamy (since bigamy is allowed by the culture).²⁸⁵ In the first case, if the wife is unable to give birth due to natural cause even, the husband divorces her and marries another wife but in the second case, during marriage, if son or daughter born to them repeatedly die due to whatever reason, then locally community think that this family has ‘*Gome*’ or *curse* so that the marriage would be divorced. The SNNPRS’s Revised Family Code provides that spouses have equal rights to share common property upon divorce and to take their personal property.²⁸⁶ However, interview conducted with local elders indicates that, whether the marriage dissolved because of the first, second or third reason, divorced women cannot partition their matrimonial land.²⁸⁷ They also explained that the justification is ‘*land being under the control of one family*’ so that the husband’s family land could not be transferred to wife’s family.

In case, where a widow did not give birth to child, immediately after some days of funeral ceremony, she must leave the house and go back to her family with empty hand.²⁸⁸ Similarly in Dorze people of the study area, widows who had no children during their marital life are the ones who must leave the home with empty hand except some amount of money.²⁸⁹ In this regard, COHRE stated that if she has no children, the custom dictates that she may remain in the home for only three days, and then must leave, given the equivalent of about US\$ 35.²⁹⁰ This is because from the very beginning her husband received the land from his family, so that that piece of land should be within that particular family.²⁹¹ Moreover, according to the custom of Dorze people, if her husband passed away and they had children, the woman has the right to only live in their home until her children are grown up.²⁹² Thus, it is clear that

²⁸⁴ An interview conducted with Mr.Diakon (n 209).

²⁸⁵ Ibid.

²⁸⁶ SNNPRS RFC (n 30).

²⁸⁷ Interviews conducted with community chiefs and divorced women, Ankober kebele, (MAD 13 March 2018).

²⁸⁸ An interview conducted with Mr. Diakon (n 209).

²⁸⁹ COHRE (n 14) 55.

²⁹⁰ Ibid.

²⁹¹ FGD held with community chiefs, Kola Shara kebele, (AMZD 03 March 2018). Their names listed under Bibliography.

²⁹² COHRE (n 14) 55; FGD with women in Shambara Kankara kebel, 21 March /2018.

because of the customary rule, which stipulates that husband's family land could not be transferred to wife's family; widows are unable to partition their matrimonial land.

As explained by one respondent, relatively, nowadays, although women are at good position to inherit land because of awareness creation in 1 to 5 groupings formed at each kebele level, majority are still do not know their rights.²⁹³ She also mentioned that, discriminatory customary practice is more pervasive especially in highland part of the study area. Interview conducted with women representatives in Kola Shara kebele indicates that, thanks to the ruling government, the cultural belief that women cannot inherit land has changed more and women inferiority position in Kola Shara kebele has altered a lot.²⁹⁴ She also explained that, however, in highland part of the study area, the society's conception that women land inheritance is abnormal is still there.²⁹⁵ Concerning the customary rule and practice of Zala district, an interview conducted with Zala district Cultural and Tourism Office Head shows that, though women situation in general now is better than the past few years ago, still the cultural discrimination exists.²⁹⁶ Thus, although some improvements made, still now many women are not free from cultural influence in the area.

Interview conducted with Women and Children Affairs Office Head in AMZD reveal that, in tropical areas of the district awareness about women's right to rural land inheritance has already created to some extent and some women are exercising their right to land inheritance, yet society's attitude not changed at all.²⁹⁷ Similarly, interview conducted with one Gender Mainstreaming Expert in the same office indicates that, especially in the highland study areas, the customary practices really prohibits women not to inherit land and she who ask to inherit her parent's land be ostracised by the family and society.²⁹⁸ He also mentioned that in the highland areas of the district, generally limited/no legal awareness created about women's right to rural land inheritance and the community are very reluctant to inherit land to daughters because of their thinking that daughters after maturation will marry husband. The same type of information gathered from other respondent shows that especially in highland

²⁹³ An interview conducted with Mrs. Tseganesh Engida, Head, Gamo Gofa Zone Women and Children Affairs Department (Arba Minch 06 March 2018).

²⁹⁴ An interview conducted with Mrs. Workinesh Danda7e, Women Representatives, Kola Shara kebele, (AMZD 07 March 2018).

²⁹⁵ Ibid.

²⁹⁶ An interview conducted with Mr. Bezabih Belete, Head, Cultural and Tourism Office (Zala District 16 March 2018).

²⁹⁷ An interview conducted with Mrs. Birtu Girma, Head, Women and Children Affairs Office (AMZD, 09 March 2018).

²⁹⁸ An interview conducted with Mr. Kassase Tsella, Gender Mainstreaming Expert, Women and Children Affairs Office (AMZD 10 March 2018).

part of the district, less than 10% of women have awareness about their legal land inheritance right.²⁹⁹ She also stated that the customary practices of the area are very serious towards women's land inheritance, in a sense that it does not allow women to inherit land. Besides, family division of labour, which bounded women in household duty, is another challenge for women not to inherit land and become landholder because society always believe that women are household duty carrier, and hence no need of land for them.³⁰⁰ From this, one can argue that the gender discriminatory customary rule and practice are pervasive and more prevalent especially in highland part of the study area causing women land disinheritance.

An interview conducted with Women and Children Affairs Office Head in MAD also reveal that, although women's right to rural land inheritance has shown some progress comparing with past 20 years, still their legal right is not fully implemented due to customary prohibition and lack of awareness about their right.³⁰¹ She also said that the attitude of the society not changed as they think that women could not be seen equal with men as far land inheritance is concerned. Moreover, an interview conducted with Women's Capacity Building Expert in the same office indicates that, land certification program undertaken in the district progressively enhanced women to use land, but still the customary rule prohibition and lack of awareness are the major problem not to inherit land equally with men.³⁰² Thus, from this one can infer that, despite legal recognition, women's right to rural land inheritance is not effectively implemented primarily because of customary rule prohibition and lack of legal awareness.

Again FGD held with women in Menana kebele also shows that, women have very limited or no awareness about their legal right to land inheritance, which is the major cause for not asking their legal right to land inheritance.³⁰³ One member of FGD in the same kebele stated that, *being women how can I ask my brothers to give me a piece of land because it is abasement for women.*³⁰⁴ Moreover, FGD with women in Ankober Kebele also indicates that, although some women's awareness towards their right to land inheritance is progressive, still majority of women are unaware of their legal land inheritance right.³⁰⁵ Due to lack of knowledge about their right to land, they not always struggle to realize their rights. They also

²⁹⁹ An interview conducted with Mrs. Terefech Chake, Coordinator, Cultural Development Study Group (MAD 11 March 2018).

³⁰⁰ Ibid.

³⁰¹ An interview conducted with Mrs. Nestanet Hailu, Head, Women and Children Affairs Office, (MAD 11 March 2018).

³⁰² An interview conducted with Mr. Tadesse Gelesu, Women Capacity Building Expert, Women and Children Affairs Office (MAD, 11 March 2018).

³⁰³ FGD held with women (n 290).

³⁰⁴ FGD held with Mrs. Lamate Chole, Menana kebele, (MAD 14 March 2018).

³⁰⁵ FGD held with women, Ankober kebele, (MAD 11 March 2018).

said that even women who know the law are also reluctant to claim their land rights because they have usually moved distant away for marriage (*verilocal marriage*), fear of Gome and social isolation.³⁰⁶ Therefore, one can safely argue that despite some improvements made on women's land rights realization, we need further efforts to aware women so that women can fully enjoy their legally entitled land inheritance rights.

The SNNPRS's RLAUP provide that any person who lives with and shares the income of the landholder can inherit rural land use rights.³⁰⁷ From the phrase ...'*any person*' one can infer that, to inherit rural land use right one is not expected to be blood relatives of the landholder. Thus, satisfying the cumulative requirements of permanently living with and sharing the incomes of the peasant farmer are sufficient conditions to inherit rural land use right from the landholder. However, one study respondent stated that because of the social belief that '*land must always stay in the hands of once family*' (from father to son and to grandson etc.) plus societal belief that women would marry husband and live there permanently, women cannot inherit land from her parents.³⁰⁸ As discussed before, the quotation by itself connotes that by customary rule of the area, land inheritance expected to be male line. For instance, Zelalem on this line wrote that, in Gamo people land is possessed and passed to only male lineage, which denies women the right to own property.³⁰⁹ In sum, the family member definition given by the region's RLAUP is not accepted by customary rule of the study area and hence, not any person living with and sharing the income of the peasant farmer could inherit the land use right of the landholder.

Besides women specific discrimination towards land inheritance, the customary land inheritance practice of the area is also discriminatory towards younger sons. In other words, it means that the customary rule prioritize the elder son to inherit the lion share of the parents land at the expense of younger ones. An interview conducted with local elders in the Menana Kebele reveal that, the custom treat the elder son better than others because elder sons are responsible to take care of the parents, nurture their juniors as well as administering the land of his family on behalf of their juniors.³¹⁰ In this regard, one informant explained that, let say one father has ten sons, then he (the father) divide and gives some plots of land to all of his

³⁰⁶ Ibid.

³⁰⁷ SNNPRS's RLAUP No.110/2007 (n 8). art.2 (7) and 5(2).

³⁰⁸ An interview conducted with Mr. Daikon (n 219).

³⁰⁹ Zelalem (n 221) 34.

³¹⁰ Interviews conducted with Local elders, Menana kebele, (MAD 14 March 2018).

sons but large portion of land including the place where his house built and permanent crops planted around the house to his elder son.³¹¹ In this vein, Yewubneh stated that:

*In lowland areas of Oyida (one ethnic group in the study area), when the father dies, it is the elder son who has customary right to inherit all property including land of his father but in highland areas, when the father dies, it is the young boy who has right to inherit and own his father's property because the society believed that as the son is the last offspring; he should be given all the properties to lead his future life as the elder sons already leading their life.*³¹²

In some situation, even parents generally authorize the elder son in all matters and dead intestate. In such a case, the elder son taken as a father of the family and administers the family in general including land administration. It is the common belief of the studying people that if the parent's home and the place where buildings erected given to the younger son, the inheritor will die or he received curse than the property.³¹³ It seems important to raise here the issue that what if the elder is daughter in the family and how the customary rule governs such situation? In this regard, respondents explained that although a daughter is elder in the home, she has no customary right to inherit land at all rather the younger son born next to daughter/s has right to inherit land by considering him as the elder son.³¹⁴ From above statement one can understand that, although there is some degree of customary practice variation from one place to another, the customary practice of the area commonly favours the elder son to inherit large portion of the father's property including land.

Besides customary rule and practice prohibition, some customary institutions in settling land-related disputes have impact on women's right to rural land inheritance due to their base on the discriminatory customary practices.

4.5 The Experiences of Customary Institutions in Land-Related Dispute Settlement in AMZD

As stated before, property inheritance in general and land inheritance cases in particular often resolved through interpersonal relation rather than through formal justice machineries in many Sub-Saharan African contexts including Ethiopia. With regard to land-related dispute

³¹¹ An interview conducted with Mr.Daikon (n 209).

³¹² Yewubneh Yemanebrihan, *Indigenous Conflict Resolution Mechanisms among the Oyda People of Southern Ethiopia: An Exploratory Study* (MA Thesis), Addis Ababa University 2016, 44.

³¹³ FGD held with community chiefs, Shambara Kankara Kebele, (Zala District 17 March 2018).

