

Land Tenure Reforms and Women's Land Rights in Plural 'Legal' and Cultural Settings: A Comparative Study of the Arsii Oromo and Dorze-Gamo, Ethiopia

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Abstract

The question of women's land rights in the context of multiple legal and cultural settings has been at the center of academic and policy discourses. This paper focuses on the implications of land tenure reforms for women's land rights in the context of plural legal settings considering Arsii Oromo and Dorze-Gamo cultural contexts. The study relies on ethnographic data gathered from Kokossa district (Oromia Regional State) and Chenchu district, Southern Nations, Nationalities, and Peoples' Regional State. The findings reveal that people in both study sites are aware of state laws and policies that uphold women's land rights. However, women's success in benefiting from legal provisions is constrained by cultural factors, among others, taboos, norms of residence, territorialization of lineages and rules of inheritance. Although social structural issues largely limit women's rights to own land in both cultural settings, the Dorze case seems more complex and detrimental to women's land rights as the Gamo land tenure system is embedded in the indigenous religion that embraces *gome*, a complex taboo system. *Gome*, which embraces taboos related to sex, marriage and descent, effectively limits the right of women to live and work on lands belonging to their patrilineal descent.

Keywords: Arsii, Dorze, land rights, land tenure reform, legal pluralism, cultural setting

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1. Introduction

In Africa, land entails a number of significances in terms of economic, socio-political, cultural and ritual values (e.g., Toulmin and Quan 2000; Kanyinga 2000). Ethiopia, a culturally diverse and economically agrarian society, is a typical case in point regarding these significances of land. Land remains a major base of livelihood for about 85% of the country's population (CSA, 2008). Its role in the country's economy and development is enormous, making it the subject of political/policy and legal controversies. Land also entails diverse cultural meanings reflecting cultural diversity of the country. This, in turn, makes land an important subject in customary law and rules regulating social relations. Although cultures may vary in their notions of land and norms that guide men's and women's access to land, most cultures are said to generally favor men. At both local and national levels, land could be a source of power differentiation and inequality, including gender-based ones. Owing partly to these multiple significances of land, and partly to the nature of the political economy of contemporary African societies, land is often held in-between competing legal systems (state-based and customary ones).

In this regard, land reform policies often attempt to foster gender equality. Apparently, government policies and legislation tend to provide about Women's position and access to resources in an effort to improve their situation "from above", mainly through legal centralism. However, despite legal attempts to ensure women's rights to acquire, own, inherit and transfer property, including land, have been emphasized by state laws and policies (FDRE, 1995, 1997), how these are interacting with local structures and customs on the ground has not been sufficiently explored. The phenomenon of legal pluralism, which the government tends to downplay, could complicate women's access to land in most of the rural Ethiopia (Mamo 2006). In the subsequent section, we briefly analyze conceptual and theoretical issues related to women's land rights in the context of gender power relation and legal pluralism.

This paper aims to assess the state of women's rights to land in the context of legal and institutional pluralism. It examines women's land rights in the context of legal pluralism thereby disclosing a problem encountered by

legislators and policy makers in resolving the complex issues and contradiction between national (and international) norms and values and local customary structures and values (See Akoto, 2013). This research may provide an insight on how future legal and policy reforms introduced to promote women's (and other disadvantaged group's) rights and equality should be framed in view of existing norms and values these reforms seek to counter-how laws and policies could bring about changes sought against competing/resisting systems.

2. Gender power relations and legal pluralism: conceptual and theoretical overview

Theoretical approach in anthropology on the study of gender relations has evolved in the framework of inequality studies. Men's and women's respective positions and roles have been presented in such dichotomous categories as public/domestic (Rosado 1974), nature/culture (Ortner, 1974), and production/reproduction (Edholm et al. 1977). These categories depict that men-women relations constitute relation of domination and subordination. Society assigns different statuses (positions) and roles (expectations) to men and women upon which the gender power relations rest. These value and behavioral patterns are socio-cultural constructs, which influence real social relations, essentially defining rights to resources. Women's lower socio-economic positions relative to those of men have been assumed to be universal, whereby gender constitutes a basis of inequality as it affects access to power, resource and prestige.

This has been forcefully demonstrated in women's access to land among patrilineal or lineage societies in Africa. For instance, Kirk (1999) indicated that indigenous land tenure systems in patrilineal societies in Africa did not provide women with secure land rights. Researchers have also argued that women in patrilineal societies are holders of secondary-rights to land (Hilhorst, 2000; Kirk, 1999). Furthermore, Chevillard and Leconte (1986:84) blamed the social structural elements in these societies for women's lower position. They posited:

All the elements that make up female status in lineage society- the rule of patrilocal residence; the exchange of women; [that] they have no right over the land which they farm [...] form a coherent whole. The pattern of these devices, the way in which they fit together, demonstrates that they have one main objective, namely, the rational exploitation of the female labour force.

Obviously, uncritical use of such Western categories and concepts as exploitation, domination-subordination and 'class' may appear to be problematic when framing the nature of men-women relations in cross cultural perspective (Strathern, 1988, Pine, 1998). However, the fact that women occupy lower position in socio-economic arena, particularly in many of the non-western societies, seems indisputable (Spradley and McCurdy, 2006). That is, "[...] a general gender asymmetry among most cultures of the world in allocation of power and influence", appears apparent (Ferraro 2006: 275).

The link between 'gender asymmetry' and 'power and influence' on one hand, and access to resource on the other hand, is also evident. In this regard, Friedl (2006) argues that: 'access to resource that circulate publicly' or 'access to position that controls the exchange of resources' influences one's position in society, and further predicts that "[as] women gain access to position that control the exchange of resources, male dominance may become archaic." Women's access to and control over land is crucial for improving their status and reducing gender inequalities in this regard.

The above, largely academic and theoretical discussions resonate with contemporary debates in international human rights laws as advanced by human rights activists and advocates, and laws of national governments. Presently, the problem may often be framed in terms of gender equality, violation of women's rights or gender-based discrimination. Conceptualized as such, the issue is debated by applied social scientists, NGOs and the state seeking for intervention to enhance women's rights and position in society. The interventions sought may range from awareness raising (or creating) to legal and policy measures. These interventions often start with illegitimizing traditional norms and values (and associated discourses and practices) deemed detrimental to gender equality, and with a broader goal of anchoring

state-based legal centralism. The actions are based on the assumption, explicit or implicit, that formal laws and policies are superior (more powerful) than the local norms and value, and that they could supplant local socio-cultural structural elements.

However, experiences show that legislative and policy interventions from above, in an environment where customary laws and values already present strongly, end up triggering phenomena of legal pluralism. Instead of supplanting norms and institutions that precede the intervention in many African states, competitions and conflicts between formal laws and customary ones could challenge the efficacy of formal interventions (see Akoto, 2013). While discussing constitutional provision and specific legal reforms instituted in order to empower widows in Ghana, Akoto (2013: 274) argues that widows still face many problems in accessing their rights and the reforms are ‘relatively ineffective’ because of cultural practices and traditions. One of the reasons for weak performance of the intervention is that norms and concepts instituted through legal reforms, “differed greatly from customary laws and norms.” (Akoto, 2013:275).

