

# Constitutional Adjudication of Rural Women's Land Rights in Ethiopia

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## Abstract

The legal regime on rural land rights in Ethiopia is decentralized, having the federal and regional land administrative legislations. Though many aspects of these laws are similar, there are few aspects of these legislations that vary in terms of substance and level of implementation. When analyzed from a gender perspective, the legislations differ in the scope and extent of promotion of gender justice in administration, control, transfer, and use of land rights of women. Questions arise as to the extent to which the diversity/difference envisaged under these legislations affects women's constitutional rights to use, transfer and administer land. This article analyzes landmark decisions rendered by the Council of Constitutional Inquiry (CCI) and the House of Federation (HoF) regarding disputes affecting women's rural land rights. The article discusses the implications of a lack of uniform gender sensitive/responsive approaches in the adjudication of rural women's rights to land in Ethiopia. The methods of data collection and analyses include a dogmatic analyses of laws, case, and the literature, as well as key informant interviews. The article provides insights for policy makers and stakeholders working on gender equality.

**Keywords:** *rural women's land rights, gender-sensitive constitutional interpretation, legislative power on land laws, Council of Constitutional Council*

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## Introduction

Ethiopia has established a federal system of governance since 1995 upon the adoption of the FDRE Constitution. The federal system established two tiers of government at the federal and regional levels with their own legislative, executive, and judicial branches. The Constitution determined the division of powers between the different tiers of the government in addition to laying down the foundation for the protection of human rights by devoting one-third of its content to human rights. The enforcement of human rights is to be overseen by all organs of the government.<sup>132</sup>

Ethiopia, under the FDRE Constitution, has opted for a constitutional interpretation to be undertaken by the second chamber of the legislative organ, i.e., the House of Federation (HoF) rather than judicial review of constitutional matters by the judicial organs. This centralized form of constitutional interpretation has granted the HoF the power to decide on all constitutional disputes.<sup>133</sup> The HoF is assisted by the Council of Constitutional Inquiry (CCI) which is composed of eleven members consisting of six legal experts, the president and vice president of the Federal Supreme Court and three representatives from the HoF.<sup>134</sup> It reviews applications for constitutional interpretation when the constitutionality of any law, customary practice, or decision of the government organs or officials is questioned and provides recommendations for the approval of the HoF.<sup>135</sup> Constitutional review can be initiated by government bodies, private parties or a judicial referral requesting the Council of Constitutional Inquiry (CCI) to review the constitutionality of the contested legislation, decision or conduct.<sup>136</sup> Furthermore, Article 84 (2) of the FDRE constitution provides that when a constitutional

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<sup>132</sup> Article 9 (2) of the FDRE Constitution.

<sup>133</sup> Article 83 (1) of the FDRE Constitution.

<sup>134</sup> Article 84 of the FDRE Constitution and Article 15 of Proclamation no. 798/2013 to Re-enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE.

<sup>135</sup> Article 3 (1) of Proc. 798/2013.

<sup>136</sup> Takele Soboka Bulto, 2011, "Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory", *African Journal of International and Constitutional Law*, Vol. 19, p. 104.

issue arises involving a contestation of Federal or State laws before a court, the court may refer the case to the CCI. Thus, the constitution envisages a non-restrictive access to constitutional interpretation mechanisms in Ethiopia.

This article investigates the implications of the diverse rural land laws at the federal and regional state levels on the protection of the constitutional rights of rural women in Ethiopia by reviewing decisions of the CCI/HoF. The article also investigates the various barriers to women's access to constitutional adjudication mechanisms in Ethiopia.

The study relies on cases collected from CCI/HoF with an informed intention to show diversity in the reasoning of the decisions from a gender perspective. The researcher focused on analyzing the decisions of CCI/HoF since a high number of cases on rural women's land rights have been entertained by these organs,<sup>137</sup> the importance of the decisions of the HoF as they have equal status with the constitutional provisions and all organs of the government are required to enforce them.<sup>138</sup> Overall, the researcher reviewed more than thirteen published and unpublished cases including those that are published in the journals of CCI and HoF. These cases are analyzed systematically to show trends in the triggering factors and grounds of constitutional interpretation of cases related to rural women's land rights. Furthermore, interviews were conducted with two key informants at CCI to understand the trends in cases brought before these organs for constitutional adjudication. The study also applies a dogmatic method to analyze the laws and cases. The analysis is informed by legal formalism and legal realism approaches which examine what the law on paper and law in action is respectively. Law in action reveals how the law is actually used

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<sup>137</sup> Among 1917 cases brought by female applicants before CCI by April 2023, 1468 (76.5%) cases are brought based on the violation of Article 40 of the constitution which is concerned with property rights including cases on common property in marriage, inheritance, and rural land rights.

<sup>138</sup> Article 80 of Proclamation No. 1261/2021- A Proclamation to Define the Powers and Functions of the House of Federation of the Federal Democratic Republic of Ethiopia.

and applied in real-life situations, rather than just what is written in books. It investigates the practical application of the law in the Ethiopian legal system.

The article is organized as follows. The second section that follows this introduction investigates the meaning and scope of access to justice. The third section investigates women's land rights under the constitution. The fourth section discusses the division of power between the federal and regional governments to enact laws concerning land rights. The fifth section gives an overview of federal and regional rural land legislations on rural women's land rights. The sixth section gives a specific attention to constitutional enforcement of rural women's land rights and examines the constitutional interpretation mechanisms, trends and triggering factors for constitutional adjudication of rural women's land rights and the barriers the rural women face in accessing constitutional adjudication. The article ends with a conclusion in its last section.

### **Meaning and Scope of Access to Justice**

There is no single definition of the term access to justice.<sup>139</sup> It has a narrow and broad meaning which has evolved over time and varies depending on context.<sup>140</sup> In its narrow sense, it refers to access to courts. This notion of access to judicial institutions was first developed by Prof. Mauro Cappelletti back in the 1970s. The notion passed through three waves in the late 1970s. The first wave aimed to make legal services accessible to the poor. It resulted in an improved provision of legal aid services to the indigent. The second phase brought about public interest litigations with the aim of protecting certain interests such as the environment and consumers. This has improved civil litigations and brought changes

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<sup>139</sup> Introduction' in Access to justice for a new century: the way forward (Bass Bogart and Zemans eds) (2005) 2; 'Civil justice on trial - the case for change'. Report by the Independent Working Party set up jointly by the general Council of the Bar and the Law Society (1993) 6 cited in Estelle Hurter, 2011, "Access to Justice: To Dream the Impossible Dream?", *The Comparative and International Law Journal of Southern Africa*, Vol. 44, No. 3, p. 413.