³¹⁴ Ibid.

settlement, the SNNPRS's RLAUP provides that when dispute arises over rural land holding right, the case first brought to KLAC and the committee shall let the dispute be resolved by negotiation or arbitration through local elders set by the choice of the two parties.³¹⁵ Since KLACs only facilitates the parties to reach an agreement, they are facilitators rather than the bodies, which have inherent power to pass binding decision. An interview conducted with 5 LACs in Shelle Mela kebele shows that, up on application by one of the disputing parties, KLAC first select one member of LAC and sends them together with 3 selected local elders to farm land over which dispute raised.³¹⁶ If the parties not reach an agreement, the KLAC again select 3 LAC members and send with five local elders selected by parties to the farmland.³¹⁷ Beyond this, the LAC cannot do anything to resolve the dispute. FGD held with LACs in the same kebele reveal that, local elders while resolving land-related disputes apply the customary rule of the area;³¹⁸ hence, mediation or arbitration mechanisms of dispute resolution are customary rule oriented. Customary systems are usually managed by a land or village chief, traditional ruler or council of elders.³¹⁹ Data gathered from FGD with LACs in Omo Lante kebele indicates that, though many land-related disputes resolved by LACs in the kebele, yet very limited land inheritance claims brought by women as customary rule and practices prohibit them.³²⁰ One member of LAC explained that even if women apply in LAC to inherit land, the selected local elders by applying customary rule, disregard their claim.³²¹ Apart from KLACs, there are customary institutions involved in dispute settlement including land-related disputes in the study area.

In AMZD, generally the customary institutions, which settle disputes including land-related dispute between/among the society, are *Gassa Dubusha Institution, Dubusha Institution, and Guta Dubusha Institutions*.³²²

³¹⁵ SNNPRS RLAUP No.110/2007(n 8), art.12(1).

³¹⁶ Interviews conducted with LACs, Shelle Mela Kebele, (AMZD 03 March 2018).

³¹⁷ Ibid.

³¹⁸ FGD held with LACs, Shelle Mela kebele, (AMZD 03 March 2108).

³¹⁹ Custula Lorenzo, et al. 'Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues' (2004), International Institute for Environment and Development, 7.

³²⁰ FGD held with LACs Omo Lante Kebele, (MAD 09 March 2018).

³²¹ FGD held with Mango Haile, LAC member, Omo Lante kebele, (MAD 10 March 2018).

³²² FGD held with community chiefs, Shelle Mela and Kola Shara kebeles, (AMZD 26 February and 05 March 2018 respectively).

4.5.1. Gassa Dubusha Institution (GDI)

GDI is one type of customary institution, which solves the dispute between two different neighbourhood kebeles.³²³ The term *Gassa* refers to the border public place shared by two neighbourhood kebeles. It serves as a place where conflicts between two kebeles are resolved. In this place, the community chiefs selected from the concerned kebeles assemble and entertain issues like border or boundary land conflict between different two or more kebeles.³²⁴ While resolving the conflicts the community chiefs apply their own customary law locally called '*Gassa Woga*'.³²⁵ *Gassa woga* is a customary rule regulating the relationship between neighbourhood kebele and, hence, it has no relevance with land inheritance cases within a given family in a given kebele.³²⁶ Similarly, an interview conducted with one local elder indicates that, interpersonal matters including property inheritance not be entertained by GDI.³²⁷

4.5.2. Dubusha Institution (DI)

DI is the second customary institution resolving disputes among people in the study area. The term Dubusha refers to the place where the issue of single kebele is discussed and resolved by selected community elders from single kebele. As to informants, the elders' selection criterion is deep understanding of customary rules of the area and the ability to calm the dispute amicably. Dubusha has 12 members including its chief executive, secretary and the person who addresses information to others.³²⁸ It is different from social courts in two aspects; one unlike social courts, it is not government rooted institution and, two unlike social courts which most often entertain financial matters, it sees cases which has an impact on the general community or a given kebele.³²⁹ Serious land boundary conflicts between two or more neighbourhood landholders are most often resolved by this institution. The proceedings

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ An interview conducted with Mr. Tsola Tsorko, Community chief, Kola Shara kebele, (AMZD 04 March 2018).

³²⁷ Ibid.

³²⁸ An interview conducted with Mr. Ayisa Nana, Community chief, Shelle Mela kebele, (AMZD 28 February 2018).

³²⁹ An interview conducted with Mr. Bukasha W.Giorgis, Community chef, Shelle Mela kebele, (AMZD 28 February 2018).

in this institution are more or less similar to that of regular court proceedings.³³⁰ First, application by the applicant to the ‘Chief Executive’ then the chief executive informs the information distributor so that he informs the other members of the institution to be collected in the usual place locally called ‘*Wola Gaatha*’ meaning ‘under the huge tree’.³³¹ After their collection in Wola Gaatha (under a huge tree locally called *Wola*), the local elders require the parties to take oath so that they could not lie or tell the truth. The oath they usually use locally phrased as ‘*Nuna Dere Xelite, Nuna Balopitte*’, which means *see us, do not lie us*.³³² The respondent stated that, DI never entertain interpersonal issues like land inheritance cases within a given family.

4.6. Customary Institution and Women Land Inheritance in AMZD

4.6.1. Guta Dubusha Institution (GDI)

The other customary institution being operational in this study area is *GDI*. According to respondents, GDI most of the time is used to resolve disputes among/between neighbourhoods. The word Guta means neighbourhood and hence, GDI is established at each Gutas in the each kebele with a view to settle disputes such as quarrel of children’s of one neighbourhood, destruction of crops by cattle of the same neighbourhood, conflicts between husband and wife and conflicts between the members of the Guta.³³³ To resolve the conflict among neighbourhood, the elders use the customary law locally called ‘Guta Woga’. In FGD, one respondent stated that, Guta Woga is a law used to resolve disputes that arises between or among the members of a neighbourhood and family members.³³⁴ However, an interview conducted with community chiefs and LACs in Shelle Mela and Kola Shara reveal that, rural land inheritance cases between family members usually resolved through Guta Dubusha Institution. In case when women apply to inherit land elders disregard as Guta Woga do not allow women to inherit land by any means.³³⁵ An interview conducted with Gender Mainstreaming Expert in AMZD reveal that, in local dispute settlement process, community

³³⁰ FGD held with Community chiefs

³³¹ An interview conducted with Mr. Dido Dikire, Community chief, Shelle Mela kebele, (AMZD 03 March 2018).

³³² Ibid.

³³³ An interview conducted with Mrs. Workinesh Danda7e (294).

³³⁴ FGD held with Mr. Yohannis Kan7a, LAC leader, Kola Shara kebele, (AMZD 07 March 2018).

³³⁵ Interviews conducted with community chiefs, Shelle Mela and Kola Shara kebele, (AMZD 27 February and 06 March 2018 respectively).

chiefs usually favour men in land inheritance cases because of their customary rule, which discourage women not to inherit land.³³⁶ In FGD held with women also shows that when women rural land inheritance claim brought to GDI, they decide according to customary rule.³³⁷ It is shameful act to women and if she gets land via inheritance, it considered as curse for her.³³⁸ In this vein, it is quite relevant to reproduce the case narrated by one of the respondents (Workinesh Danda7e) in the study area.

Mrs. Yalale Egale, a widow has been evicted from the house and landholding after the death of her husband. A few days after the funeral, her deceased husband's brothers tried to evict the widow and her two small daughters, claiming that, according to customary land tenure rules of the area, the property left by deceased should be given to his relatives. After that she took the case to Guta Dubusha Institution, one of customary institution established to settle disputes between/among neighbors and family disputes. The institution decided that up until her daughters grown, a widow could stay in the house and cultivate the land, but after their growth she should leave the house and farmland. Workinesh recalls that she called local elders (judges) working in Guta Dubusha Institution and explained to them that, according to SNNPRS RFC the widow and her daughters were the ones who had legal right to equally share and inherit the land and the house since these are their matrimonial properties. They accepted her legal reasoning and changed their decision and now a widow with her small daughters living in the house and using the farmland.³³⁹

From this case, it is clear that customary institutions while resolving land-related disputes apply their own traditional land tenure rules, which are not gender neutral. Here one can imagine that otherwise what would have happened to that widow with her small daughters? As can be evidenced from this case again, the awareness creation through different campaign has high tendency to change the attitude of the society towards women's land rights in the study area.

In addition, Mrs. Workinesh Danda7e, a women representative in Kola Shara kebele narrated her personal observation case in Kola Shara kebel is:

Ms. Ufayise Uncha and Mr. Dolo Uncha are the brother and sister. Their father owed 4 hectare of land in two different places in the same kebele. In 2004 E.C their father

³³⁶ An interview conducted with Mr. Kassase Tsella (n 298).

³³⁷ FGD held with women, Shelle Mela and Kola Shara kebele, (AMZD 26 February and 05 March 2018 respectively).

³³⁸ Ibid.

³³⁹ An interview conducted with Mrs. Workinesh Danda7e (n 294). Mrs. Workinesh Danda7e is an ex-chief administrator and currently working as a women representative in Kola Shara Kebele. In September 1997, she participated in a paralegal training course promoted by SNNPRS Office of Gender and Children Affairs. Through training, she gained knowledge regarding gender equality in general and women's equal land rights in particular.

*died due to kidney frailer diseases and left an oral will. In the will the deceased entitled Ms. Ufayise to inherit 2 hectare of land and the rest to be inherited by her brother. However, her brother prohibited her to take the farm land by saying I am the only one to inherit my father's land and she may take other movable properties. Later on, she took the case to kebele administrative bodies. The kebele administrative bodies arranged their relative elders to see the case and the elders after repeated arbitration to resolve their disputes amicably; they decided that since her father allowed her by will, she can inherit 0.25 hectare of land.*³⁴⁰

As per the SNNPRS's RLAUP, when a rural land transferred by inheritance for any person including women, It shall be accomplished in such a way that the size of the land to be transferred is not less than the minimum size of holding.³⁴¹ Since the farmland under question is irrigable land because of water access from Lake Abaya,³⁴² theoretically, the law determined the minimum holding size she could inherit (0.5 hectare). However, as can be observed from this case, the land Ms. Ufayise inherited is 0.25 hectare. This means she inherited the land, which is less than legally required minimum land holding. Another point that can be inferred from this case is that how family elders biased towards women in relation land inheritance.

4.7 The Experiences of Customary Institutions in Land-Related Dispute Settlement in Mirab Abaya District (MAD)

4.7. 1 Gamo Dubusha Institution

In MAD, generally there are two basic local dispute settlement institutions: one is Gamo Dubusha, which is located in Dega Donne kebele particularly in Gigima sub-kebele, high land part of the district.³⁴³ There are many kebeles using this institution to settle disputes between/among the people including Menana, Dega Done, Zalagutish, Damuzu, Gema, Zardo, Sula, Chench, and Ezo.³⁴⁴ The institution has 0.37312 hectare of land official given to perform its intended functions.³⁴⁵ The primary functions of this institution are to choose a person who administers them locally, to bring peace and security to the society, to settle boundary conflict between neighbouring landholders and to call the general people to seat

³⁴⁰ The case narrated by Mrs. Workinesh Danda7e (n 294).

³⁴¹ SNNPRS RLAUP (n 8), art.11 (2).

³⁴² An interview conducted with Mrs. Workinesh (294).

³⁴³ An interview conducted with Mrs.Terefech Chake (n 299).

³⁴⁴ Ibid.

³⁴⁵ An interview conducted with Mr. Tekeste Tema (n 240).

Awuchach' meaning the meeting of the whole people to pinpoint the unknown guilty person concerning the commission of a certain crime.³⁴⁶

The members of this institution are community chiefs who are considered as wise and impartial by the whole community and they collect to the usual place when petition made by the victimized party or up on request by the kebele's administrative bodies to solve disputes between people.³⁴⁷ It has one community chief leader to instruct the other members. The proceedings of the institution are very similar to that of formal court system but the whole proceedings are made by oral statement.³⁴⁸ The oath system of the institution is unique in a sense that they use their stick locally called '*Xambaro or Xoxxe*.'³⁴⁹ What they do is that they lay down the Xambaro (stick) on the ground and says '*jump this stick by saying I will not lie.*' This quotation refers to the common saying the community chiefs' use by requiring the disputing parties to tell the truth.