Legal pluralism is important approach for understanding the socio-legal dimensions of women’s rights in general and their rights to land in particular. Legal pluralism employs a broader definition of ‘law’. It recognizes the existence of a variety of legal phenomena in a given context (see von Benda-Beckmann, 2002). It depicts a scenario where two or more normative orders operate or are superimposed in a given society (Griffiths, 1986; Moore, 1973). It also refers to a framework to examine empirically the interactions among those normative orders (Wardana 2015: 107).

As Wardana (2015) correctly presented, embedded in the concept of legal pluralism is also Scott’s (1998) notion of ‘seeing like a state’, and its dimension of ‘state simplifications’ suggesting “bias towards the state legal system and an assumption that state law always determines the behavior of people throughout the territory of the state.” Attention to legal pluralism puts into perspective this state bias and neglect of non-state legal and normative systems, either contributing or constraining rights in a society.

A wide range of studies on legal pluralism in Ethiopia have been published in Ethiopia. Examples include edited books (e.g. Epple and Getachew 2020; Gebre et al, 2012; Gebreet al, 2011; Pankhurst and Getachew, 2008). Several researchers contributed chapters to the above-mentioned books focusing on customary dispute resolution mechanisms operating in different ethnic-cultural groups of Ethiopia. Most of the studies focus on issues including how customary institutions operate to resolve conflicts such as homicide and the relationship between customary institutions and state legal system. In general terms, some authors noted that customary institutions tend to undermine the rights of women related to marriage related court cases, divorce related settlements, and violence against women (e.g., Getachew and Alula, 2008) and women's property rights (e.g., Muradu, 2020; Gebre, 2012). Few researchers specifically explored the role of customary institutions in protecting women's rights and wellbeing. For example, Getaneh (2014, 2015) explored the role of customary justice institutions in protecting girls and women from gender-based violence such as rape, female genital cutting, and abduction. Teshome (2015) portrayed the limitations of customary institutions and practices in fostering women's land rights. Mamo and Shigeta (2014) also demonstrated how seemingly progressive policies and legal provisions intended to promote women's rights are challenged by local social structure among the Arsii Oromo. As Galanter correctly argued, "every legal system faces the problem of bridging the gap between its most authoritative and technically elaborate literary product at the 'upper' end of the system and the varying patterns of local practices at the 'lower end'" (2005:47). He further notes, 'traditional society is not passively regulated by modern system; it uses the system for its own ends,' (p. 48). That is how legal pluralism works.

This paper has attempted to fill this gap by 1) exploring women's land rights in the Oromo (Arsii) and Gamo (Dorze) customs; 2) examining the implications of legal pluralism for the execution of women's right to land; and 3) assessing the opportunities and challenges women have been facing vis-à-vis their property rights in the context of legal pluralism based on field data collected from the two districts located in two regional states of Ethiopia.

3. Research Methodology

Data for this article were collected primarily from Kokossa district in the West Arsi Zone of the Oromia National Regional State, and Chenchu district in Gamo-Gofa Zone of the Southern Nations, Nationalities, and Peoples Regional State (SNNPRS). Fieldwork was conducted in Kokossa and Chenchu districts. The two districts are located in a cold highland environment. The estimated populations of the two districts (Chenchu 111,680; Kokossa 114, 505) show a slight difference. The proportion of male and female population in Kokossa district was 69,989 and 74,516, respectively while in Chenchu the proportion was 51,307 male and 60,373 female. While higher female population in the Chenchu district may be explained as resulting from male out migration for weaving activities in urban areas, higher female population in Kokossa district may be attributed to polygynous marriage pattern.

Research methods and sources of data: Gender-relations as socio-cultural constructs are explained through cultural logic based on prevailing values and norms of a society. These are expressed through dominant discourses in socio-cultural contexts, and challenged through counter-dominant-discourses in the context of legal and policy frameworks. Such expressions may constitute issues of meaning, beliefs and feelings. Values, norms, discourses and counter-discourses could effectively be approached through qualitative methods. In addition, understanding the current dynamics in women's land rights through formal and quantitative approach may not adequately portray the reality on the ground because of people's tendency to report what is 'expected' in the context of state-based dominant legal and 'rights' discourses, despite the inefficiency of these laws on the ground due to challenges from customary laws and institutions. We focused on personal narratives and story-telling which enable ordinary people, particularly those who rarely act as key informants in their communities, to narrate their lived-experiences in their interaction with customary laws and formal laws. These points and our quest for depth of information convinced us to adopt a qualitative approach.

The data for this article were collected from primary and secondary sources. Secondary sources include empirical research on women's property rights

in general and land rights in particular, conceptual and theoretical materials on gender relations, and government policies and strategy documents. These are important to examine discourses and practices related to women's land rights, women's awareness of policies and legal provisions, and the practical implications of these documents for women's land rights. The bulk of the data, however, emerged from primary sources: rural Arsii Oromo and Dorze-Gamo men and women, relevant government officials, experts and development agents working in Kokossan and Chencha districts.

Diverse methods were employed to collect data from the two study sites. Semi-structured interviews with open-ended questions had been used to conduct interviews with ten key informants (5 men and 5 women) in each research site. Three focus group discussions in each site (one male only and two female only), were undertaken to explore the interaction between customary and state-based laws and institutions, and to examine whether women have benefited or not from seemingly progressive state laws and policies. Individual case studies were conducted to explore land rights discourses and practices in the context of legal pluralism. Considerable data were also gathered through informal conversations and discussions with men and women at social gatherings such as coffee ceremonies and dispute settlement assemblies.

4. Findings and Discussion

4.1 The socio-cultural and livelihood context of the study

The Arsii Oromo and Dorze-Gamo in the study areas have some socio-cultural similarities, which influence women's rights of property. Their livelihood systems do also display some parallels. In the following section, we present the socio-cultural and livelihood settings of the study sites.

Livelihood and economy: The major economic activities of Kokossa district involve cultivation of cereal crops (e.g., barley and wheat) and *enset* (*Ensete ventricosum*) and livestock raising. *Enset* cultivation dominates the western parts of the district along bordering with the Sidama Regional State. Livestock, however, constitute the backbone of the local economies. The Arsii Oromo accord livestock, particularly cattle, with special value and the

possession of livestock is an indicator of wealth and social prestige. The possession of, and decision-making power over livestock are vital in gender power relations in this regard.

The Gamo-Dorze livelihood patterns embrace farming-weaving mixed economic activities. Farming is dominated by the cultivation of *enset*, barley and wheat. *Enset* seems a dominant food crop in Dorze and other parts of the Gamo highlands. Livestock keeping is not as extensive as is the case among the Arsii of Kokossa district. This could be attributed to such reasons as 1) shortage of grazing land; and 2) the dominance of hoe farming which does not require animal power unlike the case in Arsii Oromo. Weaving, a predominantly men's occupation, is an important economic activity in Dorze where men tend to consider themselves as weavers, rating farming as a secondary option.

The Arsii custom divides household activities into those performed by men and those performed by women. Men are expected to till the land for cereal and *enset* crops, to plant and weed, and to harvest cereal crops. Men are generally in charge of grazing cattle and building kraals. They also sell livestock (particularly cattle and sheep) and grains in sacks of different sizes. Women, on the other hand, process and prepare food for the entire family, clean the house, milk cows, make and sell butter, process *enset*, and sell fermented *enset* at local markets. Traditionally, milk and butter have been in the domain of women, and this is largely the case today.