<sup>140</sup> Hurter, id, p. 408.

in procedural principles such as standing, *res iudicata*, and the role of judges.<sup>141</sup> The third wave has introduced the broader notion of access to justice by introducing new justice institutions or “dispute-processing institutions” as an alternative form of justice to the formal justice system.<sup>142</sup> This wave is all-encompassing in that it sought to create dispute resolution mechanisms that engage both formal and informal justice institutions and processes.<sup>143</sup> Eventually, this resulted in broadening the meaning of justice to encompass beyond the one that is dispensed by the formal judicial institutions and mechanisms. It expands justice to be delivered not only by legal experts but community representatives who have an indigenous knowledge on dispute resolution mechanisms.

Thus, in its broader sense, access to justice is defined as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.”<sup>144</sup> This meaning demonstrates that access to justice is not only about access to formal or informal judiciary institutions, but it is a human right to be respected and protected by the state.<sup>145</sup> The human rights approach to access to justice goes beyond making the courts accessible to people. It requires the adjudication of cases to be based on the principles of justice and fairness.<sup>146</sup> It is in this light that the CEDAW Committee stated “access to justice is understood not just as the mere access to the dispute resolution bodies but more

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<sup>141</sup> In case of public interest litigation, collective interest is litigated, and all of the members of the affected community should not be in court. Furthermore, in civil matters, the outcome of the litigation depends on the litigants especially in adversarial systems. However, in public interest litigation, the judge/s are expected to play an active role.

<sup>142</sup> Mauro Cappelletti, 1981, Introduction in *Access to Justice and the Welfare State*, p. 4. See also Cappelletti and Garth ‘Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective’ (1977-1978), *Buffalo Law Review*, Vol. 27, p. 181.

<sup>143</sup> Hurter, *supra* note 8, p. 410-411.

<sup>144</sup> Alain Aime Ndedi, and Mau Kingsly, *The Role of the Rule of Law in a Developmental State in the African Context* (February 7, 2017). Available at <https://ssrn.com/abstract=2912828> Accessed on 23 June 2023.

<sup>145</sup> Francioni, Access to Justice as a Human Right (2007) Vol XVI/4 1; Grossman and Sarat, ‘Access to Justice and the Limits of Law’ in Gambatta May Foster (eds.) *Governing Through Courts*, p. 77.

<sup>146</sup> Hurter, *supra* note 8, p. 413.

broadly i.e. in terms of guaranteeing that the legal system delivers legal and judicial outcomes that are just individually and to society as a whole".<sup>147</sup>

With this in the backdrop, the next sections elucidate the constitutional guarantees of women's land rights under the FDRE Constitution as well as the federal and regional laws on rural women's land rights respectively which are followed by a discussion on constitutional enforcement of women's land rights in Ethiopia.

### **Constitutional Guarantees on Women's Land Rights in Ethiopia**

Women's access to justice should not only refer to their access to the courts, but it should also be related to their access to the chain of justice system in an equal and effective manner.<sup>148</sup> This chain of justice starts with the Constitution.

The FDRE Constitution which was adopted after Ethiopia ratified CEDAW in 1981 recognizes both formal and substantive equality of women. The Constitution under Article 25 guarantees equality before the law without any discrimination on the grounds of sex, race, religion, political or other opinion, property, nation, nationality and other social origin, birth and other status. Article 35 which is a specific provision dedicated to women's rights not only requires women's equal rights but also provides for affirmative actions. This is to remedy the "historical legacy of inequality and discrimination suffered by women in Ethiopia".<sup>149</sup> It also ensures women's equal rights in marriage and divorce.<sup>150</sup>

The FDRE Constitution has given recognition to women's land rights by stipulating that women should have equal rights with men with respect to use, transfer, administration and control of land.<sup>151</sup> Further, it provides that women shall enjoy equal treatment

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<sup>147</sup> CEDAW rec. on women's access to justice, 2015.

<sup>148</sup> Frances Raday, Access to Justice, HRC Mandate Holder, WG Discrimination against Women in Law and Practice.

<sup>149</sup> Article 35 (3) of the FDRE Constitution.

<sup>150</sup> Article 34(1) and 35 (2) of the FDRE Constitution.

<sup>151</sup> Article 35 (7) of the FDRE Constitution.

in the inheritance of property during divorce.<sup>152</sup> Land ownership is left to the state while individuals have the right to use, control and access land rights. Individuals are only deprived of the right to sale land.<sup>153</sup> They have all other rights on the land related to *usus*, *fructus*, and *abuses*<sup>154</sup> including the ability to transfer land through donation, inheritance, rent/lease and benefit from the fruits of the land. The responsibility for land administration is reserved to regional governments.<sup>155</sup> Initially, a provision was drafted for land redistribution which was later abandoned since land redistribution in the past led to “a continued tenure insecurity which undermined investment in land by users and was a major contributory factor to land degradation and a decline in agricultural productivity.”<sup>156</sup> Finally, the Constitution under Article 40 (4) (8) guarantees protection from eviction for peasants from the land they possess except in case of expropriation for public purpose with the payment of compensation.

### **Division of Power to Legislate on Rural Women’s Land Rights in the Federal System**

The FDRE constitution gives the federal government the power to legislate on land utilization and conservation while authorizing the regional states to administer the land that belongs to the region.<sup>157</sup> Thus, the administration of rural land is decentralized based on the FDRE constitution. Whether this entitlement can also be translated to the power to adopt legislation on the administration of rural

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<sup>152</sup> Ibid.

<sup>153</sup> Article 40 (3) of the FDRE Constitution

<sup>154</sup> *Usus* (the right to use land), *Abuses* (the right to change the land) and *Fructus* (the rights to use the fruit of the land). *Usus* includes access and withdrawal rights while *Abuses* refers to management and transformations rights and *Fructus* refers to the right to make profit and loss. *Usus* and *abuses* rights form what is termed as possessory rights. C. Doss & R. Meinzen-Dick, 2020, Land Tenure Security for Women: A Conceptual Framework, Land Use Policy, Vol. 99, p. 2.

<sup>155</sup> Article 52 (2(d)) of the FDRE Constitution

<sup>156</sup> Chiara Romano, Land and Natural Resources Learning Initiative for Eastern and Southern Africa (TSLI-ESA), Case Study Report: Strengthening Women’s Access to Land in Ethiopia, 2013, p. 5.