4.7.2 Subo Dubusha Institution (SDI)

This institution located in Dega Done kebele but specifically in Xoyilo sub-kebel and it has 0.20488 hectare of land official allotted to perform its functions.³⁵⁰ Starting from Derge regime onwards Zato, Chaba, Gole, and Xoyilo kebeles are using this institution to settle any disputes including land-related ones among the society.³⁵¹ The members' selection, the proceedings and the oath method of this institution is similar to that of Gamo Dubusha Institution. Interview conducted with community chiefs in Menana kebele indicates that, this institution helps to settle cases, which has impact on the general community like secrete disposal of dead animal body into the main sources of the river, which used by the general community for drinking and washing purpose.³⁵² In other words, when unknown person dispose dead animal body into the main sources of the river, to identify that person, the whole people sit *Awuchachi* meeting in SDI.

³⁴⁶ An interview conducted with Mrs. Terefech (n 299).

³⁴⁷ An interview conducted with Mr. Shanko Doja, community chief in Menana kebele, (MAD 13 March 2018).

³⁴⁸ Ibid.

³⁴⁹ An interview conducted with Mr. Shinkut (n 235).

³⁵⁰ An interview conducted with Mrs. Terefech (n 299).

³⁵¹ Ibid.

³⁵² Interviews conducted with community chiefs, Menana Kebele (n 310).

4.8. Customary Institutions and Women's Land Inheritance in MAD

4.8.1. Dabo Dubusha Institution (DDI)

Unlike the above two customary institutions, many inter-family disputes including land inheritance issues are most often resolved by this institution. In this regard, data gathered from respondents shows that inheritance cases often resolved in DDI. FGD with community chiefs in Menana kebele reveal that, since the clan leaders/family elders working as judges apply customary rules and hence, women cannot inherit land from her parents because they considered as temporary members of their family, meaning they will marry husband.³⁵³ They also said that according to our customary rule, it is shameful for women to inherit land from their parents and due to the fear of Gome, women by themselves are reluctant to claim land from their parents.³⁵⁴

4.9 Experiences of Customary Institutions in land-related dispute settlement in Zala District.

In zala district, the widely practiced customary dispute resolution institution is locally called '*Amba Dubusha*', which means conflict resolution by the use of kinship elders or non-kinship elders in the area.³⁵⁵ The places where the society hold Dubusha meeting differ from kebele to kebele. In Shambara Kankara kebele, the place where Dubusha institution works its function is '*under the tree called Amba*.'³⁵⁶ This place is respected place so that no person could cut trees or grasses. Similarly, Dubusha in Demba Gofa district refers to a type of sacred tree where people gather to discuss on local matters.³⁵⁷ In Shambara Kankara Kebele, there are two types of Amba Dubusha Institutions: Dabo Dubusha or based on kinship (Lineage Dubusha) and non-kinship Dubusha (Cima Dubusha Institution).³⁵⁸

³⁵³ FGD held with community chiefs, Menana Kebele, (MAD 15 March 2018).

³⁵⁴ Ibid.

³⁵⁵ An interview conducted with Bezabih (n 296).

³⁵⁶ Ibid.

³⁵⁷ Esayas Awash, Indigenous Conflict Resolution Institutions: A Study among the Gofa People of the Demba Gofa District, SNNPR (MA Thesis), Addis Ababa University, June 2015, 84.

³⁵⁸ An interview conducted with Mr. Bezabih (n 296).

4.9.1 Cima Dubusha Institution (CDI)

Data obtained from FGD held with local elders indicates that, the CDI means institution other than Dabo Dubusha Institution, led by the local elders to resolve conflict rose between non-relatives.³⁵⁹ The word ‘*cima*’ means elder and the process of resolving dispute by the elders locally called ‘*Cimatetha*. From the respondents, one member of FGD mentioned that members of this institution selected from among local elders based on the criterion of deep understanding of their customary laws and their confidentiality in keeping disputing parties’ personal matters.³⁶⁰ Moreover, he explained that the selected elders before seeing the case require the parties to take oath by saying ‘*intte Dubushas giidi tuma odetitte*’ meaning *tell the truth not to endanger your future descendants*. The type of cases that could be entertained by this institution includes boundary conflicts between neighboring landholders, breach of contractual agreements and bodily injures.³⁶¹ However, land inheritance cases do not appear before CDI. In this line, Esayas wrote that in Gofa society, conflicts between spouses and families could be resolved through negotiation without inviting elders of the CDI.³⁶²

4.10 Customary Institutions and Women’s Land Inheritance in Zala District

4.10.1 Dabo Dubusha Institution

Dabo Dubusha as its name indicates is the type of Dubusha used to resolve conflicts arise between individuals and among groups of the same family.³⁶³ Thus, family members including common ancestors (locally called Mayiza), grandparents, (locally named as awa awa) and parents can solve disputes between family members as having first instance jurisdiction. Many inter-family disputes including land inheritance issues are most often than specific resolved by this institution.³⁶⁴ Importantly it is possible to predict the decision of this

³⁵⁹ FGD held with Community chiefs, Shambara Kankara kebele, (Zala District 19 March 2018). Their names were mentioned at the back of this Thesis.

³⁶⁰ FGD held with Mr. Munxaze Muka, local elder, Shambara Kankara kebele, (Zala District 19 March 2018).

³⁶¹ Ibid.

³⁶² Esayas (n 35`7) 88.

³⁶³ Ibid.

³⁶⁴ An interview conducted with Mr. Burgude Bundure, community chief, Shanbara Kankara kebele, (Zala District 18 March 2018).

institution as customarily land need not be off from the given family. In this line, interview with one respondent reveal that, in Dabo Dubusha Institution, the family elders always allow men to inherit land than women.³⁶⁵ He further mentioned that the reason behind is that customarily it is not allowed for women to inherit land.

4.11 The Merits of Customary Practices and Institutions in GGZ

Customary practices are deeply rooted in values and norms of the each society concerned. Customary practices lonely derive from the custom of the society. As stated somewhere else in this study, customary practices is general accepted and long repeated practices of each society. Like to formal rule of law, customary practices have their own punishments to be applied in case of violation of customary rules. The most known punishment in customary practices in the study area is social isolation or social ostracism. While evaluating customary practices and institutions in relation to women's land inheritance rights, it seems sound to discuss the positive sides of customary practices and institutions. Thus, the following few paragraphs discuss the importance of customary practices and institutions in general.

The importance of customary land tenure rules and institutions in multicultural society like Ethiopia in general and GGZ in particular is an undeniable fact. Apart from being a challenge to rural women's land rights realization, the customary practices and institutions have lots of importance. For instance, rural people in most part of the country in general and in the study area in particular get access to land based on their respective customs rather than on the basis of state law and most importantly they settle disputes over land through their own customary institutions rather than via formal court structures. Interview conducted and FGD held with respondents' shows that customarily one could access land through the following common mechanisms: inheritance, donation, rent and purchase. Inheritance has been more discussed before in this Thesis, so that the writer needs to highlight on the other customary means of land access. Donation is the other a common customary mechanisms of land access in GGZ. Naturally, owing to strong family cohesion, intra-family land donation is quite common among the rural community in Ethiopia.³⁶⁶ For instance, a father may donate some portion of his land to his child who is of age and wants to form his own family is common act in our

³⁶⁵ An interview conducted with Mr. Dalaye Shonga, local elder, Shambara Kankara kebele, (Zala District 18 March 2018).

³⁶⁶ Daniel (n 10) 40.

country.³⁶⁷ According to the FGD held with local elders of the area, they unanimously explained that in our kebele, land could be donated to any male relatives of the land use right holder.³⁶⁸ Moreover, land access through rent is also there but rarely practiced. In some cases like the landholder lacks oxen to plough the land, then he may give the land to another farmer through rental agreement for more than three years.³⁶⁹ Furthermore, customary land access through purchase is very common among the GG people. In this vein, the respondents also mentioned that although land sale is not supported by the local custom and state law, in some difficult situations, people sale land to another who is interested to purchase the land.³⁷⁰

As explained in detail above, customary institutions are playing a remarkable role in resolving many types of disputes including land-related ones. Customary institutions not only adjudication disputes among/between the people, but also resort community peace.³⁷¹ The dispute resolution by these institutions is more preferred by the society because of their ability to bring sustainable outcomes in a sense that unlike the state court's decision, customary dispute resolution avoids future enmity between/among the disputants.³⁷² Besides, because of easy access and simple procedures in customary institutions, people choose to resolve their disputes through these institutions.³⁷³ Moreover, the other importance of customary institution is that they resolve disputes and identify wrong doer through different mechanisms. In this vein, Assefa Argues that 'formal courts are duty bound by law to dismiss a case or acquit a suspect if there is no evidence but customary institutions in such difficult situation even resolve disputes and identify criminals by using Oath.'³⁷⁴

Concerning family disputes between spouses, one respondent judge explained that some customary institutions play a noticeable role in family dispute resolution.³⁷⁵ He also stated that since divorce is not supported by some of the religions, society and even to some extent by the law, we often refer cases between spouses to local dispute resolution institutions to be amicably resolved.³⁷⁶ The fact that elders carry heavier moral weight because of years of accumulated wisdom, deep knowledge of customary practice, impartiality and integrity, and

³⁶⁷ Ibid.

³⁶⁸ FGD held with local elders, Shamabara Kankara and Menena kebele, (Zala and MAD 19 March and 14 March 2018 respectively).

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Assefa Fisaha, Customary Dispute Resolution Mechanisms and the Rule of Law (Justice and Legal System Research Institute (JLSRI) Law and Development Series No.1 2013) 122.

³⁷² An interview conducted with Mr. Bonga Boka, local elder, Omo Lante Kebele, (MAD 11 March 2018).

³⁷³ An interview conducted with Mr. Tum7a Tura, local elder, Omo Lante kebele, (MAD 11 March 2018).

³⁷⁴ Assefa (n 371) 124.

³⁷⁵ An interview conducted with Mr. Mitiku Melese, a Judge, AMZD Court, (Arba Minch 05 March 2018).

³⁷⁶ Ibid.

often chosen by parties leaves little room for non-compliance.³⁷⁷ Thus, by conclusion, one may argue that although customary institutions have negative impact on women to realize their legal land inheritance rights, they also play an observable role in settling disputes amicably by bringing sustainable outcomes.

4.12 Courts Handling of Rural Land Inheritance Cases in GGZ

Land-related disputes in general account more than half of the caseload in all Ethiopian courts even though its degree differs from court to court depending on the nature of cases.³⁷⁸ Interviews conducted with judges in the study area courts reveal that, violation of women rights through social transfer (through inheritance) is the common issue of litigation. In this regard, interview conducted with a judge in MAD reveal that, customarily land use right transfers usually via inheritance to male line at the expense of violation of women's legal right to inherit land.³⁷⁹ Due to this, nowadays, some women who aware their legal rights bring a civil suit to court and exercise their rights after courts pass decision on the case.³⁸⁰ However, an interview conducted with another judge in the same court indicates that, despite gender specific legal reform measures undertaken, inter alia, to empower women equally with men economically, still their implementation is very low primarily because of deep-rooted discriminatory customary rule and practice.³⁸¹ Moreover, an interview with a Judge in Zala District court shows that, unlike past experiences, currently there is a remarkable improvement on the part of women themselves by knowing their legal rights and bringing their cases to court of law.³⁸² He also explained that in very remote areas of the district especially in '*Oyda Shabe*' (one of the kebele in the district), culturally women not allowed to inherit land and their awareness level about their legal right to land inheritance is very limited. According to him, besides cultural discrimination and limited level of awareness in remote areas, lack of access to court (distant location of court from the kebeles) is also another challenge for women not to benefit from court of justice.³⁸³ From this again, one can understand that women's land inheritance rights stipulated by many legal frameworks are not effectively implemented due to discriminatory customary practices.

³⁷⁷ Assefa (371) 127.

³⁷⁸ Daniel (n 10) 138.

³⁷⁹ An interview conducted with Mr. Kenean Kam7ale, a judge, MAD Court, (MAD 12 March 2018).

³⁸⁰ Ibid.

³⁸¹ An interview conducted with Mrs. Tigist Haile, Judge, MAD Court, (MAD 12 March 2018).

³⁸² An interview conducted with Mr. Getahun Girmashe, Judge, Zala District Court, (Zala District 18 March 2018).

³⁸³ Ibid.