The Dorze have a well-defined gender division of labor which, in some cases, is sanctioned by strict rules and taboos. In *enset* cultivation, for instance, digging the ground and planting *enset* seedlings is the role of men. Women enrich the soil fertility with manure, harvest and process *enset* for consumption. Men hoe the plots for cereals, sow the seeds and thresh the harvest. In addition to treating farm plots with livestock dung, women are engaged in weeding, harvesting and carrying the harvest to the homestead. In general, women's involvement in crop cultivation and farm management is prominent in Dorze households since a considerable number of young men stay in distant urban areas as migrant weavers.

Social organization, relationship and religion: The Arsii Oromo practice exogamous marriage, at least at the clan level. Polygyny is commonly practiced, as it is permitted by both tradition and Islam. Clan is the most encompassing functional level of social organization. Under normal circumstances, clans are territorial. Arsii Oromo socio-cultural life is characterized by patrilineal descent and inheritance, patrilocal residence patterns (Mamo 1995; Mamo & Shigeta, 2014). The family is the basic unit of resource holding and decision-making. However, power within the family is not evenly distributed among members. The dominance of men in economic, legal, and political spheres is apparent. The husband is the breadwinner and dominates decision-making over major resources, such as land and livestock.

Similarly, the Dorze-Gamo culture in general is dominated by a patriarchal structures, discourses and practices. Men control political and ritual statuses and dominate the ownership of key resources. Land is owned by men and inherited through the male line. Inheritance of land is open to sons, in the absence of sons, to other male relatives. Descent throughout the Gamo area is reckoned through male's line. Residence pattern follows patrilocal rules and polygyny is a widely practiced type of marriage.

Dispute settlement settings are largely dominated by men in both districts. *Jaarsa or jaarsa biyyaa* (elders of the community) are important actors among the Arsii and so is *dere chima* among the Gamo. Gamo's *dubusha*, which refers to a community assembly and the assembly site as well, is structurally equivalent to Arsii's *yaa'a* (assembly) or *battala yaa'aa* (assembly site). *Yaa'a* can also refer both to people's assembly and assembly site as well. Gamo's *dere woga* (law of the country) is conceptually equivalent to Arsii's *seera* or *seera ambaa* which can be defined as customary law or people's law. These customary institutions are dominated by men and symbolically privilege elders in both cultures. For example, women are allowed to participate in *dubusha* assemblies only when family and women's issues are discussed. In such circumstances, women sit at the edge of the *dubusha*, occupying the left (*garsabaga*) and down (*hadirsabaga*) section of the assembly place. Men speak standing at the center of the assembly place while women speak being seated at the edge.

The Dorze are predominantly followers of Ethiopian Orthodox Tewahedo Church. Alongside Christianity, the *gome* institution, which embraces hundreds of taboos that regulate human behavior, plays a central role in Dorze-Gamo culture and indigenous religion (Getaneh, 2014). According to the indigenous belief, the transgression of taboos would lead to pollution, which unless cleansed through ritual(s), would bring about misfortunes. *Gome* regulates human-human relations. The Arsii Oromo, on the other hand, follow Islam. Traditional Islam in the past tolerated customary practices and beliefs at large. Observations in Kokossa reveal that recently tendencies exhibit dynamic religious discourses and practices, including some form of religious reformation. As a result, in contrast to Dorze, customary beliefs are being discouraged in the Arsii context.

4.2 Women's property rights in the context of legal pluralism: Discourses and practices

Three major sets of questions were presented to the study participants. The first set of questions regards what the customary laws say about women rights and access to land in their different stages of development: as a daughter, as a wife, as a divorcee, as a widow or as a wife being inherited upon the death of the spouse. The second set of questions focused on people's awareness about women's land rights in the context of state laws and policies. Third set of questions aimed at examining how customary laws and values and state laws/policies interact at the grassroots level; and how women approach these settings and make use of them to maximize their access to and control over resources such as land.

Under stable family life, discussion of rights of men versus women to land made little sense for study participants as the land is mainly used for common purpose of securing household livelihoods. Both societies being largely subsistence farmers, the issue of land right in men-women dichotomy becomes an issue when inheritance, separation or divorce scenarios are taken into account. That is why we have focused on scenarios other than land in the context of normal family life. To achieve this purpose, we have explored the responses of the study participants to the following questions: 1) Do the culture of the study population allow

women to inherit land in their place of birth or get it as a gift from parents; 2) Does a widow has a right to inherit her deceased husband's land? 3) Do women have the right to have a share from family land when divorce happens?

4.2.1 Women's rights to inherit or receive land as gifts from their parents and to live upon it

Among the Arsii Oromo, for a woman to inherit land from her father and have it in her name is a possibility but not a norm. This is effectively constrained by exogamous marriage rules and patrilocal residence rules. This is further complicated by clan territoriality. According to informants, a father can give a plot of land to his daughters, particularly to his favorite one. Indirectly, a man may also give a plot of land to his favorite son-in-law to build home and settle on such a land. Informants pointed to cases of son-in-laws living among the lineages of their father-in-laws for decades. Some informants claim that there is no customary law which explicitly forbids women from having or inheriting parents' land, get married and reside within the territory of their clan of birth. The only problem may be psychological and social that the husband may feel an outsider, as someone in a place where he is not supposed to be and being transplanted from one's clan to live among his in-laws. Others would like to be more specific, pointing to issues that practically make such a practice difficult. The following excerpts indicate these points of view.

It is not prestigious for a man to settle among his in-laws. It is not desirable for a man to settle outside of his close relatives (*aanaa-dhaala*). *Galaa* [someone who comes in, an outsider] is not respected. He may reside and work on a land among his in-laws but may not be comfortably participate in many of the social occasions. Being an outsider in his in-laws' clan, he may not enjoy many of the status enjoyed by the members of the host clan.

The term *galaa* has a negative connotation in the Arsii cultural context. It is a term of reference rather than that of address. *Galaa* refers to individuals who reside among groups other than their lineage or clan. The meaning of the term, which ranges from 'outsider', as its literal meaning,

to ‘one who comes in’, suggests that *galaa* is someone who takes a refuge in the territory of another patrilineal descent group or clan. It thus suggests weakness, dependence and being out of place.

The woman may also not pride herself of living in her natal village. Being at her place of birth after marriage, she remains an ordinary woman, who fails to enjoy statuses she could have enjoyed in her husband’s clan. Thus, unless forced by circumstances, such as shortage of land in her place of marriage, or special relationship with her father, women prefer to establish marriage life at places far away from the village in which they grew up. A study participant reported that:

An unmarried girl has no problem using her father’s land, if she wishes to do so. Upon marriage a woman joins another clan. For this reason she can’t inherit land from her father since it is her brothers’ right to do so. While a girl marries and moves away, sons have nowhere to go. Yet, a father may give a land to his favorite daughter. So not all daughters of a man can get land from their father.