<sup>157</sup> Article 51 (5) and 52 (2 (c) of the FDRE Constitution, Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1<sup>st</sup> year No. 1.



land has been a controversial issue in literature. The Amhara regional state was the first regional state to adopt a rural land proclamation in 1996 as Proclamation 16/1996 amended 17/1996. This Proclamation was enacted before the federal government adopted Proclamation No. 89/1997 on land use and administration. In this connection, a case was brought before CCI challenging the constitutionality of the 1996 Amhara Rural Land Proclamation on Land Allocation and Redistribution. CCI held the Proclamation is constitutional on the grounds that states have residual power to enact such a law and the federal rural land proclamation (adopted in 1997) has given them the power to adopt such law.<sup>158</sup> This decision indicates that regional states have the power to adopt laws on the administration of land, land allocation and redistribution based on the retroactive application of the 1997 Federal Rural Land Administration Proclamation. However, the CCI's reliance on the 1997 federal government Proclamation confirming the power of the states to adopt legislation on land administration is not the right approach as it implies the federal government's legislation is the source of the states' power to adopt legislation on the administration of rural land. This diminishes states' power and puts them under the whim of the federal government that bestows them with the power to legislate on land administration which may be revoked at any given time. Scholars argued that their power should be seen to emanate from the Constitution directly rather than from a federal legislation.<sup>159</sup> On the other hand, one may argue that regional states do not have the power to enact land administration laws based on Article 52(2(d)) of the Constitution which enshrines the power of regional states is "... to administer land and other natural resources in accordance with Federal laws". They suggest that the term "... in accordance with federal laws" implies that regions possess solely administrative authority, and that this administration should be

<sup>158</sup> *Biyadglegn Meles et al. v. the Amhara Regional State*, petition, Miazia 30, 1989 E.C. (unpublished) cited in Assefa Fiseha, (2017), Constitutional Adjudication through Second Chamber in Ethiopia, *Ethnopolitics*, Vol. 16, No. 3, p. 299.

<sup>159</sup> Habtamu Sitotaw, Muradu Abdo and Achamyelash Gashu, 2019, Power of Land Administration under the FDRE Constitution, *Journal of Ethiopian law*, Vol. 31, p. 95.



per federal laws. Thus, unless the federal government delegates its power to enact land laws to the regional governments as per Article 50(9) of the same constitution, the regional governments cannot enact laws on land administration. However, this second argument is not convincing when read with Article 52 (1), which reserves all power not given to the federal government to the state. The Constitution reserved the power to enact “....laws for the utilization and conservation of land” to the federal government.<sup>160</sup> This implies that the power to enact laws on the administration of land is the residual power of regional states. Thus, the cumulative reading of Articles 52 (1) and 55 (5) implies that the Federal law on land serves as a framework legislation and regions are expected to enact legislation on the administration of land in conformity with this legislation.<sup>161</sup>

The federal government under the current federal system is given the power to legislate on land utilization and conservation because the framers of the constitution believe that this will bring uniformity in the regulation of land tenure at the national level.<sup>162</sup> The federal government in particular should determine the right to access land to vulnerable groups of the society including women.<sup>163</sup> This entails that the constitution has thought about uniform protection of women’s land rights at the national level. However, it should also be noted that the constitution envisaged decentralizing land legislation with a view to give attention to local context, needs and concerns in land administration in addition to its being an expression of self-determination. Furthermore, it allows for the state to have proximity in the execution of land governance closer to the community. An exemplary case that needs decentralized approach

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<sup>160</sup> Article 51 (5) of the FDRE Proclamation.

<sup>161</sup> Gedion T. Hessebon and Abduletif K. Idris, 2017, ‘The Supreme Court of Ethiopia: Federalism’s Bystander Chapter in Courts’ in Nicholas Aroney and John Kincaid (eds.), *Federal Countries: Federalists or Unitarists?* University of Toronto Press, p. 176.

<sup>162</sup> The Constitutional Minutes, Deliberation on Article 40, House of Peoples Representatives Library, Addis Ababa cited in Habtamu Sitotaw et al, *supra* note 28, p. 97.

<sup>163</sup> Habtamu Sitotaw et al., *supra* note 28.

is the mechanism of land dispute resolution which can be designed based on the context of regional states without compromising due process of law.<sup>164</sup> Be that as it may, the federal and regional governments have adopted their own respective land laws which are discussed below.<sup>165</sup>

### **Federal and Regional State's Legislations on Rural Women's Land Rights**

With this as a backdrop, both the federal and regional states' Rural Land Administration Laws have provisions regarding women's equal access to such critical resources. Though these laws are fundamentally similar, there are instances where they depart from each other. Accordingly, farmers who are above the age of eighteen and interested to engage in agricultural activities are entitled to the right to access and use agricultural land regardless of sex. Furthermore, women are one of the vulnerable groups who are given priority during the distribution of land.<sup>166</sup> Some of these laws protect female heads of household by ensuring their rights to obtain land certificate in their own name.<sup>167</sup> Few of these laws, furthermore, uphold that rural land that is held jointly by a husband and wife should be registered in the name of both.<sup>168</sup> Some of these

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<sup>164</sup> Habtamu Sitotaw et al, *supra* note 28, p. 99.

<sup>165</sup> These proclamations are Federal Rural Land Administration and Use Proclamation No. 456/2005, Tigray Regional State Rural Land Administration and Use Proclamation No. 239/2014; Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017, Oromia Regional States Proclamation No. 248/2023, Sidama Regional State Proclamation No. 27/2023, Benishangul Gumuz Regional State 's Rural Land Administration and Utilization Proclamation No. 152/2018, Afar National Regional State Rural Land Administration and Use Proclamation No. 49/2009 and Regulations No 4/2011, Somali region Rural Land Administration and Use Proclamation No 128/2013 and SNNP regional States Proc. No. 110/2007 (since SNNP Regional State does not anymore exist, this proclamation will be in operation until it is replaced by legislations to be adopted by the newly established regional states i.e. Southwest Ethiopia Peoples' State, South Ethiopia Peoples' State, Central Ethiopia State) .

<sup>166</sup> Article 5(1(c)) of proclamation 456/2005, Article 5 (2) (4) of proclamation No. 27/2023, Article 5 (1) (7) of Proclamation 152/2018, Article 5 (2) (6) of Proclamation No. 252/2017, Article 5 (2) (3) of Proclamation No. 110/2007

<sup>167</sup> Article 8 (8) of Proclamation 27/2023, Article 5 (6) of proclamation No. 110/2007.

<sup>168</sup> Article 6 (4) of proclamation 456/2005, Article 8 (5) of Proclamation No. 27/2023

laws provides that jointly certified rural land can only be leased or exchanged or donated upon the consent of both husband and wife.<sup>169</sup> If the consent of one of these parties is missing, the lease or exchange contract will be null and void. Some of these laws also protect women whose husband is away to use the rural land and obtain land certificates in their own name.<sup>170</sup>

However, they have different provisions on whether a woman could be entitled to share equal division of rural land that is acquired before marriage. As marriage in Ethiopia is virilocal/patrilocal, the Rural Land and Administration Regulation of SNNPR entitles a husband and wife to jointly use land they possess before their marriage.<sup>171</sup> A certificate with a joint land holding right is issued for the land they held before marriage.<sup>172</sup> It also entitled them to jointly use a land they inherited.<sup>173</sup> The recently adopted proclamation of the Sidama regional State also stipulates that land acquired before marriage is considered as common property unless the spouses conclude a special agreement to make it personal property.<sup>174</sup> However, in the Amhara regional state's law, land acquired before marriage is considered as personal property unless the spouses agree to make it a common property.<sup>175</sup> It rather allows a landless woman in conjugal relationship to acquire land on her own behalf.<sup>176</sup> This manifests variation in the subsidiary laws of regions which affects the rights of women.