Interviews conducted with judges in Gamo Area High Court reveal that, although the *'family member'* definition of the SNNPRS's RLAUP seems contradictory with the succession laws of the country, it is an acceptable stipulation towards benefiting those who lack opportunity to access rural land in the region.³⁸⁴ On the other hand, data obtained from AMZD court shows that, the courts do not decide land use right to women who are married and have their own means of income, because those women are not satisfy the two cumulative requirements of the law (permanently living with and sharing the income of the landholder).³⁸⁵ However, interview conducted with a judge in MAD Court indicates that, the *'family member'* definition given by the law is very difficult to implement and it seems unjust law so that instead they always refer to the succession law, which put descendants in first stage to succeed their parent's property including land.³⁸⁶ Therefore, there is no consensus among judges in the study area as far as interpretation of *'family member'* stated in the law is concerned. Moreover, what should be underlined here is that the *family member* definition provided by the law is not acceptable by the customary rule of the society. This is primarily because land for them is a source of identity.

During investigation, the researcher has visited many dead files in the study area courts to understand how courts are handling rural land inheritance cases from the perspective of women's legal right to land inheritance. The following are some of cases history the researcher gained from courts:

Case 1: court's decision on certificate of heir in Shelle Mela kebele referred from MAD court:

*In this case, Ms.Yiftusira Engida petitioned to the court that she was born from Engida Gezahegn (her deceased father) and from her mother Ershitu Ergalem. Her father had many properties including 2.5 hectare Banana farming land in Shelle Mela kebele. However, her father died in 1985 E.C. Thus, she asked the court to decide to give her certificate of heir that reveals she is the first successor of her deceased father. The court decided that as per art.842 (1) of the Civil Code of Ethiopia, she is the first successor of the deceased father.*³⁸⁷

However, an interview conducted with Ms. Yiftusira in Shelle Mela kebele reveals that, although the court decided heir certificate to her, she not inherited farm land but she has

³⁸⁴ Interviews conducted with Mr. Terfe Tesema and Chubaro Chundero, Judges, Gamo Area High Court, (Arba Minch 05 March 2018).

³⁸⁵ An interview conducted with Mr. Mitiku Melese (n 375).

³⁸⁶ An interview conducted with Mrs. Tigist Haile (n 381).

³⁸⁷ The case between Yiftusira Engida VS No respondent AMZD court decision civil file no. 23855.

inherited 2 cows.³⁸⁸ To justify the reason, she said that my father had a son born from another wife and he has inherited the farm. From this case, it is obvious that the court's decision over the case is correct because as per article 35(8) of the SNNPRS's Constitution, women have equal right with men to inherit property from their parents. However, due to customary rule prohibition a daughter in this case not inherited land.

The land inheritance **case 2** in *Kola Shara kebele* referred from AZD court is:

The case between Ms. Tadelech Hita Vs Mrs. Dumagn Dorcho and Mr. Chernet Hita was instituted in AMZD Court. The applicant in her statement of claim exhaustively listed her father's properties including land in different parts of the district and requested the court to decide her share from these assets. For instance, her father had 1, 0.5, and 1/4, hectare farming land in different place of Kola Shara kebele, and ¼ hectare farming land in Yeka Kebele within Arba Minch district. The main reason for this suit was that the first and second respondents possessed all properties and prohibited her (the applicant) from using the assets. However, the court while framing the issue stressed on only the house located in Kola Shara kebele and lifted out all farming land claim requested in the statement of claim. After hearing four eyewitnesses, the court decided that the house should be sold by auction and 50% from house sale proceeds should be given to the applicant.³⁸⁹

Obviously, from the spirit of the Region's land laws one could understand that the one who has his/her own income has no legal right to inherit the landholder's land holding right.³⁹⁰ However, in the case at hand, Ms. Tadelech has no her own income to satisfy her basic needs, she is grade 10 student.³⁹¹ From the statement of the claim it is clear that her deceased father had a lot of farming land in different place, but she did not inherited a piece of land at all because of the customary prohibition that women cannot inherit land from her parents, which is considered as a shameful claim by the community. In this regard, she said that I have tried my best to get my share from my father farming land; apart from asking in front of local elders, I also instituted a court action but the court only decided 50% share from the house selling.³⁹² Thus, the writer believe that the court's decision in this regard is not in line with

³⁸⁸ An interview conducted with Ms. Yisftusira Engida (unmarried girl), Shelle Mela kebele, (AMZD, 04 March/2018).

³⁸⁹ The case between Mrs. Tadelech Hita Vs Mrs. Dumagn Dorcho and Mr. Chernet Hita, civil file No 21663/2010 that referred from AMZD Court.

³⁹⁰ SNNPRS RLAUP (n 8), cumulative reading of art.2 (5) and 5(2).

³⁹¹ An interview conducted with Mrs. Tadelech Hita, Kola Shara kebele (AMZD 06 March 2018).

³⁹² Ibid.

the law because since the applicant satisfy the two legal requirements mentioned above, she has legal right to inherit her parent's land.

The land inheritance **case 3** in Shelle Mela Kebele referred from AMZD court is:

Mrs. Melat Bekele married Mr. Eyasu W/kidan and gave birth to a son for him. However, because of unknown reason her husband killed by someone in the kebele. They had three-hectare Banana farmland, which her deceased husband inherited from his parents and a Bajaj they bought during their marriage. After the death of her husband, his sisters (Desalech W/kidan and Abaynesh W/kidan) wanted to take the farmland by assuming that a widow has no right to inherit the farmland. They took the case to local dispute settlers and asked her to leave the farmland. However, she refused to leave the land by saying that even though my husband dead, he left a son, so that his sisters have no right to inherit the farmland. They took the case to AMZD Court and the court decided that since the respondent is farming the land and as she has no any other income, she has the right to use 50% of the land as per 5(2) and 2(5) of SNNPRS RLAUP. The court also decided that since both applicants are the sons of Mr. W/kidan they have the right to inherit 50% of their parents land.³⁹³

A close look at the court's reasoning shows that, partially the court applied the civil code provisions governing succession issues and entitled the applicants to inherit a half share from the farmland on one hand and the SNNPRS's RLAUP on the other hand and hence, entitled the applicant to take the other half. Nevertheless, the SNNPRS's RLAUP on this regard is clear enough by saying...*any person who living with and shares the income of the peasant farmer can inherit the land use right of the peasant farmer/landholder*. From the interviews conducted with the applicants, the writer identified the fact that, both applicants were married and they have their own income.³⁹⁴ Thus, as per the Region's RLAUP art.2 (5) and 5(2), the widow (respondent in this case) should inherit the farmland but the court's decision in this regard is different and it is not in accordance to the spirit of the land law. Moreover, it seems sound to apply here the interpretation rule that the *later law prevail over the former law* since the two laws are in contradiction. However, this all shows that lack of clarity of the family member definition given by the law confuses courts.

³⁹³ The Case between Mrs. Abaynesh W/kidan and Mrs. Desalech W/kidan Vs Mrs. Melat Bekele Arba civil file no.23752 that referred from AMZD Court.

³⁹⁴ Interviews conducted with both Mrs. Abaynesh W/kidan and Mrs. Desalech W/kidan in Shelle Mela kebel, (AMZD 29 February 2018).

The case 4 in Shelle Mela kebele referred from AMZD court is:

*Mrs. Tsehaynesh Tsegaye, who was married and gave birth to 3 children and they had two hectare Banana farmland producing monthly income of 4000 birr. However, her husband remarried another wife and lives with her in Arba Minch Town. He does not provide maintenance to the children and prevented her not to use anything from their farmland for about one year. Currently, she is selling 'Tella' (local soft drinking) and administers her three children. Disappointed by this fact, she applied to court by claiming the court to decide divorce and maintenance to children. However, the respondent refused to appear before court of law and as a result, the court told her that she should arrest him by collaborating with kebele administrative body so that he could be under the control of the police. Nonetheless, she did not find him and the court closed the case because of parties non-appearance.*³⁹⁵

An interview conducted with Mrs. Tsegaynesh Tsegaye reveal that, for about two years she was administering three children by making Tella and her husband is now using their matrimonial Banana farmland with his second wife.³⁹⁶ She also mentioned that she could not cut and sale Banana from the farmland because he warned her not enter into farmland. Thus, from this case, one can understand that Mrs. Tsegaynesh's legal right that married couples have equal right to administer and use the common properties during marriage has been violated.

4.13 The Gaps between the Law and the Practice

As explained under chapter 3 of this Thesis, women's right to land inheritance has legal basis in many International and Regional Human Rights Instruments. Moreover, in contemporary legal set up in Ethiopia, there are many legal provisions, which guarantee women's property inheritance right in general and land inheritance rights in particular. Furthermore, the SNNPRS has its own legal frameworks governing land rights. Among International Human Rights Instruments, CEDAW provides that state parties, inter alia, should take all appropriate measures, including legislation, to modify or abolish existing customs, and practices, which constitute discrimination against women.³⁹⁷ Moreover, the Human Rights Committee provides that women should have equal inheritance rights to those of men when the dissolution of marriage caused by the death of one of the spouses.³⁹⁸

³⁹⁵ The case between Mrs. Tsegaynesh Tsegaye Vs Mr. Birahanu Bolde Civil File No. 23435 that referred from AMZD Court.

³⁹⁶ An interview conducted with Mrs. Tsehaynesh Tsegaye, Shelle Mela kebele, (AMZD 02 March 2018).

³⁹⁷ CEDAW (n 22) art, 3.

³⁹⁸ United Nations human rights committee General Comment No. 28 (n 130)

To fulfill her international obligation, Ethiopia, inter alia, constitutionally stipulated that those customary rules and practices, which discriminate women, based on *sex* are prohibited.³⁹⁹ Nonetheless, although there are some improvements, still the customary rules and practices of the study area clearly contradict with these formal legal rules and the custom entitles only the sons of the landholder to inherit land unlike other properties. The family member definition given by the Region's RLAUP is not accepted by customary rule of the study area and hence, not any person living with and sharing the income of the peasant farmer could inherit the land use right of the landholder. In FGD held with local elders in Menana, Kola Shara kebeles, stated that before some years ago, it is very shameful act for women to inherit land, but, now days, there are some women who inherit land.⁴⁰⁰ They also explained that, still the customary practices privileges men to inherit land.⁴⁰¹ Thus, it could be right, if one concludes that, though some improvements made, yet the customary practices, which favour only men land inheritance, are active and pervasive in the study area. Therefore, there is a gap between the law on the paper and the practice on the ground.

4.14 The Consequences of Land disinheritance on Women

Like any other ethnic groups in Ethiopia, societies in the study area largely depend on their land to satisfy their basic needs. Land is their only viable source of livelihoods for both men and women. That is why the society is always uttering their common proverb '*Biitinne ayaa iisso*' which means as a child cannot survive without breasting its mother breast, the Gamo Gofa society cannot survive without using their land.⁴⁰² Land for them is everything and hence, life would be miserable if no land access for both men and women. Lack of right to inherit land and become landholder has tremendous negative consequences on women. Gender inequalities have a negative impact not only on the lives of women, but also on their children, households, communities and, ultimately, on society as a whole.⁴⁰³ Although women's right to rural land inheritance has legal backup, the presence of pervasive discriminatory customary practices become a constraint to effectively implement their legal right to land inheritance in the study area. In this regard, an interview conducted and FGD

³⁹⁹ FDRE Constitution (n 7), art.35 (4).

⁴⁰⁰ FGD held with local elders in Menana and Kola Shara kebeles, (MAD and AMZD 16 and 08 March 2018 respectively).

⁴⁰¹ Ibid.

⁴⁰² Esayas (n 357) 66.