The above excerpt suggests the difficulty for a woman/daughter to inherit land from her parents. Inheritance as a matter of right is more difficult and constrained as compared to receiving land from relatives in the form of gift or temporary land use grant. Even receiving land as a gift may not be easy for a woman. The strongest challenge comes not from her parents but from her male siblings or her father’s heir. However, a woman may receive plots of land from parents while they are alive. The possibility for a woman to inherit land is not absolutely blocked but extremely limited. One informant in Bokore *kebele*, Kokossa district, pointed to three cases from neighborhoods in his own sub-lineages regarding these possibilities. He said:

It is difficult for a woman to inherit land from her father. But she can get it as a gift. If she is a strong woman with great social relation, she can work and live on the land after marriage. In my neighborhood, there are three of ‘our daughters’ who have been living among us. They got married and had children. The first has been living here for over 30 years. Her father gave the land to her as

a gift and her brothers have also supported her. The second one has been living among us with her husband on the land of her late father for about ten years now. She also got children and so far faced no problem from her uncle [her late father's heir] and her younger brother so far. The third woman was a widow. Her late husband didn't have sufficient land in his clan. She has moved to her village of birth after her father gave her some land.

Other similar cases where women received land from their parents, get married and settled on the land in their clan of birth were reported in Kokossa district. These cases indicate the existence of some flexibility in the norms guiding land inheritance and couple's place of residence after marriage. Other factors could also influence these issues. Another informant pointed to the norms of social relation between in-laws as one of the factors influencing women's permanent residence in her clan of birth after marriage. He said:

The relationship between in-laws is special. It is delicate and sensitive. It is full of mutual respect (*kabajjaa*) and fear (*sodaa*). It is also sacred (*wayyuu*). These are better protected (exercised) when in-laws live at distance. It is a challenge for a man to settle among his in-laws. For a woman to have a land and settle in her place of birth is also difficult. She may not receive a respect she would receive being in her right place [among the clan of her husband].

The data presented above show complexities in the Arsii custom for a woman to have land and settle in her natal village or her clan of birth. Social structural issues vis-a-vis partilineal descent rules, patrilocal residence rule, clan territoriality, in-laws status/ritual relations and related expectations, are at the center of such complexity.

The situation in Gamo seems generally similar. Here too a woman can in principle inherit land or receive it as a gift from her father. But having a permanent and full-fledged life on such a land is practically constrained by a complex taboo system (*gome*). The following dialogue with a Gamo male key informant (an elderly man) clearly present such a scenario.

Does the Dorze culture allow women to inherit land from their parents?

Yes! A man could give land to his daughter... even to a married one; but on a condition that she must give back the land when she gets older.

Does it mean the land should be returned to her natal family?

Right... [Nodding to the researcher] because the father would give her the land saying: "Do not give the land to your children when you get older. Use the land and give it back." So, the woman uses [cultivates] the land and gives it back to the family.

It means that the woman cannot transfer the land to her children; is that so?

Yes! She cannot do that! She cannot!

Well! Let me ask you. Let us assume that you have given a plot of land to your daughter. Do you allow her to get married and live on the same land with her husband?

No! No! This can never happen in our land! Never! It is *gome* [taboo] for the family!

Why? Why is it gome?

The *wog* [customary law] does not allow her to live on her father's land with her husband. She cannot inherit land where the house of her relative [e.g., father, uncle, or brother] is erected. She may do that if she gets land located far away from her father's homestead, however, this has never happened

What is the problem if she establishes marriage, bears children and lives with them on the land?

It involves a big problem. It is something that had never happened in our country. The *tus* [a wooden pillar of the traditional house] is standing there! The clash between one *tus* and another is not good. The two *tusata*, a wooden pillar of a Dorze traditional house, [belonging to different descent groups] envy against each other! They detest each other! People would label such a woman as 'the one who has brought her husband to her father's land!' They would also say,

'Let her use the land given to her and live elsewhere with her husband.' [Because of this] a woman would never bring her husband to the land where she was born. It is a taboo! It is *wolqa gome*! It would bring misfortunes to the descendants of her father.

That means a woman has no chance to inherit land from her father on permanent basis?

She can. For example, my daughter can do that if I have no male children and if I give her the land before I die. This is not *gome*. Whatsoever, she would not bring her husband to that place.

This conversation reveals the strong relationships between descent rules, sex taboos, and land rights and their implications for women's land rights. Women are marginalized from land rights in their natal family as they are considered as outsiders from their patrilineal descent groups. They may get land rights in some situations, particularly in the form of gift; when they receive land as a gift, their privileges are restricted to land use rights. Moreover, women land rights are circumscribed by taboos related to sex and marriage. The following activities are deemed to be severe breaches of taboo for a Gamo woman: 1) establishing marriage on the land she receives from her parents' or relatives' or the land inherited from them; and 2) practising sexual intercourse and give birth on the land belonging to her patrilineal descent group.

Although women are marginalized from land inheritance and ownership rights, they may get access to land in some circumstances. If it happens, it would be difficult for the woman to live with her husband on her deceased father's land. However, there are exceptional cases anomalous to what people widely practice in a given cultural setting. The next story narrated by a study participant illustrates the cultural barriers to enjoy practical benefits from the land transferred from a father to his daughter.

A man had no sons but only a daughter. His wife had died several years ago. When he got older he became weak and sick. His daughter was not married for years. She lived with her father managing the house, taking care of him until his last days. As most

of his relatives withdrew their support, her father relied on her support for years. The man was impressed by his daughter's good manner, patience and persistent care and support. Finally, she inherited the homestead and the land in his dead bed. Contrary to the custom of the land, he also allowed her to get married and live on the land with her husband. His daughter stayed single for years partly because men were not interested in moving into her place she inherited from her father because such a marriage is labeled as *gome*. After staying single for years, she got married to a young man from another ethnic group and started living with him in her father's homestead. However, the marriage encountered problems for various reasons. First, it was not recognized as a culturally proper marriage by the community. As a result, the woman was subject to gossips as she was the only woman who has brought her husband to her father's land. Second, her husband got seriously sick and stayed in bed for years. People associated his sickness as a misfortune caused by *gome*. The couple did not receive social support. The marriage came to an end as the sick man was taken away by his relatives.

This story is widely narrated as a practical example of the implications of violating taboos related to land, descent, and marriage. Participants of the study claimed that the marriage was not successful because the woman established the union on her father's land and homestead. Her action was regarded as a grave transgression as it led to mixing of bloods of different descent groups which, according to local narratives, envy against each other and destroy one another. Participants asserted that this kind of marriage had never been practiced in Dorze. The man had entered into the above-mentioned marriage because he was an outsider to the Gamo culture. He suffered from sickness and eventually the marriage came to an end just because his wife had violated the taboo. What is important about this case is the extent to which people are interested in it and passionately narrated it. It seems that the intension of the informants was not to talk about a courageous father who dared to deviate from the established norms by allowing his daughter to inherit his land and homestead. It rather seems to warn others about the grave consequences of transgressing taboos that are considered to have severe implications when they are violated.