The other gap in the law is that some of the regional laws entitle inheritance rights to land to family members.<sup>177</sup> Family members are defined in the legislation as those who permanently live with

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<sup>169</sup> Article 10 (3) and 12 (5) of Proclamation 27/2023, Article 8 (2) of SNNP Rural Land Use and Administration Proclamation No. 110/2007 and Article 8 (1(a)) of Rural Land Administration and use regulation No. 66/2007.

<sup>170</sup> Article 8 (8) of Proclamation 27/2023, Article 5 (7) and 6 (6) of Proc. No. 110/2007.

<sup>171</sup> Article 5 (2(A)) of Regulation No. 66/2007.

<sup>172</sup> Article 6 (4 (b)) of regulation No. 66/2007.

<sup>173</sup> Article 5 (2 (B)) of Regulation No. 66/2007.

<sup>174</sup> Article 5 (7) of Proclamation 27/2023.

<sup>175</sup> Article 35 (4) of Proclamation No. 252/2017.

<sup>176</sup> Id. Article 10 (3).

<sup>177</sup> Article 2 (5) and 8 (5) of Proclamation No. 456/2005, Article 8 (5) of Proclamation No. 110/2007 and Article 2 (5) and 17 (5) of Proclamation 152/2018.

the head of the household sharing the income of the landholder.<sup>178</sup> This implied excluding daughters who move to their husband's place from inheriting the use right of land. The recently adopted revised regional states' land laws have taken a different approach and provide that land can be inherited testate and intestate without any condition. Accordingly, the Amhara regional state law provided that the landholder can bequeath their land to whomever he/she wants provided that he/she does not disinherit their children.<sup>179</sup> Similarly, the Sidama regional state allows landholders to transfer their land through inheritance.<sup>180</sup>

Another controversial issue is the practice of joint titling during polygamous marriage. The prevalence rate of polygamous marriage at the national level is 11%, having the highest prevalence in rural areas.<sup>181</sup> The FDRE constitution guarantees equal rights of spouses during marriage under Article 35 (1). Thus, the practice of polygamy violates the constitutionally protected rights of women. However, it is also important to protect the property rights of women in polygamous marriages without giving recognition to the marriage. Thus, the certification program in Oromia and SNNPR has jointly registered wives with their husband in polygamous marriages. Nevertheless, when disputes arise on the property division during divorce, it does not get an easy solution and has made its way to the highest level of courts and CCI.

The other variation in the laws is related to land dispute settlement mechanisms. Some of the regional rural land legislations authorize a local land administrative and use committee (LAC) to resolve land disputes before a case is taken to court.<sup>182</sup> Some others make

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<sup>178</sup> Article 2 (5) of Proclamation No. 456/2005, Article 2 (5) of Proclamation 152/2018 and Article 2 (7) of Proclamation No. 110/2007.

<sup>179</sup> Article 17 (3) of Proclamation No. 252/2017.

<sup>180</sup> Article 11 of Proclamation no. 27/2023.

<sup>181</sup> The prevalence rate in rural area is 12% while it is 5% at the national level. Central Statistical Agency (CSA) [Ethiopia] and ICF. 2016. Ethiopia Demographic and Health Survey 2016. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF. p. 66.

<sup>182</sup> Article 12 of Proclamation No. 456/2005, Article 32 of Proclamation No. 27/2023, Article 12 of Proclamation 110/2007,

it optional for the case to be resolved by arbitrators selected by the parties to the dispute before a case is taken to court.<sup>183</sup> The alternative dispute settlement mechanism is encouraged for land-related disputes between peasants while in the case of disputes between the state and the peasants, such as land expropriation, the judicial mechanism is preferred to resolve such disputes.<sup>184</sup> As LAC is composed of elders, there is the likelihood that local norms are applied to women's land rights issues when elders handle such cases. The Amhara Regional State law<sup>185</sup> states that any grievance about the decision of the land administration authority can be reviewed in the appropriate court of law. However, a similar provision lacks in other regional states' proclamations on land use and administration.

The other difference is that some of the regional states' proclamations provide quota for women's participation in the Rural Land Administration and Use Committee (LAC) while some other proclamations lacked a similar provision.<sup>186</sup> Thus, the implications of the differences and gaps in these laws are analyzed in the subsequent sections as they have triggered the constitutional cases brought to CCI/HoF as discussed in the section below.

<sup>183</sup> Article 52 (1) of Proclamation No. 252/2017 and article 37 of Proclamation No. 152/2018.

<sup>184</sup> The Federal Supreme Court cassation decision in the case of *Wonji Sugar Factory vs Ato Bacha Alemu* confirms that when a case involves an investor and a peasant, such case can go to courts directly without resorting to alternative dispute resolution mechanism as first resort. See *Wonji Sugar Factory vs Ato Bacha Alemu* file No.102406 (18 November 2016) the Federal Supreme Court Cassation Decisions, Vol.21 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, January 2018) cited Brightman Gebremichael Ganta, 2018, *The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants and Pastoralists*, PhD dissertation, p. 318.

<sup>185</sup> Article 52(6) of Proclamation No. 252/2017.

<sup>186</sup> Article 5 (4) of Proclamation No. 239/2014 of Tigraye Regional States requires a minimum of two members of LAC out of five to be women. However, some proclamations such as the SNNP rural land administration and utilization proclamation do not provide for quota.

## **Constitutional Enforcement of Rural Women's Land Rights**

The enforceability of rural women's land rights through a constitutional mechanism requires an enabling environment for rural women to access this mechanism. To assess this, first the nature of the institutional mechanism to review land related decisions and laws are analyzed. Then, trends and triggering factors for constitutional adjudication of women's land rights is discussed. Subsequently, a discussion on gender implications of constitutional adjudication based on selected cases is made. The last section dwells on women's access to constitutional mechanisms in Ethiopia.

### **Synopsis of Constitutional Adjudication Mechanism in Ethiopia**

The FDRE Constitution embraces a non-judiciary constitutional review mechanism by bestowing the power to interpret the constitution to the HoF, which is a political organ representing Nations, Nationalities, and Peoples of Ethiopia. This is preferred by the framers of the Constitution because of the ethnic federal system, which puts Nations, Nationalities and Peoples as the owners of the constitution and therefore its interpreter. In addition, the framers wanted to prevent "judicial dictatorship".<sup>187</sup> Lack of a well-functioning judiciary trusted by the people in the previous regimes is also believed to be the other reason to deprive the judiciary from having the power to interpret the Constitution.<sup>188</sup>

The HoF can entertain individual human rights cases involving constitutional disputes. As said hitherto, since the judiciary is stripped of the power to interpret the constitution, it is expected to refer a case to the HoF whenever there is a need for constitutional interpretation. This is unusual for democratic states to adopt a non-judicial constitutional review mechanism. It is only in few countries

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<sup>187</sup> Assefa Fiseha (2007), 'Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)', *Mizan Law Review*, Vol. 1, No. 1, pp. 10 & 11.