⁴⁰³ Marianna Bicchiere and Anabel Ayala, Legal pluralism, women's land rights and gender equality in Mozambique; Harmonizing statutory and customary; FAO Legal Papers No.104, (FAO 2017) 9.

held with women in Shelle Mela and Omo Lante kebele uniformly indicate that, women's land disinheritance is the major cause of their poverty and distress from hunger.⁴⁰⁴ One widow in FGD in Shelle Mela kebele said that although such kind of practices has impact on women starting from time immemorial, its consequences on today's women is very serious because in the early time there was respect and communion among the people.⁴⁰⁵

Writer personal observation case from Shelle Mela kebele is:

*Mrs. Meskele Burkato and Mr. Marde Manaya concluded marriage as per customary marriage system in 1987 E.C. They had five children and owed many properties including 2-hectare Banana farmland. However, her husband remarried another wife and prohibited her from cutting of Banana from the farmland by warning her to kill when she found in the farmland. Starting from past 4 years she has been living with her two small children with her parents. Her father died in 2009 E.C and his farm lands inherited by her married brothers. She also said that her brothers had their own farm lands they received through donation from their fathers during his life time. Although her father had farm lands in the kebele, due to the customary practice prohibition, she was unable to inherit a piece of land from her deceased father. She is now daily labourer carrying Banana for others from farmland to the place where Banana loaded on the care. The writer found this woman while she was crying in front of the kebele administrative body by asking them to call and command her husband so that he may provide at least maintenance to the children.*⁴⁰⁶

Legally, women have the rights to inherit their parent's property including land. Moreover, the law provides that everyone has the right to an adequate standard of living adequate for himself/herself and of his/her family well-being, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁴⁰⁷ However, as it is clear from the case at hand, Mrs. Meskele did not inherit any piece of land from her father merely due to customary practice prohibition. Hence, her legally sanctioned rights including the right to adequate standards of living violated due to biased cultural belief that land could not be inherited to women.

⁴⁰⁴ Interviews conducted and FGD held with Divorced women and widows, Shelle Mela and Omo Lante kebele (AMZD and MAD 04 and 07 March 2018 respectively).

⁴⁰⁵ FGD held with Mrs. Melat Bekele, Shelle Mela kebele (AMZD 03 March 2018).

⁴⁰⁶ The writer personal observation in the study area, on 09 March 2018.

⁴⁰⁷ CESCR (n 130) art. 11.

CHAPTER FIVE

THE FINDINGS, CONCLUSION, AND RECOMMENDATIONS

This chapter discusses the main findings of this Thesis that focused on the customary practices and institutions in relation to women's right to rural land inheritance in GGZ, based triangulation analysis of data gathered from different sources under Chapter 4. Moreover, the chapter also summarizes the main points discussed so far in this Thesis and finally provides recommendations meant to solve the problem articulated in present research

5.1 The Key Findings of the Study

The key findings of this study are the outcomes of different interviews conducted and FGDs held with different key informants, personal case stories narrated by some respondents, the writer's personal observations and courts case decisions from six *kebeles* in AMZD, MAD and Zala Districts. FGDs were held with women, local elders, and LAC members and interviews were conducted with women, officers from Gender and Children Affairs Office, Culture and Tourism Office, judges from high and first instance courts and with community chiefs involved in customary dispute settlement institutions. These all are the key data collection ways for these findings. As indicated in the methodology part, the criteria for the selection of the districts are the high/low economic value of agricultural land there and the presence of wide customary practices and institutions especially in highland part of the districts. To compare with low land-value areas, the writer purposefully selected one *Kebele* from Zala district, where land-value is very low. Besides, there are variations in land-values within each district *kebele* based on topography of the land, water access or high rainfall fluctuations. Hence, the following are the key findings the researcher identified depending on the basic research questions.

The legal frameworks including SNNPRS Constitution and RLAUP do not discriminate while entitling land inheritance rights for men and women based on sex. As per the law, they have equal right to inherit land. However, one key finding of the study shows that, in the study area, unlike other properties, customarily land is always inherited to only male lineage, which clearly denies women's right to inherit and own land. Thus, daughters have very little chance to inherit land from their parents. This is because of the following reasons: the families believe that they will have land access from their marital families, if land inherited to

daughters at the time of marriage, her family's richness goes to husband's family, the belief that once family land must always be within that particular family and the believe that they are physical weak to plough the land. The only chances in which daughters can have access to land through inheritance are in the case where there is no boy born to inherit land and will left by the deceased father. Moreover, the custom treats the elder son better than younger sons because the elder son is responsible to take care of the parents, nurture their juniors as well as administer the land of his family on behalf of their juniors.

The other finding is that inheriting land by women is immoral among the GG society, especially in the high land part of the Zone. If a woman inherits land, customarily it is a transgression of customary rule and it is feared that she will not give birth to child or her fertility will dry up. Because of this fear, in the study area, women themselves are usually reluctant to inherit land. The basic justification behind is that if the land is inherited to women, when she marries, the land of her family will be transferred to another family which is locally considered as '*Gome*' which means misfortune or curse because '*family land must always stay within that family*'. Although women's legal awareness towards their legal right to land inheritance is progressive, still majority of women are unaware of their legal right to land inheritance. Because of the fear of *Gome*, social isolation or ostracism and lack of access to court, family division of labor, and economic incapacity to take the cases to court of law are the major practical impediments to realize the land rights for the few who are aware of their legal rights.

The study also finds that the land registration and certification program undertaken in the Zone progressively helped some married and household head women to use land. The photos of married women together with their husband appear side-by-side on the land use right certificate and the household head women are also given land use right certificate in their own name. However, the land use right of those married women will expire when their husband die because of customary prohibition. Both divorced women and widows have no customary right to partition their matrimonial land. This is so because the land, which the husband received from his families' customarily, expected to be within that particular family. In case, where a widow did not give birth to child, immediately after some days of funeral ceremony, she must leave the house and go back to her families with empty hand. However, if her husband passed away and they had children, the woman has the right only to live in their home until her children are grown up. But she could not share the land by custom.

The study also finds that in case where the woman lacks marriage opportunity, as per the custom, her brothers are duty bound to take care throughout her life but she cannot inherit any piece of land from her parents. As a result, among others, food insecurity and lack of access to health facilities and economic incapacity are the consequences of land disinheritance on women.

Moreover, the study also assures that apart from KLACs there are customary institutions involved in land-related dispute settlement such as Gassa Dubusha, Dubusha, Guta Dubusha, Gamo Dubusha, Subo Dubusha, Cima Dubusha and Dabo Dubusha Institutions. However, land inheritance claims are not resolved in these all institutions, meaning from these all institutions only Guta Dubusha and Dabo Dubusha Institutions entertain land inheritance claims. But while resolving land inheritance cases the local elders or family elders by applying their own customary rules such as the Guta Woga usually favour men in land inheritance cases because of their customary rule application, which discourage women not to inherit land. Apart from being a challenge for women's land rights realization, the customary practices and institutions have a lot of importance. Rural people in most part of the country in general and in the study area in particular get access to land based on their respective customs rather than on the basis of state law and most importantly they settle disputes over land through their own customary.

Concerning the gaps between the law and the practice, the study has come up with the finding that despite having pertinent gender neutral legal regimes, the customary rules and practices of the study area clearly contradict these formal legal rules and the custom entitles only the sons of the landholder to inherit land unlike other properties. Moreover, the family member definition given by the Region's RLAUP is not accepted by customary rule of the study area and hence, not any person living with and sharing the income of the peasant farmer could inherit the land use right of the landholder. Some judges in the study area apply the Civil Code provisions governing succession issues instead of applying the *family member*' enshrined in SNNPRS's RLAUP.

5.2 Conclusion

This Thesis clearly indicates that in rural areas including the study area land is the only viable source of livelihood for majority of rural poor including women. Women's access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to an adequate standard of living (source of food, shelter, water and the

right to work). In pre-1974 land tenure history of Ethiopia, there was no concern for women's rights of access to land and this was due to socio-cultural constraints that precluded women from exercising their rights. Although the sweeping land reform measure taken by the Derge called for equitable distribution of available land to the peasantry, the land distribution process, which focused on household heads, has been criticized for being gender-biased and, therefore, failing to ensure equal land rights of women. Similarly, although the 1987 PDRE Constitution recognized the equality rights of men, the land rights of women, other than those heading households and registered in PAs, are only partial or even theoretical. Unlike the past legal regimes, currently, there are many gender neutral legal regimes, which very well recognize and protect women's right to property inheritance in general and land inheritance in particular. These legal regimes include: International and Regional Human Rights Instruments to which Ethiopia is a party member, FDRE and SNNPRS Constitutions, FDRE and SNNPRS RLAUPs and Regulations and National Gender Policy.

Although the SNNPRS's Constitutional and RLAUP provisions have stipulated women's right to inherit land equally with men, due to the presence of discriminatory customary rules and practices, localized arbitration of inheritance cases, lack of legal knowledge and information about their legal rights and the gender biased social attitude, the implementation of women's legal right to rural land inheritance is very low in the study area. Land inheritance by women is taken as immoral by the general society and women who ask to inherit land sometimes result in social ostracism or isolation. As a result, many women in the study area face the problem of food shortage and health problems. In addition, elders/clan leaders in some customary institutions while resolving land inheritance cases, apply their own customary rule, which do not allow women to inherit land by any means. However, amicable local dispute resolution and regulation of society's social, economic and political life and determining local land access mechanisms are the merits of customary practices and institutions in the study area. This study has raised the point that legal stipulation of women's right to land inheritance alone is not sufficient to enable women to exercise their legal rights, rather investigating and identifying the implementation bottlenecks at the local level is equally important to realize their rights.

By way of conclusion, one can say that there are gaps between the law and the practice because despite having pertinent gender neutral legal regimes, the customary rules and practices of the study area clearly contradict with these formal legal rules and the custom entitles only men and sons of the landholder to inherit land unlike other properties. Moreover,

the family member definition given by the Region's RLAUP is not accepted by customary rule of the study area and hence, not any person living with and sharing the income of the peasant farmer could inherit the land use right of the landholder. Furthermore, some district courts are confused to interpret the meaning of the '*family member*' stated by the region's rural land legislation and in most cases; they apply the provisions of Civil Code governing succession.

Thus, today every woman in the study area needs to be free from the discriminatory customary practices and institutions and requires effective implementation of their legal rights that may change their life style and encourage their sustainable development.

5.3 Recommendations

Therefore, in light of the above findings and conclusions, it is recommended as follows:

Firstly, awareness creation to the whole rural society about women's legal equal right to inherit land is the first solution to solve the problem of women in the study area. As indicated in the findings of this study, women's rural land inheritance is considered as immoral act by the whole rural studying people and those some award women who try to realize their land inheritance be ostracized by the family or society. In addition, the idea of '*Gome*' or *curse* is another social consideration deeply-rooted in the whole rural society and their belief that if a daughter inherit land, at the event of marriage, her family's richness goes to husband's family is another society's misunderstanding and results in women land disinheritance. Therefore, to dispel the society's gender biased understandings stated above, we need to create awareness among the whole rural society on equal treatment of their son and daughter with regard to land inheritance. To create awareness to the whole rural society, kebele-based awareness creation programmes should be undertaken. To do so, giving paralegal training to some selected members of the community (to kebele administrative bodies and leader of each 1 to 5 groupings established at kebele level) is crucial because those trained members of the society can easily reach and aware other members in their different meetings.

Moreover, awareness creation to those community chiefs/clan leaders who are solving land-related disputes is the second solution to the problem under consideration. As indicated in the findings of this study, localized arbitration of land inheritance cases by some customary institutions is another challenge for women to realize their legal right to land inheritance in the study area. The FDRE and SNNPRS Constitutions under art.9 (1) outlaws customary laws

practices which contradict with the constitutions by saying no effect or null. The local elders or clan leaders while solving inheritance cases apply their own local norms, which are discriminatory towards women. The awareness creation objective can be achieved by giving free legal aid services to those selected community chiefs and clan leaders who are solving land-related disputes. The free legal aid service can be given by different stakeholders including NGOs working on Human Rights in general and on women's right in particular, Law Schools especially those located near the study area and by legal experts working in the office of Gender and Children Affairs in South Region and in GGZ. Thus, unless the local elders get legal awareness and give fair decision on land inheritance cases, as per the said provision of the law their decision contradict with the constitutions so that it should not have legal effect at all.