4.2.2 Widow's rights to inheritance of the deceased husband's property/land

As indicated in the socio-cultural background section, the Arsii Oromo culture encourages the practice of widow inheritance (or *dhaala*). Upon a husband's death the widow is inherited by the heir, that is by one of the deceased man's brothers, usually the youngest brother. The heir could also be a classificatory brother from the same sub-lineage or lineage. Other than this, the custom does not allow the widow to marry a man from another clan and live on her deceased husband's land. The practice involves moral and social responsibility for descent continuity. The heir is supposed to inherit both the woman and the wealth, including land belonged to the deceased husband. The heir works on the land, manages the property, and brings up young children thereby ensuring the continuity and prosperity of the descent. Ideally a respected heir is the one who makes the property and 'homestead' (*qe'ee*) of the deceased man flourishes rather than consuming and diminishing it. But, in practical life, the heir would soon run into a conflict of interest, of expanding his power and wealth by controlling over widow's property on one hand, working for two or more households (including his own) and trying to make both equally proposer. This makes the responsibility of the man a demanding exercise that may result in tension between the widow and the heir (his family). Such a tension could be mediated if the woman has grownup children and/or she has support and follow up of her parents. Widow's parent's support and the presence of grownup sons are important conditions for her to maintain the land by herself.

The practice of widow inheritance has recently been discouraged and challenged on two grounds: 1) the threat of the spread of HIV/AIDS and 2) violation of women's human rights. Some local elders and *kebele* officials have even instituted by-laws, in collaboration with an NGO and government sector offices, making widow inheritance punishable by customary law. In the context of state laws and current human rights discourse, women have also now started challenging the practice

particularly when the would-be heir is not a person of their interest or not up to their expectation (see Mamo 2006; Mamo & Shigeta 2014). Sometimes, they succeed in their efforts; other times they may fail to succeed amid legal pluralism. It is in this context that we present the following case study. This was a story of a widow who run into complex trouble for refusing to take a man as an heir (a rightful heir according to custom) and opting for another man of her choice in one of the *kebeles* in Kokossa district.

Case 1

Widow/women-in-between

Upon the death of her husband, the woman refused to take in a man who was the rightful heir of the deceased man according to the custom of widow inheritance. She instead took another person who was not in the category of potential heirs. The ‘rightful’ heir was furious at her action. His sub-lineage was also outraged by the woman’s act. Consequently, he threatened her with forceful eviction from the land and home of her deceased husband. He dispossessed her of livestock and destroyed some of her crops, making life miserable for her. The local social structure couldn’t help the woman because she somehow violated an established customary norm and practice.

The man she opted for a new partner could not interfere on her behalf because, he is considered himself culturally an intruder, and didn’t have the courage to do so. He could only assist her to pursue the case in court. When she took her complaints to the district police and court, it never moved forward. It came out that the defendant’s son was a police officer in the district and that he was the one ‘killing’ her case. She finally managed to take her case to the Oromia Supreme Court. She managed to get some favorable decision. The police officer was temporarily relieved from his job only to return to it soon. To this day, nothing happened to the accused and she couldn’t get her property back. (A land and property dispute case as described by an expert working in Woreda Women’s Affairs Office, November 2013, Kokossa).

This case indicates the overwhelming significance of property in such circumstances and the vulnerability of women’s rights upon the death of

the spouse. The fact that she managed to push her case for a long time and as far as to the regional state level indicates her awareness of the law. The support she received from her male partner was also the other factor that assisted her to push the case to level of Oromia Supreme Court. Otherwise, she could have given up the case earlier at the lower level of state structure. The outcome of the case also indicates the power of custom and social structure to evade the decisions made by state authorities inefficient.

This case also suggests that the custom of inheriting a widow seems deeply associated with interests in wealth and property. Another important implication of this case is complications that legal pluralism could potentially create. In this case, we have seen that the local custom is overlapping with the formal system which is reflected in the behavior of actors (the police officer in this case) who had a divided allegiance to multiple normative and institutional settings. Under such circumstance, the formal structure is of no help for women because it is filled with actors connected culturally and socially to the local social structure. But this should not be taken as a dominant case scenario as there are women who succeed in court.

Widow's rights of inheritance to her late husband's land is no less complicated among the Gamo. The difference is basically the guise under which such complication is explained in the context of local custom. Women get access to land through their husband when the latter is alive. The general operation of the norms guiding widow's access to land among the Gamo is almost identical with that of the Arsii as presented earlier. As was the case among the Arsii, the Gamo practiced widow inheritance, which somehow granted widow's continued use of land of her late husband under the control of the inheritor. Nowadays this practice is said to be rarely practiced, and a woman has to either leave the land behind and get married somewhere else or give up re-marriage and continue living on her late husband's land.

Informants presented widow's rights and challenges in the usual 'yes...but' style of explanation. The following excerpt of the discussion with an elderly informant is a good representation of responses of several

informants to our question whether a widow has the right to inherit land of her late husband in Gamo custom. He said:

Yes, a widow can inherit land upon the death of her husband. Particularly, she can inherit land and continue living upon it if she has grown up sons. Her parents' side may come and take her away for a while to help her forget the death of her husband. She then returns and lives on the land. But, she cannot enter into another marriage even after several years of her husband's death. She has to refrain from doing this since such action constitutes *wolqa gome* (severe violation of taboo) resulting from the mixing of bloods of different descent groups. Bringing in an outsider to her late husband's land is considered as erecting a new rival *tus* to the existing *tus* that represents her ex-husband's descent group.

This suggests the principle that a widow has the right to inherit her late husband's land doesn't grant her full rights to make important decisions in her life. For one thing, her rights seem partly dependent on the presence of grownup sons. Participants narrated stories of widows who were forced to move back to their natal family after the death of their ex-husband just because they had no sons. This makes a woman's access to land fragile if she has no son(s). For another thing, her inheritance and continued use of the land could only be fully granted if she has no plan for re-marriage. This is explained in the context of *gome* which is embedded in the indigenous belief system. Re-marriage of a widow in the homestead of her deceased husband is deemed to be devastating for her safety and the safety of her ex-husband's lineage. In the context of Gamo belief system, even a potential partner to a widow is discouraged from joining her and making living on such a land as he would equally be concerned for his safety. The fear of pollution associated with violation of *gome* resulting from bringing in an outsider into her late husband's lineage or hearth practically constrain a widow from inheriting her deceased husband's land and live their getting married.

In both cases, competing parties were apparently introduced. In Arsii, member of one lineage is vigilant against members of another lineage

coming and settling among them through women. Hostile close relatives and fear of violence discourage an outsider coming into a widow's home/land. In Gamo, there are competing or rival symbols (the *tus*) and spirits that accompany 'outsiders' coming to a certain family through women. The essence is similar- the Arsii case is direct-competing men are depicted as such and fear of social conflict is expressed; while the case of Gamo seems indirect in disguising competing men in competing spirit and fear of divine conflict/punishment.

4.2.3 Women's rights to land upon divorce

Divorce (*hiikkaa*), literally "untie" or "release," once considered a rare or non-existent phenomenon in the Arsii culture, is becoming a reality in the context of women's rights and state laws. It requires the annulment (*rakoo dhiqaa*) of the most fundamental marriage ritual in the Arsii culture called *rakoo*. Thus, divorce involves *rakoo dhiquu* ("cleansing *rakoo*") or *rakoo haquu* ("erasing *rakoo*"). Currently, request for divorce often results from disagreements of various sorts. It is also often taken before the district court. The court can summon (and coerce) an accused man, ordering him to accept the divorce request filed by his wife. The court can also transfer the case to the local elders, who seek reconciliation between the disputants or facilitate divorce if attempts at reconciliation fail. When disputes end in divorce, women often attempt to get a share of the property, although, according to informants, they rarely succeed. The following factors were mentioned as contributors to women's limited opportunities in this regard: clan territoriality, the strong patrilineal ideology, the departure of women from their ex-husbands' villages following divorce, and the lengthy and complicated litigation process, in which women often occupy a disadvantaged position.