<sup>188</sup> Chi Mgbako and et al, 2008, Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights, *Fordham International Law Journal*, Vol. 32, Iss. 1, p. 268.

such as Bahrain, Congo, Cuba, and North Korea where there is non-judicial constitutional review system.<sup>189</sup>

Some scholars argue that HoF is not the appropriate organ for constitutional adjudication because of its lack of independence from the executive and also of expertise in legal matters. This has precluded the HoF from passing decisions against the government in several cases.<sup>190</sup> Contrary to its position on politically sensitive cases, the HoF is comfortable in deciding individual cases that do not involve the government.<sup>191</sup>

The HoF/CCI jurisdiction is triggered in two scenarios. The first is when there is a decision of government organs, statute or customary practice which is contrary to the Constitution.<sup>192</sup> In this case, any person whose rights are violated by the final decision of a government organ can apply to CCI for the review of the decision.<sup>193</sup> The other scenario is when courts entertain cases, the court or any interested party can refer the specific issue that needs constitutional interpretation to CCI.<sup>194</sup> The CCI, in its analysis, should not go into the facts of the matter but rather address the constitutional interpretation issues referred to it by the courts.

The FDRE Constitution recognizes human rights in line with international laws and principles. It included individual rights and collective rights of Nations, Nationalities and Peoples and a comprehensive and detailed list of rights and freedoms in a great departure from previous constitutions of the country. The

<sup>189</sup> Mgbako and et al, *Ibid*, p. 278.

<sup>190</sup> See CUD case (*Coalition for Unity and Democracy vs. Prime Minister Meles Zenawi Asres*, Fed. First Instance Ct., Lideta Div., File No. 54024 (Decision of 3 June 2005) (26 Ginbot 1997 E.C.)), Melaku's case (Melaku's case, File no. 1421/07, Council of Constitutional Inquiry) and Negaso's case (The case of the former FDRE President Negasso in House of Federation, Journal of Constitutional Decisions, 2009 E.C. (2017), Vol. 2 (2), p. 36-41). A detailed discussion is made in Anchinesh Shiferaw Mulu, 2019, 'The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia', *Mizan Law Review*, Vol. 13, No. 3, pp. 419-441.

<sup>191</sup> Mgbako and et al, *supra* note 57, p. 287. See also Anchinesh Shiferaw Mulu, Id.

<sup>192</sup> Article 3 (1) of Council of Constitutional Inquiry (CCI) Proclamation No. 798/2013.

<sup>193</sup> Article 5 (1) of CCI Proc. No. 798/2013.

<sup>194</sup> Article 4 (1) of CCI Proc. 798/2013.



constitution makes ratified international human rights agreements part and parcel of the law of the land.<sup>195</sup> The HoF is required to interpret the Constitution in conformity with these ratified international instruments.<sup>196</sup>

The fact that the Ethiopian federal system prioritizes the rights of Nations, Nationalities and Peoples including their cultural rights gives the impression that it has contributed to creating conflicting rights between the rights of women and cultural rights which might contravene the human rights of the former.<sup>197</sup> The HoF which is established with the idea that state sovereignty resides in Nations, Nationalities and Peoples, and therefore should interpret the constitution, might have adversely affected women's rights. However, the constitution has tried to minimize this impact by empowering CCI, composed of legal experts and court personnel i.e. the President and the Vice President of the Federal Supreme Court, to provide recommendations on matters of constitutional interpretation. Thus, it is important CCI plays its key role in balancing group rights and individual rights in its constitutional adjudicatory role.

### **Trends in Constitutional Cases on Women's Land Rights**

Rural Women's land rights are frequently brought to CCI. Based on the data obtained from CCI, among 7665 files opened until April 2023, 1917 (25%) cases were done so by women applicants while 4125 (54%) and 1623 (21%) cases by men or jointly by men and women respectively. As shown in the table below, the number of rural women's land rights cases are among the top cases brought to CCI by women applicants. There are various reasons for the

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<sup>195</sup> Article 9 (4) of the FDRE Constitution.

<sup>196</sup> Article 14 of Proclamation No. 1261/2021.

<sup>197</sup> Dereje Feyissa, 2020, 'The Praxis of Combating VAW in Ethiopia: A Political Interpretation', *DIIS Working paper* 2020:10, p. 13-14. Article 39 (2) of the constitution protects the cultural rights of Nations, Nationality, and People of Ethiopia while Article 34 (5) and 78 allows for family and personal matters to be adjudicated by customary and religious courts with the consent of the parties to the case. However, there are customary norms that go against rural women's inheritance and land rights in various part of the country.

high number of rural women’s land cases to be brought before CCI. Some of them relate to legal gaps while others are related to frequent violation of this right by using cultural norms as pretext to prevent women from accessing land and land inheritance.<sup>198</sup>

**Table 1: Type of cases brought by female applicants as of April 2023**

No.	Case type	Number
1.	Article 40- Property rights (including common property in marriage, inheritance, rural land rights)	1468
2.	Article 37- Access to Justice	352
3.	Article 35- Women’s right	23 4.
Article 25- Equality before the law	26 5.	
Labor rights	16 6.	
Criminal cases	17 7.	Child
maintenance cases	12 8.	
Others	2	
<b>Total</b>		1917

**Source:** CCI Case Flow Management Directorate

Most of the rural women’s land rights cases brought to CCI/HoF arise in the context of marriage and concern the sharing of marital property. Most of the women applicants cited Articles 25, 35 and 40 of the Constitution as a basis for their claims. Cases related to irregular union, inheritance and polygamous marriage are also frequently brought before CCI.<sup>199</sup>

Among the 7665 cases brought before CCI, 3927 (51%) of them were rendered decision while 3738 (49%) were still pending. This shows a high case backlog. Among the cases rendered decision, 3822 (97%) were rejected on the ground that they lack a merit for constitutional interpretation. It is 105 (2.6%) of the cases that were found to be appropriate for constitutional interpretation.

**Table 2: Number of cases decided before April 2023**

<sup>198</sup> Interview with Yadeta Gizaw Amenti, Constitutional Teaching and Awareness Creation Team Leader of the Secretariate of the CCI on 3 March 2023.  
<sup>199</sup> Interview with W/ro Rahel Berhanu, Case Flow Management Directorate Director on of the Secretariate of the CCI on 3 March 2023.