Furthermore, legal awareness creation for women themselves is also important solution to solve the problem. One finding of this study is that although women's legal awareness is progressive especially in low land part of the study area, still majority of women in highland areas are unaware of their land inheritance rights as reflected in state laws and as a result, not even ask to inherit land. To achieve this goal, starting from 1 to 5 groupings established at each kebele level is paramount important. In each kebele, the kebeles administrative bodies and agricultural extension experts in collaboration have established 1 to 5 groupings (locally named as *1 le 5 Limat Budin*) with a view to control and facilitate people participation in developmental activities. As observed in the study area, at least one woman is included in each 1 to 5 grouping. Apart from participation in developmental activities, each grouping undertakes many tasks including minor land-related dispute resolution. Thus, the writer suggest that, from each 1 to 5 grouping in each kebele one woman should be given legal training like paralegal training regarding their equal legal rights to inherit land from the parents. Then, those trained women can easily aware others and by this process awareness creation can be effective so that women exercise their legal right.

Secondly, as stated before, in the study area, customarily most often land inherited to male bloodline by denying women's land inheritance. Moreover, dispute settlers in customary institutions favour men to inherit land than women. In such as a case, simply proclaiming that women have legal right to inherit land equally with men is radically insufficient. Both the FDRE and SNNPRS Constitutions under art. 13 (1) state that all Federal and State legislative, executive and judiciary organs at all level shall have responsibility and duty to respect and enforce the Human Rights provisions of the Constitution (chapter three). Women's right to

land inheritance is categorized under the Human Rights provisions of the Constitutions (art.35 (7) of the FDRE Constitution and art.35 (8) of the SNNPRS's Revised Constitution). Thus, based on this provisions, the writer recommend that all three organs of the government should discharge their constitutional duty by enforcing women's right to rural land inheritance. To do so, the three organs of the government should work together by sharing information. To be more specific, the Officers working in Women and Children Affairs Office should play significant role in working with courts at the district level. These courts as they are constitutionally empowered to interpret and apply the law should seriously do so. Therefore, all three organs of the government should take an assignment and enforce the laws so that women can equally inherit land with men.

Thirdly, as explained before, in the study area, there is no agreement among judges as far as the interpretation of family member definition stated under the SNNPRS's RLAUP is concerned. The judges at the district level most of the time apply the Civil Code provisions of succession law and decide the decedents of the deceased person to be the first successor of their deceased father. However, judges in Gamo Area High Courts prefer the meaning of family member stated under the rural land administration and use legislation, hence decide any person permanently living and sharing the income of the land holder to be the successor. The meaning of the phrase '*any person*' stated under the SNNPRS RLAUP is intentional legal stipulation because it is intended to give some plot of land to those who have no land access opportunities. As said before, women are the most landless section of the society in the study area because of the customary prohibition. In such a case, strict application of the land legislation obviously can help women to get land through inheritance. Thus, the writer suggests that district level courts should take and apply the definition of family member provided by the land legislation of the region than the Civil Code provisions.

Through these all suggestions, it is possible to synchronize the gaps between the laws and the practices on the ground as far as women's land inheritance right is concerned. In doing so, all stakeholders such as government officials, general rural society, women, courts and NGOs should actively participate to equalize women with men in land inheritance in the study area.

BIBLIOGRAPHY

I Books

1. COHRE, Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women (Alla Koulorina (tr) and Robert Stuart (ed) COHRE 2004)
2. Crummey D, Land, and Society in the Christian Kingdom of Ethiopia; from the thirteenth to the Twentieth century (Addis Ababa University Press 2000)
3. Daniel Behailu, Transfer of Land Rights in Ethiopia: Towards a Sustainable Policy Framework, (Eleven International Publishing, 2015)
4. Elias Awato et al, "Marriage, Child and Burial Rites among Semen Omo People", Birhan and Selam Printing Press, 1990)
5. Kifle Lemma, "Land Tenure: Legal Aspect and Its Impact on Sustainable Land Use and Food Security (1999)
6. Original Wolde-Giorgis, Land Tenure and Gender (1999)
7. Quinn M and Cochran M, A Guideline to Using Qualitative Research Methodology (2002)
8. Stake R, the Art of Case Study Research (Sega Publication 1995)
9. Tamirat Layne, Ethiopian Transitional Period Economic Policy (Addis Ababa Office of Prime Minister 1991)
10. Yin R, Case Study Design and Methods (2nd ed. Sega Publication 1994)
11. Zenebwork Tadesse, (Ed) (2000). Revisiting Rural Development through a Gender Lens, Issues in Rural Development, and Proceedings of the Inaugural Workshop of the Forum for Social Studies, (September 1998)

I Journal Articles

1. Lorenzo C, et al. 'Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues' (International Institute for Environment and Development 2004)
— — Better Land Access for the Rural Poor; Lessons from Experience and Challenges Ahead (IIED FAO 2006)
2. Cooper E, 'Inheritance Practices and the Intergenerational Transmission of Poverty: A Literature Review and Annotated Bibliography' [2008] London: Overseas Development Institute (ODI) and Chronic Poverty Research Centre (CPRC)

- — ‘Inheritance and the Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations’ (Chronic Poverty Research Centre 2010)
- — ‘Women and inheritance in Sub Saharan Africa: Opportunities and challenges for policy and practice change’ (march 2011)
3. Daniel Weldegebriel, Land rights and expropriations in Ethiopia: School of Architecture and the Built Environment, Royal Institute of Technology (KTH); (Stockholm, 2013)
 4. Daniel Shiferaw et al, Indigenous Practices of Ganta Community in Protecting Natural Resources, Gamo Gofa Zone, (International Journal of Environmental Protection and Policy 2017)
 5. Defaru Debebe and Tuma Ayele, ‘Land Use Patterns and its Implication for Climate Change: The Case of Gamo Gofa, Southern Ethiopia’ (International Journal of Scientific Research and Reviews 2013)
 6. Hadera Tesfa, ‘Women And Land Rights In Ethiopia: A Comparative Study of Two Communities in Tigray and Oromiya Regional States’ (Eastern African Sub-Regional Support Initiative for the Advancement Of Women (EASSI 2002)
 7. Hussen Ahmed ‘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)
 8. Hoben A, ‘Land tenure Among the Amhara of Ethiopia: The Dynamics of Cognatic Descent’ (12(2) The Journal of Modern African Studies, 1974)
 9. Hanna Kebede, ‘Gender Relations in Mobilizing Human Resources in Ethiopia’ (1990)
 10. Ostrom, E., “Private and Common Property Rights”, in B. Bouckaert and G. de Geest, (eds.), Civil Law and Economics, Encyclopedia of Law and Economics, Vol. 2, (Cheltenham: Elgar, 2000); Ostrom, E., and E. Schlager, “The Formation of Property Rights”, in S. Hanna, C. Folke, and K.G. Mäler, (eds.), Rights to Nature, (Washington, DC: Island Press, 1996)
 11. Shimeles Tenaw et al, ‘Effects of land tenure and property rights on agricultural productivity in Ethiopia, Namibia and Bangladesh’ Sustainable Rural Development with Emphasis on Agriculture and Food Security within the Climate Change Setting (SARD-Climate 2009)
 12. Stein H and Tefera Tewodros, ‘From Being Property of Men to Becoming Equal Owners? Early Impact of Land Registration and Certification on Women in Southern Ethiopia’ (UNHABITAT 2008)

13. Teshome Yirgu, Socio-cultural and Policy Related Constraints to Women's Land Right: A Case Study from Gamo Highland, SW Ethiopia' (Humanities and Social Sciences. Vol. 3, No. 4, pp. 149-154 2015)
14. UN Entity for Gender Equality and Empowerment of Women, Gender and Land Tenure Security challenges and Barriers to Women's Entitlement to Land in India, (UN Women)
15. Yohannes Mare and Gebrerufael Girmay 'Rural women access to productive resources: implications for poverty reduction- the case of Gamo Gofa' (Afr.Agric.Res vol. 11 no.4 2016)

III Other References

1. Assefa Fisaha, Customary Dispute Resolution Mechanisms and the Rule of Law (Justice and Legal System Research Institute (JLSRI) Law and Development Series No.1, 2013)
2. Almaz Woldetensaye, Women's Access to and control over Land in the Current Land Administration System in 2 rural Kebeles in Ada'a Woreda of Oromia Region (M.A Thesis) (Addis Ababa University, December 2007)
3. Bicchiere M and Ayala A, Legal pluralism, women's land rights and gender equality in Mozambique; Harmonizing statutory and customary; (FAO Legal Papers No.104, FAO 2017)
4. Crewett W, et al. Land Tenure in Ethiopia: Continuity and Change, Shifting Rulers, and the Quest for State Control. CAPRI Working Paper 91. (International Food Policy Research Institute 2008)
5. Deere D and Doss C, Gender and the Distribution of Wealth in Developing Countries, (United Nation University (UNU)-World Institute for Development Economics Research (WIDER); Research Paper No. 2006/115 2006)
6. Doss C, Women, Marriage and Asset Inheritance in Uganda Paper presented at the CRPC/ ODI Roundtable 'Inheritance and the Intergenerational Transmission of Poverty', (ODI Chronic Poverty Research Centre October 2010)
7. EU Land Policy Guidelines; EU Guidelines for support to land policy design and land policy reform processes in developing countries, (November 2004)
8. Esayas Awash, Indigenous Conflict Resolution Institutions: A Study among the Gofa People of the Demba Gofa District, SNNPR (MA Thesis), (Addis Ababa University, 2015)
9. Framework and Guidelines on Land Policy in Africa; Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, (ECA Publications and Conference Management Section (PCMS) 2010)

10. Hizkale Banbire, 'Transfer of Rural Land Use Rights in SNNPRS: Experiences from Gamo Gofa' (LL.M Thesis, unpublished Hawassa University, 2017)
11. Hirut Girma and Giovarelli R, the Gender Implications of Joint Land Titling in Ethiopia (Brief), (Landesa May 2013)
12. Joseph K, Women's Access to Land in Tanzania, The Case of the Makete District' (PhD Thesis) (Royal Institute of Technology (KTH) 2017)
13. Mebrat Gebreslassie, Breaking the Norms: Gender and Land Rights in Tigray, Ethiopia (MSC Thesis), Norwegian University of Life Sciences 2011)
14. National Policy on Ethiopian Women, (Transitional Government of Ethiopia The prime Minister's Office Women's Affairs Sector September 1993)
15. SIDA, 'Tool: African Conventions, Declarations and Agreements' Women's Economic Empowerment and Gender-Based Violence (2010)
16. SIHA Network Strategic Initiative for Women in the Horn of Africa, Building Universality from Below: A project on customary laws and practices, which impede access to rights for women and girls in Oromia, Ethiopia, (March 2011)
17. Taye Assefa, 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.
18. USAID, 'Women's Property and Inheritance Rights: Improving Lives in Changing Times: Final Synthesis and Conference Proceedings Paper' (2003)
19. United Nations Centre for Human Settlements (UN Habitat 1999)
20. UN Human Rights Office of High Commissioner, Realizing Women's Rights to Land and Other Productive Resources, (UN Women 2013)
21. UN Entity for Gender Equality and Empowerment of Women, Gender and Land Tenure Security challenges and Barriers to Women's Entitlement to Land in India, (UN Women)
22. Yewubneh Yemanebrihan, Indigenous Conflict Resolution Mechanisms Among the Oyda People of Southern Ethiopia: An Exploratory Study (MA Thesis), (Addis Ababa University 2016)
23. Yonas Tafesse, 'Women and Land Rights in Rural Ethiopia: The Case of Wolaita' (MA Thesis), University of Tromso (2011)
24. Zelalem Zewudie, Woga: An Ethnographic Study of Customary Law among the Gamo of Ethiopia, (MA Thesis), (Addis Ababa University 2016)

VI List of Laws

I International Laws

1. Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. G.A.O.R., 34th Sess., Supp. No. 46, U.N. Doc. A/34/36 (1980) (entered into force 3 Sept. 1981)
2. International Covenant on Civil and Political Rights adopted by U.N. GA Res. 2200A (XXI) of Dec. 16, 1966, (entered into force Jan. 3, 1976)
3. International Covenant on Economic, Social and Cultural Rights Adopted by U.N. GA Res. 2200A (XXI) of Dec. 16, 1966, (entered into force Jan. 3, 1976)
4. United Nations Human Rights Committee (General Comment No. 28 on Equality of Rights between Men and Women)
5. United Nations Committee on Economic, Social, and Cultural Rights (General Comment No. 7 on the Right to Adequate Housing)
6. United Nations Committee on Economic, Social and Cultural Rights (General Comment No. 12 on the Right to Adequate Food)
7. United Nations Committee on the Elimination of Discrimination against Women (CEDAW) (General Recommendation No. 21 on Equality in Marriage and Family Relations)

II Regional Laws

1. African [Banjul] Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 211.L.M. 58 (1982) (entered into force 21 October 1986)
2. African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990), (entered into force Nov. 29, 1999)
3. Maputo Protocol to the African Charter on Human and People's Right on the rights of Women in Africa, adopted 11 July 2003 by African Union (entered into force on 25 November 2005) art.21 (Maputo Protocol).
4. Solemn Declaration on Gender Equality in Africa declared by Africa Union General Assembly, July 2004, no.7.