The District Court and the Office of Women, Children, and Youth Affairs at the district level play pivotal roles in assisting women when claiming share of property from their ex-husband. Local people's perceptions of this development were mixed. Some male informants complained that women's rights were abused or misused by some men, who encouraged women to seek divorce with the aim of promoting their own interests. For

instance, a dispute between a husband and his in-laws may lead a woman to sue her husband and get some property from him, which would eventually benefit not the woman but her male relatives.

This scenario was mentioned by some informants as a potential threat to social harmony and family stability, rendering modern divorce as a struggle between men, not merely as issue of women's dissatisfaction in marital relations. Some male participants also blamed state institutions for favoring women and tending to accept allegations presented by women against men at face value. Women informants were not generally enthusiastic about discussing divorce. However, some women argued that state institutions were male oriented and that women rarely defeat their male opponent in court. Discussions about divorce elicited mixed reactions; divorce was viewed as an opportunity for women to terminate their marriage through the legal process; as a way of preventing women from using this opportunity to share marital property, especially land and livestock; as a threat to social cohesion; and as an abuse of women's rights due to the competition or rivalry among men that the process may entail (see Mamo and Shigeta 2014).

The situation of divorce in Gamo area seems similar. Although historical data from the Gamo setting is very limited, it seems that, at least since the recent past, divorce has been a common practice among the Dorze. Based on a fieldwork conducted in 2004, Getaneh (2006) pointed out that divorce among the Dorze was a widely observed phenomenon. Encountering divorce and remarriage seemed to be a life experience for many men, though they enter into another marriage within shorter time interval when compared to women. Getaneh presented the case of an old informant (about the age of 80 in 2004) who was involved in eight marriages that came to an end with divorce.

Divorce did not involve a complicated procedure and division of family resources in the Dorze context. According to the custom, women do not claim a division of resources, especially of fixed assets such as land, when they get divorced. According to Getaneh (2006), instead of focusing on the division of key family resources such as land, women tend to request upon

divorce for compensation for the labor they invested in their marital home. In most cases, compensations have symbolic value rather than economic significance, given that the *dere chima* focuses more on rituals and blessings when settling divorce cases.

The current situation suggests some changes in this regard. Women in the two study districts, Chenchu and Kokossa, are informed at different levels by discourses related to women's legal and human rights. Now, it is not easy for men to chase their wives away just on the pretext that they do not bear children, as the former could claim division of family assets including land. Women may do this, despite the difficulty to get succeed, to threaten their men so that the latter could know that they cannot easily divorce their wife and get married to another. Getting the backing of their respective district Women's and Children's Affairs Offices, women are in a better position to offer a strong challenge and fight for their land rights.

4.3 State laws, local custom and women's rights: opportunities and challenges of legal pluralism

In both research sites, people's awareness about women's rights is remarkable. Study participants are not only generally aware of the laws and policies in this regard; they are also passionate, and some are quite articulate when they talk about it. Women participants are particularly enthusiastic about state laws, often expressing them as having a role of liberating them. The rhetoric even extends to open condemnation of traditions, and at time accusation of men for denying women equal rights. Some male interviewees also appreciated the laws and policies when the issue is raised in relation to their daughters while others tended to take a different perspective when husband-wife relation over immovable properties (e.g., land) is at stake.

The study findings reveal that state legal and policy provisions and human rights ideas are becoming aspects of local discourses at the grassroots level. The level of people's awareness about right discourses in both sites is impressive. Yet, knowledge of the laws and discourses may not necessarily show whether these are translated into action on the ground. Informants and participants of FGDs varied in their assessment of

improvement of women's rights under the state laws, in the setting of legal pluralism. The responses were not uniform both with and across research sites. Some participants tended to be enthusiastic about the right discourses and practices while others tended to be cautious about changes on the ground. In what follow, we present verbatim quotations representing each of these perspectives. First let's look at an optimist's viewpoints of Dorze participants. The following is quoted from a Dorze young man:

Women are now permitted to inherit land from their parents. People are now aware of government laws supporting these rights. We have been given awareness raising education at various levels. People are now familiar with the equality of women. Our custom discriminated against women. Today, our daughters got a better chance and can inherit land. The law is on their side. There are many women who are challenging men in the court to claim land or inherit land.

A female participant had a similar impression of the present state of women's right in the context of the local custom and state laws. She was critical of women's customary position vis-à-vis women's right and clearly appreciative of the state laws. She narrated:

A woman faced a lot of problems in the past when she gave birth to female children only. Her husband had the right to chase her away and marry another woman... she had no choice... but moving to her father's place... moving away bare handed. Now, however, women could share property with their husband equally [when divorce occurs]... In the past a woman could not give her comment in public meetings. She can do that now. (a 44-year-old woman).

Another young woman commented in the same vein focusing on the improvements she has witnessed regarding women's rights. Her enthusiasm about the progressive features of the state laws apparently led her even to exaggerate some of the claims she made about what she know in this regard. She insisted:

A woman has equal rights to man with regard to land and other properties. She has also the right to learn up to the university level.... It is forbidden to establish a marriage on top of an existing

one [because] it will lead to 15³ years of imprisonment. Meles Zenawi [the late Prime Minister] is the one who introduced this law. (FGD participant)

The above excerpt may tell more about the hopes and legal possibilities than practices on the ground. Yet, people's awareness of the laws and optimism that women could make use of them to defend their right was apparent. People also pointed to actual cases where women used state laws to win land cases in court. Field observations also showed that women went through different channels to succeed in their land claims. While some women go between state and customary institutions in the process of land claims, few women take land dispute cases to the court of law and pursue the same line persistently. However, such women take actions with great care to avoid clashes with their brothers, relatives, and local communities. They do not assume a radical position that may lead them into conflicting situations. The land case pursued by Abayoo, a woman in her late 40s, vividly illustrates this situation.

Case 2

A woman grabbing opportunity: of Success stories

Abayoo has been mentioned widely as one of the brave women who took a land case to the court and won after a lot of ups and downs. Abayoo's brothers live in Addis Ababa and other towns far away from Dorze. Abayoo's reaction was against a male relative (distant relative) who controlled plots of land belonging to her deceased father. As other women do, first she consulted her brothers, learned that they do not have claims on the land she aspired for, and received their advice and support. After preparing a safe ground, she used the *dere cima* to request the man to give her the plots of land. He refused to do that. She filed her case in the *woreda* court and won the case. When her contender filed the case in the high court for judicial review, she moved to Arba Minch town,

³The participant mentioned an exaggerated figure regarding the punishment depicted in the Criminal Code of Ethiopia. According to Article 650 of the Criminal Code, a person intentionally involved in a second marriage union misleading his first partner will be punished "with rigorous imprisonment not exceeding five years", (not 15 years).

about 30 kilo meters from Dorze. As the case had been transferred to different courts at different times, she moved to Soddo town and then to Hawassa city about 100 and 250 kilo meters from Arba Minch respectively. Finally, after years of legal processes, she won the case and took control of the plots of land.