Decided cases		Decided cases submitted by women	
Rejected 3822	Interpreted	Rejected	Interpreted
(97.4%)	105 (2.6%)	957 (95%)	50 (5%)
<b>Total</b>	<b>3927</b>	<b>Total</b>	<b>1007</b>

**Source:** CCI Case Flow Management Directorate

The number of rural land cases being filed before CCI had decreased in the past two years from 2023 because of security concerns which prevented applicants from pursuing their cases by traveling from remote rural area to Addis Ababa. In addition, COVID-19 pandemic in 2020-22 resulted in reduction of the number of cases submitted to CCI.<sup>200</sup> The next section illustrates the triggering factors for the cases brought before CCI.

### **Triggering Factors for Constitutional Adjudication of Rural Women’s Land Right**

The factors that trigger the constitutional adjudication of rural women’s land rights can be categorized as legal gaps, gaps in legal awareness and implementation gaps.

#### ***a. Legal gaps***

Some of the legal lacunas that are discussed in the previous section are the reasons that triggered constitutional interpretation. For instance, the legal provision that grants “members of a family” – who are dependent on the landholder and permanently reside with the head of the family – the right to inherit the use rights of the land has been a contentious issue.<sup>201</sup> In the case of *Wubalem Derib vs. Shibabaw Temesgen*, the applicant, who was the stepdaughter of the land holder, claimed inheritance of land as a member of family. However, the respondent argued that he is entitled to inherit the land since the land belonged to his grandfather. However, CCI rejected the case arguing that it is the grandson who is entitled to

<sup>200</sup> Ibid.

<sup>201</sup> Article 2 (5) and 8 (5) of Proclamation No. 456/2005, Article 8 (5) of Proclamation No. 110/2007 and Article 2 (5) and 17 (5) of Proclamation 152/2018

inherit.<sup>202</sup> This shows that there is no consensus on who is a family member. Though CCI tried to provide criteria of a family member as one who is permanently living with the landholders, sharing the latter's income, its application has been controversial. Again, in the case of *Enat Belete vs. Mebrat Beza*,<sup>203</sup> the applicant claimed that the respondent had taken her land which she was plowing with her deceased husband while living together with her deceased mother-in-law under the same roof. The land belonged to her mother-in-law who has now passed away. On the other hand, the respondent argued that she and her children were registered as "family members" of the deceased on the landholding title and they are entitled to inherit the land under the land administration law. However, CCI decided in favor of the applicant on the grounds that she has a constitutional right not to be evicted from her land. In addition, the evidence has shown that the respondent has her own land, and the landholding title does not list the name of the family members, rather it indicates that there are four family members. Thus, it did not recognize the respondent's claim that she is entitled to inheritance rights.

In most of the rural parts of the country, marriage is patrilocal which means that women move to their husband's land or to his family house when marriage is concluded. Thus, this excludes them from inheriting land from their natal family as they no longer permanently live with them.<sup>204</sup> In a case decided by CCI,<sup>205</sup> an applicant, who was raised by her grandparents, used to benefit from plowing the land of her grandparents with her husband. When her grandparents passed away, she brought a case before the Amhara Regional Courts, and she was denied inheriting that land by the courts that relied on

<sup>202</sup> Forum of Federations, 2022, *Land Inheritance Rights of Women and Girls in Ethiopia: A Desk Review*, p. 22 and 29.

<sup>203</sup> *Enat Belete Vs. Mebrat Beza* in Secretariat of Council of Constitutional Inquiry, 2018, Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional issues*, Vol. 1(1), case No. 1327/07, p. 17.

<sup>204</sup> Abebaw Abebe Belay and Tigistu G/meskel Abza, 2020, Protecting the Land Rights of Women through an Inclusive Land Registration System the Case of Ethiopia, *African Journal of Land Policy and Geospatial Sciences*, Vol. 3, No. 2, p. 36-37.

<sup>205</sup> *W/ro Zemedede Wagawwe Vs. Ato Habetamu Wagagwe et al*, Case No. 2562/2010, Feb. 26, 2021, FDRE Council of Constitutional Inquiry.

Article 2 (6) of the Regional Rural Land Administration and Use Proclamation on the ground that the applicant's family membership is disconnected when she got married and moved. Accordingly, the applicant contested this decision and brought a case before CCI claiming she is entitled to land inheritance and the courts' judgment violates her constitutional right under Article 40 which protects her against eviction from rural land. She stated that following her divorce and the death of her grandfather, she moved to another town. In its landmark decision, CCI asserted that the decision of the courts to deny the applicant inheritance of landholding is based on the interpretation of the regional law that appears to imply a woman who has left her family through marriage will never come back to join the family. Accordingly, the CCI has commented the judgment of the regional Supreme Court by stating that the patrilocal practice in the countryside dictates that women would move out with their natal family and join her husband or his family. No law prohibits anyone who left the family due to marriage or any other situation from returning to the family. Thus, the Regional Supreme Court's decision to disinherit the applicant reasoning that she is not a family member due to the fact that she left her family when she was married contravenes the constitutional principles enshrined on the rights of women and the right to marry and start a family. Thus, the CCI decided, unanimously, that the judgment given against the applicant that disallowed her inheritance is unconstitutional and, hence, null and void. This decision considered the contextual factors that affects women from accessing land. Such a decision can be considered as gender sensitive in its articulation as it tries to tackle the social norm that exclude women from inheritance when she moves in with their husband.

The other cases brought are based on legal gaps related to cases involving polygamous marriage. The division of land in divorce cases and in the case of the death of a spouse in a polygamous marriage have been a key issue for some of the cases brought before CCI/HoF. In the case of *Fatuma Hamdu vs. Hussen Tuffa et*

*al*,<sup>206</sup> Fatuma brought the case claiming that rural land and other properties belong to her upon divorce from Hussen. Hussen had two other wives who also intervened in the case claiming their share of the land. The lower court decided the land to be equally divided among the three wives. However, a higher court decided to allocate the rural land considering who was using the land. The decision has resulted in the exclusion of the applicant whose marriage remains intact while the other spouses are entitled to divide the property. CCI argued that this arrangement goes against Articles 34 and 35 of the Constitution which protects family and women's rights during divorce. However, HoF dismissed the cases saying it does not involve a constitutional issue. Similar challenges are observed in other cases such as in the case of *Jamaye Wonde vs. Workinesh Itich*.<sup>207</sup>

The other controversial issue is whether a rural land owned previously by one of the married couples and used jointly should be considered as a common property during divorce. The SNNPR Rural Land and Administration Regulation entitles a husband and wife to jointly use a land they possess before their marriage and a certificate is issued for them as joint landholders.<sup>208</sup> It also entitles them to jointly use a land they inherited.<sup>209</sup> This provision has been the basis of CCI's argument that the land which was acquired before marriage by one of the spouses is considered a common property and will be subject to equal division between the spouses upon divorce. This argument is supported in the case of *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun* by CCI which argued that a woman

<sup>206</sup> *W/ro Fatuma Hamude vs. Ato Hussien Tuffa*, House of Federations 5<sup>th</sup> parliament 4<sup>th</sup> year 1<sup>st</sup> council meeting, case no. ፌዴግ/አፍ/5/308, Nov. 10, 2019.