III Domestic Laws

1. Civil Code of the Empire of Ethiopia (Proclamation No. 165) Addis Ababa, 5 May 1960
2. Derge Proclamation No. 31 of 1975; a Proclamation to Provide for the Public Ownership of Rural Lands in Ethiopia
3. Federal Democratic Republic of Ethiopia Constitution, Proclamation No 1/1995
4. Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No.456/2005
5. Family code of the Federal Democratic Republic of Ethiopia Proclamation No. 213/2000
6. Oromia National Regional State Rural Land Use and Administration Proclamation No. 130/2007
7. Revised Family Code of SNNPRs, Proclamation No.75/2004
8. Revised Constitution, 2001, of the Southern Nation, Nationalities and Peoples Regional State, Proclamation No.35/2001
9. Southern Nations, Nationalities and Peoples Regional State, Rural Land Administration and Utilization Proclamation No.110/2007
10. The 1987 Constitution of Ethiopia (EPDRE Constitution)

Definition of Terms

1. *Inheritance*- is the way of transfer of property or means for the transfer of property like land. Inheritance is both a way that individuals acquire assets and that wealth is transmitted across generations. Although there is conceptual controversy on the definition of succession and inheritance, they are used interchangeably in Ethiopia. By definition succession means transfer of all rights, duties and social position of deceased person whereas inheritance is the transfer of only rights to property such as land and house. In this research the writer preferred inheritance as the transfer of property such as land at the moment of death.

2. *Women*- in this study 'women' refer to all categories of rural women including widows, divorced women, and unmarried girls.

3. *Women Land Rights*- is all about the right to use land and is equated with holding rights in our country. 'Holding Right' means the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for' purpose of agriculture and natural resource development, lease and bequeath to his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and' to sale, exchange and bequeath same.

4. *Rural Land*-means any land outside of a municipality holding or a town designated as such by the relevant law.

5. *Customary Practices*- for this investigation, customary practices means traditional norms or customs with widely known common practices and acknowledged by a local community or customary norms, social practices that influence the rights of women to inherit and own land.

6. *Customary Institutions*- refers to social organizations at kebele level which are handling and resolving disputes including rural land-related disputes; and it does not include formal courts at any level.

7. *Customary land tenure*-customary land tenure is a land administration regime consisting of standards, rules, taboos and enforcement procedures vested in identified customary authority such as traditional chiefs or elected village councils.

APPENDIXES

Lists of Interviewees and Focus Group Discussions

These interviews and focus group discussions undertaken with women (married, unmarried, widows, divorced women), LAC members, community chiefs, agricultural extension experts, rural land development experts, women and children affairs office heads and experts, cultural and tourism development study experts and judges from February 24-March 24, 2018.

Appendix I. List of person contacted/interviewed

1. Interview with Mr. Diakon Chollo, Cultural Development Study High Expert in GGZ, February 29/2018
2. Interview with Mr. Mardikiyos Kerba, Cultural and Tourism and Government Communication Office Head in AMZD, March 06/2018
3. Interview with Mr. Teshome Tesma, Land Information Expert in GGZ Agricultural and Natural Resources Department, March 05/2018
4. Interview with Mr. Teshome Eshetu, Arba Minch Zuria district Agricultural and Natural Resource Development Office, Land Administration and Utilization core-processing unit Coordinator, February 23, 2018

5. Interview with Mr. Mekoninn Amogna, Plant Science Expert and Shelle Mela Kebele Agricultural Office Coordinator, February 24, 2018
6. Interview with Mr. Gezahegn Gambore, Land Administration Expert at Mirab Abaya district Office of Agricultural and Natural Resources Developments, March 07/2018
7. Interview with Mrs. Roman Teshome, Kola Shara Kebele Agricultural Office Head, March 03/2018
8. Interview with Mr. Shinkut Getachew, Animal Science Expert, and Ankober kebele Agricultural Office Head, March 08/2018
9. Interview with Mrs. Aster Molla, Seble Expert in Omo Lante kebele, March 10/2018
10. Interview with Mr. Tekeste Tema, Natural Resources Development Expert in Menana kebele, March 13/2018
11. Interview with Mr. Seba Gola, Road and Transport Office Coordinator in Zala district, March 17/2018
12. Interview with Mr. Sintayehu Zinabu, Natural Resources Development Office Coordinator, March 17/2018
13. Interview with Mr. Mathewos Bereded, Shambara Kankara kebele LAC, March 17, 2018
14. Interview with Mr. Haringo Haltaye, Shambara Kankara kebele LAC, March 17, 2018
15. Interview with Mr. Morka Yaya, Shambara Kankara kebele LAC, March 17, 2018
16. Interview with Mr. Zire Zida, Shambara Kankara kebele LAC, March 18, 2018
17. Interview with Mr. Albene Ayele, Eocal Elder in Shambara Kankara kebele, March 18/2018
18. Interview with Mr. Yaikob Yala, Agricultural Office Head in Zala district, March 17, 2018
19. Interview with Mr. Kawte Kaysha, *Zala* district Agricultural and Natural Resource Development office, Rural Land Administration and Utilization Core-processing unit Coordinator March 19, 2018
20. Interview with Mr. Akalu Ayele, Shambara Kankara Kebele Agricultural Office Head, March 18/2018
21. Interview with Mr. Tariku Tinsae, Seble Expert in Shambara Kankara kebele, March 18/2018
22. Interviews with divorced women and widows in Shelle Mela, Menana, Omo Lante and Kola Shara, February 24, March 13, March 08, March 8 respectively
23. Interview with Mr. Ayigida Ankute, Local Community chief in Shelle Mela Kebele, February 27/2018

24. Interviews with Community Chiefs and divorced women in Ankober kebele, March 12/2018, their names were: Elders 1. Mana Anjulo 2. Petros Gobena 3. Alate Arzo, the name of divorced women were mentioned in the footnote
25. Interview with Mrs. Tseganesh Engida, GGZ Women and Children Affairs Department Head, March 06/2018
26. Interview with Mrs. Workinesh Danda7e, Women Representatives in Kola Shara kebele, March 07/2018
27. Interview with Mr. Bezabih Belete, Zala district, Cultural and Tourism Office Head, Mach 16/2018
28. Interview with Mrs. Birtu Girma, Women and Children Affairs Office Head in AZD, March 09/2018
29. Interview with Mr. Kassase Tsella, Gender Mainstreaming Expert in Women and Children Affairs Office in AZD, March 10/2018
30. Interview with Mrs. Terefech Chake, Cultural Development Study Group Coordinator in MAD, March 11/2018
31. Interviews with Mrs. Nestanet Hailu, MAD Women and Children Affairs Office Head, March 11/2018
32. Interview Mrs. Meselech Tinfisa, Zala district Women and Children Affairs Office Head, March 18, 2018
33. Interview with Mr. Tadesse Gelesu, Women Capacity Building Expert in MAD, March 11/2018
34. Interviews with Local elders in Menena kebele, March 14/2018, their names were: 1. Shanko Doja 2. Kalo Kan7a 3. Koshuma Wonta
35. Interviews with Land Administration committees in Shelle Mela Kebele, March 03/2018, their names were mentioned below under appendix II.
36. Interview with Mr. Tsola Tsorko, community chief in Kola Shara kebele, March 04/2018
37. Interview with Mr. Ayisa Nana, community chief in Shelle Mela kebele, Februrary 28/2018
38. Interview with Mr. Bukasha W.Giorgis, community chief in Shelle Mela kebele, February 28/2018
39. Interview with Mr. Dido Dikire, community chef Shelle Mela kebele, March 03/2018
40. Interviews with community chiefs in Shelle Mela and Kola Shara kebele, February 27 and March 06/2018 respectively. Their names were: Shelle Mela kebele, 1.Delelegn Endalcha

2. Gezahegn Asela 3. Yaikob Toga 4. Gebire Deneke, Kola Shara kebele, 1.Aba Dicha 2. Tsola Tsorko 3. Maze Mamo 4. Mitachew Anjulo 5. Mekonin Haresa
41. Interview with Mr. Shanko Doja, community chief in Menana kebele, March 13/2018
42. Interview with Mr. Belete Udha, community chief in Shambara Kankara kebele, March 18/2018
43. Interview with Mr. Burgude Bundure, community chief in Shanbara Kankara kebele, March 18/2018
44. Interview with Mr. Dalaye Shonga, community chief in Shambara Kankara kebele, March 18/2018
45. Interview with Mr. Bonga Boka, local elder in Omo Lante Kebele, March 11/2018
46. Interview with Mr. Tum7a Tura, local elder in Omo Lante kebele, March 11/2018
47. Interview with Mr. Mitiku Melese, a Judge in AZD Court, March 05/2018
48. Interview with Mr. Kenean Kam7ale, Judge in MAD, March 12/2018
49. Interview with Mrs. Tigist Haile, Judge in MAD, March 12/2018
50. Interview with Mr. Getahun Girmashe, Judge in Zala district court, March 18/2018
51. Interviews with Mr. Terefe Tesema and Mr. Chubaro Chundero, Judges in Gamo Area High Court, March 05/2018
52. Interview with Mrs. Workinesh Bunaro in Omo Lante kebele, March 09/2018
53. Interview with Mrs. Wudinesh Togon7a, divorced women in Elgo kebele of AMZD, March 01/2018
54. Interview with Mrs. Tadelech Hita in Kola Shara kebele, March 06/2018
55. Interview with Mrs. Almaz Lambebo in Ankober kebele, March 15/2018
56. Interview with Mrs. Abaynesh W/kidan and Mrs. Desalech W/kidan in Shelle Mela kebel, February 29/2018
57. Interview with Mrs. Tsehaynesh Tsegaye in Shelle Mela kebele, March 02/2018