Abayoo was successful for some reasons. First, the man (her contender) was not backed by other male relatives. Abayoo, on the other hand, took wise steps to go forward. She checked that her brothers did not have claim over the plots of land she aspired for, managed to get their morale support ahead of time, and secured their financial backing when she was pursuing the land case in the court of law. She did not bypass customary institutions as well; she first took the case to the *dere chima* before filing the case in the district court.

Seemingly progressive elements of the state laws and policies could be constrained but the long-established tradition and local customs, which constrain both men and women in utilizing the laws, also hamper women's effort to get access to land rights. It was in this context that other informants adopted a guarded approach in their assessment of the situation. When we asked whether women inherit land and settle with their parent in the current context, one of the study participants responded as follows:

Not often... although the law supports them in this regard; although fathers' who don't have sons willing to let their daughters to inherit land, the larger community (close relatives) often oppose this. It is also *gome* for her to settle on her father's land with her husband. So, even if the patirilineages don't oppose, a woman can also fear of the consequences of violating *gome*.

Among the Arsii, informants responded affirmatively to such question. But they would quickly qualify their response by adding difficulties that a woman could face in utilizing or settling on such a land with an 'outsider' husband under the support of state law. As elders put it:

She may disregard the custom and sue her husband; the heir upon her husband's death or her brothers and claim land for herself. When

doing so, she has to bear in mind about her life with her neighbors and close relatives afterwards. Once the case is decided in her favor in the state court; she will have to come back home. The court and the judges won't accompany her. They cannot live with her and her partner. [The informant said the following in Afan Oromo]: 'seerii iyyaa nama hin bayu', 'mootumaan ibidda nama hin kennu', which means: They can't help her in everyday need; in case of a serious need beyond her capacity. (emphasis added)

This is a clear indication of problems inherent in competing systems with competing interest. The constraint a woman would face in the present context of legal pluralism is not one of outright violence per se. It rather is subtle and covert. This could include denial of association and mutual support. It is withdrawal of the informal 'social protection' or social capital so vital for her life in the rural context. This cannot be enforced or changed by law or any law enforcement agency.

Data from both study sites generally suggest that despite people's awareness of women's rights and policy and legal provisions, the implementation of the provisions seems limited for some reasons. For the Gamo, the *gome* trouble continues to constrain the application of legal/policy principle. As Case 3 shows, though women are informed by legal and land rights discourses and practices, they do not exclusively rely on either the state or customary institutions. Securing legal rights to land requires an extraordinary struggle for a prolonged time, years in some cases. Women adopt a flexible and moderate position to achieve their goals. They refrain from aggressively challenging the custom and the positions of male relatives as they know that state institutions do not adequately enforce the law that stipulates gender equality in land rights. They are also aware that local institutions (e.g., *iddir* in this case) are not completely against women's land rights; rather they have rooms for supporting moderate claims of women. The following case illustrates this reality:

Case 3

Securing rights to inherit parent's land by challenging custom in the context of law; refraining from settling on the land fearing custom in the context of taboos

Tsehay is a 54-year-old widow living in her husband's compound with her children. She narrated her long struggle to reclaim her late father's land from a relative of her father. Her two brothers live in Addis Ababa, away from home. She started claiming plots of land after consulting her brothers. First, she applied to Woreda Agricultural Office (WAO) which referred the case to the *kebele* administration. When the latter failed to settle the issue, she reported the status of the case to WAO's representatives who came to Dorze for a meeting. The representatives passed on the case to the *dere chima* [council of elders]. The latter could not resolve the case either. Since her opponent was a relatively wealthy man who could influence the elders and *kebele* leaders, her case was dragged on for over eight years. Although the man snatched the land from her, she kept on paying government tax in her late father's name. Eventually, Tsehay took the case before the *iddir* to which she and her opponent are members. Initially, the *iddir* also failed to solve the problem as its members were divided into two groups. The first group, mainly consisting older men and close relatives of the man, argued that she has no right to inherit land based on the Dorze custom. The second group dominated by young people and women supported her land claims. Moreover, the *iddir* could not hear the case in the presence of the two parties as the man continuously refused to appear before the *iddir* meeting. Annoyed by his refusal, the *iddir* members put their differences aside and made decision on her favor. When the man refused to return the land to her, the *iddir* threatened him with expulsion from membership-which could have further consequences including barring people from engaging in business with him [the person has a business at Bodo, a small town in Dorze *dere*]. Finally, he agreed to return the land. She received three other plots in 2003; one plot in 2004.

The continuation of the above case revealed that women's claims, and struggle are not confined to promoting women's land rights. Women also fight for their brothers' land rights and future lives. Tsehay, whose case is narrated above, described her intentions in this way:

My desire was also to reclaim the plots of land on behalf of my two brothers who lived in Addis Ababa. I fought so that the man [her opponent] would not register the land in his name and make it difficult for re-claiming. I did that to defend my brothers' interest too...I use the land now, I would give the land to them if they come back home...I don't want to see my brothers come back from Addis Ababa and become landless when their father's land is being used by another person.

Tsehay's narrative also reflects women's understanding about the practical aspect of their land rights in their cultural setting. Though women gain land right by the decision of the state court or the *derechima*, they know that the rights are bounded by taboos, and that the land they received would eventually go to male siblings. When asked whether she would establish her own home, have a husband, and live on the land she received (her deceased father's land) in case that her brothers fail to come back to work and live on the land, Tsehay replied as follows:

Presently, I and other women are well aware that we have the right to claim our parents' land and live upon it. The law allows us to inherit land and establish our life upon it; yet we still are afraid of the *gome*. If I ignored it saying that the 'law allows me to do so' and built a house and get husband to live upon it, myself and my husband would die. It is dangerous because of *gome*.

This narrative portrays an ambivalent position of women amid an interest and opportunity to use formal law on one hand, and fear of and/or respect for local norms and belief systems on the other. Interest in formal law being associated with material gain while belief in local norms/taboo is associated with their general wellbeing (health and prosperity). It would be difficult to risk health and general wellbeing for the sake of a piece of land. It is also clear that women do attempt to maintain descent line and make their father's descent to continue rather simply using the opportunity and claiming the land when male children are not around. This case reveals one important point: winning a case is not the ultimate target; there are other issues considered. The next case drawn from the Arsii setting shows that winning a case is a matter of perspective.

Case 4

Winning a case/right is a matter of perspective; yet it is worth trying to win anyways: On complexity of legal pluralism for women's rights

This case of land dispute took over five years in court provides a clue about complexity and difficulty of winning the case by a woman. The dispute initially was between a man and a woman (widow). The woman was given a piece of land originally held by a man (now defendant) in the process of land registration. The man didn't strongly resist the action of the *kebele* initially but later denied the woman access to the land. When she went into the court process, he appeared for a couple of times and then transferred the case, citing health issues, for his wife to represent him and fight in court on his behalf.