<sup>207</sup> *Jamaye Wonde Vs. Workinesh Itich* cited in Forum of Federations, *supra* note 71, p. 22 & 30. The case involved the two wives who were litigating over the land they jointly owned with their diseased husband. The court decided the widows to share the land. However, CCI dismissed the case arguing it does not involve a constitutional issue.

<sup>208</sup> Article 5 (2(A)) and 6 (4 (b)) of Regulation No. 66/2007.

<sup>209</sup> Article 5 (2 (B)) of Regulation No. 66/2007. According to the family law of the region, the property that each spouse possesses on the day of their marriage, or that an individual spouse acquires after their marriage by succession or donation, remains their personal property unless they decide otherwise. The law furthermore recognizes "community of property" regarding property acquired after marriage, and the joint administration of family property.

should get an equal share of the land based on her contribution to the development of the land during marriage though the land was acquired by her husband before marriage.<sup>210</sup> The decision also took into account the fact that women have a very limited opportunity to acquire land as the custom dictates land inheritance through a patrilineal line and redistribution of land has not been undertaken for long. However, the decision was reversed by the HoF arguing that the respective regional state law maintains that personal property acquired before marriage including land remains as personal property even though the husband and wife have jointly used the land. In this case, whether women's constitutional rights to equally acquire, transfer and use land should have been considered. It is also important to consider whether the law ensures women's substantive equality and not only formal quality. Though the difference in applicable laws of regional states is expected as the Constitution has given a residual power to enact land laws to regional states, such laws should not contradict the constitutional rights of women.

Similarly, in the case *W/ro Halima Mohamed vs. Ato Adem Abdi*,<sup>211</sup> HoF maintained that a husband who inherited his brother's wife after his death should not be entitled to equally divide the land that the wife jointly acquired during the previous marriage. The HoF argued that equal division of the land which was acquired during the previous marriage would deprive the woman of her right to access, administer and control land and also affect the best interest of the children from the previous marriage. However, CCI, contrary to its decision in *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun*, maintained that the land should be considered as personal property by pointing out that the husband has another land acquired through succession in his second marriage with another woman. This shows that CCI's approach in this matter has been inconsistent with its previous decision.

<sup>210</sup> *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun (guardian of Tsehaye Tameri)*, September, 2011 E.C (2018), FDRE House of Federation 4th year ordinary Meeting, p. 3.

<sup>211</sup> *W/ro Halima Mohamed vs. Ato Adem Abdi*; File No. 713/04 in House of Federation, *Journal of Constitutional Decisions*, 2009 E.C., Vol. 2 (2).



### *b. Implementation gaps*

Most of the constitutional dispute cases were brought to CCI/HoF by applicants dissatisfied with final court decisions. A small number of cases were referred to by courts for constitutional interpretation while the cases are pending before them.<sup>212</sup> Most of the cases were brought by applicants because of errors in evidentiary evaluation by the courts. Thus, among the cases brought, only around 3% were reviewed for constitutional interpretation. The rest did not pass the test for constitutional interpretation. The reason for this is that most people do not bring cases with an understanding of the mandate of the CCI. They are not also supported with legal experts when they initiate cases.<sup>213</sup>

Furthermore, some of the issues brought to CCI/HoF are based on the gaps in the implementation of the joint registration and certification of rural land which has been implemented in Ethiopia since 1998. The first level titling involved using local materials to measure and demarcate the land. The certificate gives the name of the neighbors and did not demarcate the land accurately with the land map. The second level land registration resolves this problem by indicating the exact size of the land and physical location of the land on the certificate through coordinates. In both cases, joint land certificates in the name of the husband and wife are issued.<sup>214</sup> The advantage of the land registration and certification program is that it helped the establishment of land administration structures starting from region up to the Woreda level. However, the recording and recording keeping of documents and updating of records whenever land transactions occur were not properly done. Thus, the first level of certification gave rise to land disputes which were resolved by local land administrative committees and courts while some cases ended up before CCI/HoF.<sup>215</sup>

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<sup>212</sup> The courts referred six out of 72 cases reviewed by the CCI until April 2019 cited in Anchinesh Shiferaw Mulu (2019), *supra* note 59, p. 423.

<sup>213</sup> *Supra* note 68.

<sup>214</sup> Mintewab Bezabih and Dagye Goshu, 2022, Land Issues in Ethiopia: Trends, Constraints and Policy Options, *Policy Working Paper 06/2022*, Ethiopian Economic Association (EEA), p. 44.

<sup>215</sup> *Supra* note 67.

Though a joint registration and certification of rural land in the name of husband and wife has been carried out, the registration process was more accessible for men because they have more access to relevant information and because of their customary role in administering land. This resulted in the absence of the spouse's name or fraudulent acts of registering other female relatives instead. Consequently, the number of cases brought to courts and later to the CCI increased. However, the land registration was successful in certifying female headed households in their own name.<sup>216</sup>

The majority of the cases involving women's land rights brought before CCI are concerned with land transfer. Despite the constitutional provision which provides land is owned by the Nations, Nationalities and Peoples, individuals engage in unconstitutional transfer of land rights through sale. Most of these cases are first taken to the local land administration committee and then to the courts. However, courts decide based on the sale agreement which calls for constitutional adjudication. For instance, in the case of *Banchamlak Dersolign vs. Abebaw Molla*,<sup>217</sup> the parties concluded a contract of antichresis. The defendant argued that the contract should not be taken as sale of land and the court decided supporting this argument. The CCI rejected the court's decision and held that the sale of land is unconstitutional based on Article 40 of the FDRE Constitution.<sup>218</sup> Similarly, *Aliya Dawe vs. Mumad Adem* case involved the sale of land which the applicant requested to be returned. The Court accepted the validity of the sale. However, HoF nullified the sale of the land for the same reason. In the case of *Hasay Doye vs. Tinsaye Kutale et.al*, the HoF nullified a court decision that

<sup>216</sup> *Supra* note 67.