Appendix II: Lists of FGDs

1. FGD with women in Omo Lante, March 13, March 08. Their names were:
1. Workinesh Bunaro, 2. Banchu Matiyos, 3. Tsehaynesh Tola, 4. Ubi Muse, 5. Geshi Gazumo, 6. Gebaynesh Ganasha, 7. Joki Murkagne and 8. Erbi Gibate
2. FGD with women in Shelle Mela and February 28/2018. Their names were: 1. Birkinesh Emagn, 2. Felekech Lulaye, 3. Banchu Matiyos 4. Abebech Olaye 5. Abebech W/kidan 6. Melate Bekele 7. Desalech W/kidan and 8. Zenebech Adassa
3. FDG with women in Kola Shara kebele, March 8/2018. Their names were: 1. Wudnesh Togon7a, 2. Tirunesh Gezahegn 3. Andare Toga 4. Dumagne Durche 5. Zinash Hita 6. Aster Hita, 7. Abaynesh Adha. 8. Tewabech Tesema
4. FGD with women in Menana Kebele, March 14/2018
Some of their names were: 1. Lamate Chole 2. Tadelech Hanako 3. Alemitu Dara
5. FGD held with women in Ankober kebele, March 11/2018. Their names were:
Abebech Samuel, 2. Tsabite Mesele, 3. Hirut Ali7o 4. Almaz Lamebo 5. Adanech Musa.
6. FGD with women in Shanbara Kankara kebele, March 20/2018.
7. Their names were: 1. Bekelech Bereded, 2. Zufa Tona, 3. Aster Albene, 4. Wudinesh Basha, 5. Lakech Lema, 6. Tirunesh Arega, 7. Bakani Shurche and 8. Yumuli Domaye.
8. FGD held with community chiefs in Ankober kebele, March 13/2018
Some of their names were: 1. Mana Anjulo 2. Petros Gobena 3. Alate Arzo, 4. Yosef waja, 5. Zemach Bonga 6. Zekarias Fantu
9. FGD held with community chief in Shelle Mela kebele, February 29/2018
Their names were: 1. Delelegn Endalcha 2. Gezahegn Asela 3. Yaikob Toga
4. Gebire Deneke, 5. Gibre Deneke 6. Samuel Mana.
10. FGD held with community chiefs and LACS members in Menana Kebele, March 15/2018
Their names were: 1. Chole Chemo 2. Shanko Doja 3. Dandire Dagewu 4.
11. FGD held with Community chiefs in Shambara Kankara kebele, March 19/2018,
Their names were: 1. Belete Udha 2. Albene Ayele 3. Muntsaze Muka 4. Dalaye Shonga, 5. Dagoye Daga and 6. Murte Muka
12. FGD with local elders in Kola Shara kebeles, 08/2018

Some of their names were: 1. Aba Dicha 2. Tsola Tsorko 3. Maze Mamo 4. Mitachew Anjulo 5. Mekonin Haresa

12. FGD held with LAC of Shelle Mela kebele, March 03/2108

Their Names were: 1. Belachew Belete 2. Bekele Birahanu 3. Bukasha W/Giorgis 4.Mebratu Anjulo Ayigida Ankute 5.Dido Dikire 6.Haltaye Hanota

13. FGD held with LACs in Omo Lante Kebele, March 09/2018

Some of their Names were 1. Desta Feleke 2. Mango Haile 3.Goa Geta and 4.Ayissa Nana

14. FGD held with LACs in Menena Kebele, March 13/2018

Some of their Names were: 1. Chole Chemo 2. Shanko Doja 3. Dandire Dagiwu 4. Kassa Kama

15. FGD held with LACs in Shambara Kankara Kebele, March 20/2018

Their Names were: 1. Mathiwos Bereded 2. Haringo Haltaye 4. Morka Yaya 5. Zire Zida and 6. Dayishole Damana.

16. FGD held with LACs in Kola Shara Kebele, March 10/2018

Their names were: 1. Yohannis Kan7a (leader) 2. Abiyot Bizho (secretary) 3. Kedho Ada 4. Abiro Aba 5. Legesse Wonbera 6. Gelaye Gayigo

17. FGD held with LACs in Ankober Kebele, March 14/2018

Their names were: 1. Mardikiyos Chinasha 2. Belay Balta 3. Gadana Arba 4. Deneke Dalcha, 5. Balta Bakalo and 6. Chane Chalalo

Hawassa University

College of Law and Governance, School of Law

LL.M Program in Land and Environmental Law

Appendix III: Interviews and Focus Group Discussion Guides

In-depth Interview Guides for women

Introduction

Dear Interviewee,

Thank you for agreeing to meet with me. I am Bilate Bisare Hawassa University Land and Environmental law Masters (LL.M) post-graduate student. I also have an assister Mr. Amanuel Albene who takes notes for me. Currently, I am undertaking a research entitled 'Evaluation of Customary Practices and Institution in relation to Women's Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo-Gofa Zone*'. I selected you to have in-depth interview for the study purposefully because of your life experience. Please assist me in giving your own personal perceptions, opinions, feelings, experiences and knowledge on how customary practices and institutions regulates women's right to rural land inheritance in your locality, whether you have awareness about women's legal right to land inheritance. Without your participation, the purpose of the study will not be achieved, but your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality. Do you have any question?

Thank you in advance for your kindly cooperation and dedicating your time

For Women

1. Do you have customary right to inherit land in your locality?
2. If no, what is the rationale behind customary prohibition?
3. Have you taken your case to local dispute settlers?
4. If so, how they decided?
5. Why they decided as such?
6. If so, what is its consequence on your life?
7. How the regular courts handle it?
8. What is your recommendation to solve the problem?

Thanks a lot for your time and assistance!

II In-depth Interview Guides for Judges

Introduction

Dear Interviewee,

Thank you for agreeing to meet with me. I am Bilate Bisare Hawassa University Land and Environmental law (LL.M) post-graduate student. I also have an assister Mr. Amanuel Albene who takes notes for me. Currently, I am undertaking a research entitled ‘Evaluation of Customary Practices and Institutions in relation to Women’s Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo-Gofa Zone*’. I selected you to have in-depth interview for the study purposefully with respect to your professional roles in land inheritance cases and your better experience and knowledge on the study area. Please assist me in giving your deep experiences and knowledge on how you handle the inheritance cases. Without your participation, the purpose of the study will not achieve, but your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality.

Thank you in advance for your kindly cooperation and dedicating your time.

1. Do you think customary rules and practices challenges women’s legal right to rural land inheritance?

2. Do you send back inheritance cases to local dispute settlers?
3. If so, based on what criteria?
4. What about local dispute resolution mechanisms? Don't they have any influence on women's land rights?
5. What are the weaknesses in existing land laws as far as women's land right is concerned?
6. Is there any gap between the law and the practices on the ground as far as women's land inheritance right is concerned?
7. What are the challenges in translating laws in practice?
8. Do you have any comment on the issue?

Thanks a lot for your time and assistance!

III Key Informant Guides for community elders

Introduction

Dear Interviewee,

Thank you for agreeing to meet with me. I am Bilate Bisare Hawassa University Land and Environmental law Masters (LL.M) post-graduate student. I also have an assister Mr. Amanuel Albene who takes notes for me. Currently, I am undertaking a research entitled 'Evaluation of Customary Practices and Institution in relation to Women's Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo-Gofa Zone*'. I selected you to have key informant interview for the study purposefully because of your deep understanding of customary practices and your experience in land-related dispute resolution process in your locality. Please assist me in giving your own personal perceptions, opinions, feelings, experiences and knowledge on how customary practices and institutions regulates women's right to rural land inheritance in your locality. Without your participation, the purpose of the study will not achieve, but your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality. Do you have any question?

Thank you in advance for your kindly cooperation and dedicating your time.

1. What is customary land inheritance practice of your locality?

2. Who inherits land as per the custom?
3. Can women inherit land equally with men in your locality?
4. Can daughters inherit land equally with sons?
5. Have you entertained land disputes through local dispute resolution mechanisms?
6. What are customary institutions involved in land dispute settlement process?

Thanks a lot for your time and assistance

IV Key Informant Interview Guides for Land Administration Committee (LAC)

Introduction

Dear Interviewee,

Thank you for agreeing to meet with me. I am Bilate Bisare Hawassa University Land and Environmental law Masters (LL.M) post-graduate student. I also have an assister Mr. Amanuel Albene who takes notes for me. Currently, I am undertaking a research entitled ‘Evaluation of Customary Practices and Institution in relation to Women’s Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo-Gofa Zone*’. I selected you to have key informants interview for the study purposefully because of your experiences in local land administration. Please assist me in giving your own personal perceptions, opinions, feelings, experiences and knowledge on how customary practices and institutions regulates women’s right to rural land inheritance in your locality. Without your participation, the purpose of the study will not achieve, but your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality. Do you have any question?

Thank you in advance for your kindly cooperation and dedicating your time.

1. How you administer land towards securing women’s land rights?
2. How you allocate land use rights among people in your locality?
3. Can women inherit land in your locality?
4. What is the customary practice of land inheritance in your locality?
5. How customary practices and institutions treat women’s right to land inheritance in your area?

VExpert Interview Guides for Rural Land Administration Experts

Introduction

Dear Interviewee,

Thank you for agreeing to meet with me. I am Bilate Bisare Hawassa University Land and Environmental law Masters (LL.M) post-graduate student. I also have an assister Mr. Amanuel Albene who takes notes for me. Currently, I am undertaking a research entitled ‘Evaluation of Customary Practices and Institution in relation to Women’s Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo-Gofa Zone*’. I selected you to get your expert opinion for the study purposefully with a view to gather additional useful information. Please assist me in giving your own personal perceptions, opinions, feelings, experiences and knowledge on how customary practices and institutions regulates women’s right to rural land inheritance in your locality. Without your participation, the purpose of the study will not achieve, but your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality. Do you have any question?

Thank you in advance for your kindly cooperation and dedicating your time.

1. How do you inculcate the local customary practices from the perspective women’s right to rural land inheritance?
2. Does local dispute settlement process influence women’s right to land inheritance?
3. If so, why for?
4. Is there any measure taken up to empower women economically?
5. Are women participating in land administration?
6. What do you recommend to solve the problem?

VI Key Expert Interview Guides for Women and Children Affairs Office Heads and Experts

Introduction

Dear Interviewee,

Thank you for agreeing to meet with me. I am Bilate Bisare Hawassa University Land and Environmental law Masters (LL.M) post-graduate student. I also have an assister Mr. Amanuel Albene who takes notes for me. Currently, I am undertaking a research entitled 'Evaluation of Customary Practices and Institution in relation to Women's Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo-Gofa Zone*'. I selected you to have expert interviews for the study purposefully because to gather additional useful data. Please assist me in giving your own personal perceptions, opinions, feelings, experiences and knowledge on how customary practices and institutions regulates women's right to rural land inheritance in your locality. Without your participation, the purpose of the study will not be achieved, but your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality. Do you have any question?

Thank you in advance for your kindly cooperation and dedicating your time.

Hint- I hope you know that women's right to land inheritance has legal protection. However, practically women not equally inherit their matrimonial or parent's land with men.

1. Then, what do you think the reason for this?
2. What is your view towards customary practices towards women's right to rural land inheritance?
3. What measures have been taken to help women to exercise their legal right to rural land inheritance?
4. What do you suggest to help women so that they can exercise their rights?

Thanks a lot for your time and assistance!

Focus Group Discussion Guides for Local Elders and Women

Introduction

Dear participants,

Welcome. I want to thank you for coming today. My name is Bilate Bisare, a graduate student of Hawassa University, (LL.M) in Land and Environmental law. Currently, I am undertaking a research entitled 'Evaluation of Customary Practices and Institution in relation to Women's Right to Rural Land Inheritance in SNNPRS: Experiences from *Gamo Gofa Zone*'. Moreover, today I will hold a group discussion with you on some specific topics in which I am a facilitator and I have one assister Mr. Amanuel Albene who takes notes for me. I invited you to take part in the discussion of customary practices and institutions in relation to women's right to rural land inheritance in your locality by hoping that you have a better knowledge on the issues or you have participated in local land dispute settlement process, and/or you have life experience on the issues. Please freely forward your impressions or opinions on those questions and discuss it in detail. Your participation is voluntary.

Finally, I confirm you that the information that you share me will be kept confidential and be with me and used for the academic purpose only. Moreover, it determines this study quality.

Thank you in advance for your kindly cooperation and dedicating your time;

1. Customary laws governing land inheritance in your locality;
2. Customary institutions resolving land inheritance cases in your locality;
3. Women's customary right to inherit land in your locality;
4. Any customary or traditional practices that facilitate or hinders realization of women's right to rural land inheritance;
5. Social and cultural barriers affecting women's land inheritance
6. The rationale behind customary rules prohibition;
7. Consequences of women's land disinheritance
8. Any real cases you know on land inheritance in your locality;
9. Measure to be taken to enhance access of women to land;

Thanks a lot for your time and assistance!