This brought two women face to face-changing the discourse and rhetoric/argument-that initially the plaintiff presented in man-woman dispute. This was a game changer as the litigants are both female and are 'equally treated in court'. When the woman took the issue to the *kebele*, the *kebele* decided in favor of the defendant. This reportedly happen because the manager of the *kebele* was a relative of the defendant. Some informants insisted that it was in fact the coming of this individual to such *kebele* position gave the impetus for the defendant to deny the woman access to the plot with the aim of reclaiming the land using his connection to the individual.

Then the plaintiff appealed against *kebele's* decision and took the case to the district court; the court decided in her favor. This time the defendant appealed and went to the zonal court which decided in favor of the plaintiff again. The defendant appealed again and brought the case before the regional state level-thereby raising the stake. It wouldn't be easy for a poor woman to travel to Addis (over 300km) and pursue the case in a socially, legally, and geographically complex environment. Informants emphasized that she even managed to push the case thus far because the sub-lineage of her late husband was behind her, supporting financially by collecting money and advising her how to proceed. But when the case reached Addis Ababa, it brought a number of practical problems. This made the plaintiff to accept reconciliation efforts, which she has refused for years; the case was finally settled towards the end of

2014 by local elders where the defendant was persuaded to buy the land from the plaintiff.

One who has read the above case may pose this question: who won this case? The answer depends on people's perspectives. Dispute settlers in customary setting would say both were winners; or it is not individuals, rather it is truth (*dhugaa*) that was the winner. The disputed land originally belonged to the defendant (the man), which entitled him to having or deserving some truth (rights). The fact that the land was given to the plaintiff (the woman) in the context of the state law also entitled her for some rights/truth. In this context both were winners. Yet, given the symbolic nature of litigation and land claim in the context of the local culture, the defendant was a winner. Given the huge sum of money both spent while pursuing this case the poor woman obviously lost as the money, she received from the defendant was not sufficient enough to cover all her expenses.

Another interesting point is the defendant's twist deciding his wife to represent him in court or take the case up and engage in litigation with another woman. This was a deliberate twist intended to exploit some holes that local people see in the way the formal court operates. There is a general feeling that if litigants are a man and a woman, particularly on land issues, it is believed that the state system sympathize with the woman or their decisions favor women.

There are also hopes that we could see in the formal system: 1) that the woman (widow) managed to get land in her name, though found it difficult to maintain it; 2) at two important levels decision were provided in her favor; and 3) she took initiative and managed to pursue the case in state court – suggesting awareness and interest in using law to defend here rights.

Challenge are also apparent: 1) because of overlapping formal and social structures, the man used his connection to *kebele* power structure and took the land from the woman; 2) the defendant did not resist initial action by former *kebele* official taking some land from him and transferring to the woman. The man avoided confrontation then only to take action when the time was ripe. This shows how individuals (in the context of customary

structure) avoid confrontation with formal system until they find the right time to sabotage the system and prevent it from working effectively and sustainably. The dispute settlers at the final phase of this dispute also just tried to, though implicitly, restore the status quo (returning the land), despite upon the transfer of money to the woman, to its original owner. Yet, they made the woman feel that she also won the case as she negotiated for land sale. If she insists on getting the land, she might not be able to fully use the land, being intimidated and sabotaged by the claimant of the original right to the land.

These cases obviously show the difficulties that women face in getting their rights respected. Despite resistance on the part of customary structures, many women claim that the present legal and policy systems work in their favor and far better than the customary structures as far the land issues are concerned. In both cases, we have seen some changes-in the direction of improvement vis-à-vis women's rights to land. We also witnessed challenges remaining. Women are active participants in appropriating knowledge and pursuing opportunities; they seek solution to problems not only through formal law but also through customary mechanism. Women are aware of demanding full rights as stipulated in the law. Yet, they are also aware of constraints of social life and burden imposed on them by their social networks. Custom and social relations, thus, are not something imposed on them that they passively obey. Sometimes they attempt to exploit them; at times they even contribute maintaining it, despite negative consequences to their rights.

5. Conclusion

People (men and women alike) in the study sites are quite aware of government policies and legislations regarding gender equality in general and their legal land (and property) rights in particular. Yet, a few think that these policies and laws are effective on the ground. Legal pluralism, the operation of state laws side-by-side with local customs, seems to have compromised the realization of women's rights as postulated in legislations and policy documents. This is particularly significant since customary structures often compete with, and at times work against, state structures

and legal provisions. Therefore, despite people's awareness of women's rights and legal/policy instruments, apparently, implementation/enforcement of these policies/laws or women's interest/attempt to secure rights or fight against violation of rights seems limited for several reasons.

These include among other things: ritual and taboos imbedded in the local belief system; norms of residence and territorialization of lineages and sub-lineages, rules of inheritance in the context of local custom. While social structural issues (kinship and associated rules) largely limit women's rights to land (inheritance) among the Arsii Oromo; the Dorze case seems more complex and detrimental to women's rights as it is embedded in the society's indigenous religion (embracing a complex taboo system-*gome*), which effectively limits the right of married women to live and work on land in their village of birth. Yet, the goal of the customary system appears the same. The target of exclusion is not women per se but 'outsiders' who could have come and occupy/use land through women. That is, in both societies, women can generally possess land, work and live on it in their place of birth within the territory of their father's patrilineage. But the difficulty is living on land belonging to their father's lineage with their husband (and children).

This situation clearly suggests the differences between principles and actual practices. People seem to be aware of the laws that support gender equality and women's rights to property. Parents are also sympathetic to rights of their daughters to inherit land. They, however, are constrained by social structural issues and the belief in taboos and associated pollutions. It was in this context that informants, particularly from district Women's Affairs Office and district court tended to emphasize the power of social structural issues and women/girls inability or lack of willingness to bring their case before authorities; fail to pursue cases brought to court under pressure from social structure or because of lack of financial and other resources to follow up a protracted and expensive legal battle. Women often fall under the influence of their parents or communities not only through coercive acts but also through deception and persuasions. That complicates the work of institutions and individuals working to change the situation.

However, there are also emerging opportunities and improvements that need to be noted as far as women's rights are concerned. First, what is evidently emerging in both settings is women's increasing agency: challenging custom; claiming some space in public settings; speaking out and engaging in counter dominant discourse-though at times they tend to be on its side. They are willing to discuss issues of their common concern, supporting each other at times. The destination may be quite away but the journey has commenced. Second, women can now take their land cases to the court or customary settings, having some courage to challenging customs and traditions. Despite their limitation in connection to power and knowledge of how different systems work, and financial constraints, they sometimes succeed in such an endeavor. Even when women's case got some sympathy from state structure or when they won their case in court, bringing in an 'outsider' (as husband) onto the land in a certain lineage/sub-lineage is still difficult. The present land registration and certification, affirming land as a joint resource, by issuing the certificate in the names of the husband and wife, is also one step forward to promoting women's rights to land as it enhances the bargaining power of women. Yet, the issue tends to be more complex when relations break (divorce or separation) because of a strong belief in *gome* among the Dorze and clan territoriality/social structural issues in the case Arsii. This calls for further research on local customs, values and norms in order to inform policy/legal reform processes or design a gender sensitive and culturally appropriate policy/legal system.

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