<sup>217</sup> *Banchamlak Dersolign vs. Abebaw Molla* in House of Federation, *Journal on Constitutional Decisions*, Vol. 3, p. 10- 11. It is also available on Secretariat of Council of Constitutional Inquiry (2018), *Recommendations of Council of Constitutional Inquiry, Journal on Constitutional issues*, Vol. 1(1), Case No. 1110/06, p. 10-13 (ኢ.ፌ.ዴ.ሪ የሕግመንግሥት ጉዳዮች አጣሪ ጉባዔ ጽ/ቤት የተዘጋጀ የሕግመንግሥት ጉዳዮች አጣሪ ጉባዔ የውሳኔ ሐሳቦች፣ ሕገ

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<sup>218</sup> Forum of Federations, Desk Review on Women's Land Inheritance Rights: The Right of Women to Access to Justice on Constitutional Adjudication in Ethiopia: With Focus on Access to Information.

validated a sale of rural land in a similar fashion.<sup>219</sup> The other cases, *Kelebe Tesfa vs. Ayelegn Derbew*, and *Muyedin Yunis vs. Nazi Aliye et. al.* also involved the sale of rural land which was held unconstitutional based on the provision of the Constitution prohibiting the sale of land. In these cases, CCI/HoF relied on the literal application of the constitutional provision which provides that land is the common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange. In adjudicating these cases, CCI/HoF used textual interpretation of the constitution to invalidate the sale contracts.<sup>220</sup>

The other cases involved the protection of women from eviction. The case of *Ato Ketefo Gebreyes vs. W/ro Denekenesh Jima*,<sup>221</sup> involves donation of land by the applicant. The applicant donated the land to the respondent believing that the latter will support him in his old age. When the contract was concluded, the applicant assumed it was a contract of donation in return for assistance. CCI invalidated donation of land given by the applicant who has no other means of livelihood based on Article 40(4) of the Constitution which provides that Ethiopian peasants have the right to be protected from any eviction from their possession of rural land. In most cases, the CCI and HoF invalidated various private dealings on land that resulted in the eviction of the original holders of the land for the same reason.

The other kind of cases brought to CCI are disputes that relate to land rental by women. In such cases the statute of limitation for

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<sup>219</sup> The other cases, *Kelebe Tesfa vs. Ayelegn Derbew*, and *Muyedin Yunis vs. Nazi Aliye et. al.* also involved the sale of rural land which was held unconstitutional based on the provision of the Constitution prohibiting sale of land.

<sup>220</sup> Anchinesh Shiferaw Mulu (2019), *supra note* 59, p. 432. See also Mustefa Nasser (2018), *Methods of Constitutional Interpretation in Constitutional Dispute Settlement in Ethiopia*, (unpublished LL.M thesis), School of Law, Addis Ababa University, p. 29-30. The textual interpretation model endorses that the interpretation of a constitution should focus on what the law basically asserts through the literal and technical meaning of its provisions.

<sup>221</sup> *Ato Kitifo Gebreyes and W/ro Deneknesh Jimma vs. Besufikade Ayele*, 2009 E.C (2017), File No. 1663/08 in Secretariat of Council of Constitutional Inquiry (2018), *Recommendations of Council of Constitutional Inquiry*, Journal on Constitutional issues, Vol. 1(1) (ኢ.ፌ.ዴ.ሪ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ ጽ/ቤት የተዘጋጀ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ የውሳኔ ሐሳቦች፣ ሕገ መንግሥታዊ ጅርናል፣ ቅፅ 1፣ ቁጥር 1፣ መስከረም 2011 ዓ/ም), p. 14-16.

such contacts is at issue. In the case of *Alemitu Gebre vs. Chane Desalegn*,<sup>222</sup> the applicant requested the return of land rented to the respondent for five years while the latter argued he has rented it for fifty years. The Federal Supreme Court Cassation bench endorsed the lower court decision which decided for the respondent stating that he has been using the land for more than fifty years and it is barred by fifteen years period of limitation as per Article 1168(1) of the Civil Code. Nevertheless, the CCI overturned the court's decision, arguing that the land rental caused the eviction of the applicant against Article 40(4) of the FDRE Constitution. This case demonstrates an erroneous interpretation of the law by courts.

Thus, the above cases demonstrate that gaps in the implementation of laws or their interpretation by lower courts can trigger constitutional cases concerning rural women's land rights.

### *c. Lack of legal awareness*

Legal awareness refers to one's knowledge of rights and obligations and the mechanism to claim these rights.<sup>223</sup> Accordingly, for a person to claim their rights, they should be aware of the rights and be able to recognize their infringement.

Most cases of rural land are related to the disguised sale of land. This relates to the lack of awareness of the prohibition of land sale under the Constitution. A desk review on women's land inheritance rights conducted by Forum of Federations shows that among the 18 reviewed cases brought before CCI, most of the cases focus on the sale of land which were held unconstitutional.<sup>224</sup> Accordingly, the cases arise because of the lack of awareness of the prohibition of the sale of land by the parties to the dispute.<sup>225</sup> In addition, the lack of awareness of the formality requirements (i.e. land transactions should be in a written form and concluded before the authorized organ) is a common cause of the disputes.

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<sup>222</sup> *Alemitu Gebre vs. Chane Desalegn*, 130 File No. 913/05, Sene 26, 2007 E.C., 1(1) *Journal of Constitutional Cases* 26 (2011 EC).

<sup>223</sup> T. Geraghty and D. Geraghty, 'Child Friendly Legal Aid in Africa' in *Child Friendly Legal Aid in Africa*, UNICEF and UNDP, UNDOC, 2011, Executive Summary, p. 9.

<sup>224</sup> Forum of Federations, *supra* note 71, p. 27-30.

<sup>225</sup> Forum of Federations, *supra* note 71, p. 22.

Furthermore, rural women are not aware of their rights to inherit the land, their land rights during polygamous marriages and their rights when they enter into various types of contracts such as rental as demonstrated in the cases discussed in the previous section.

### **Barriers to Women's Access to Constitutional Adjudication**

Women's access to justice is affected by the existing normative and institutional frameworks in addition to structural and systemic social and political barriers. These barriers include physical barriers, digital divide, urban and rural divide, cost of legal services, lack of social network, infrastructural and transportation barriers, lack of legal awareness etc.<sup>226</sup> Though legal formalism intends to bring justice through the uniform application of laws, it has also unintended consequences. The incompatibility between the ideals of justice through the formal justice system and the social realities on the ground has resulted in unequal access to justice for the various groups of the society including women. Inequality in wealth, opportunities, and social and political status has been the main factor in the limited access to justice by women. The formalization of the legal system has sometimes resulted in protecting the rights of those who are socially and economically better off.<sup>227</sup>

Women's access to constitutional bodies is important since constitutions are reflections of the embodiment of equality of men and women. Though the constitution guarantees unrestricted access to CCI/HoF whenever there is a constitutional dispute, it has been observed rural women and other vulnerable groups face challenges in accessing this mechanism. Women's access to CCI/HoF is limited because of various social or institutional barriers. Some of these barriers may not be unique for women, although they disproportionately affect them. The barriers can be summarized as lack of awareness of how the mechanism works, procedural

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<sup>226</sup> OECD, 2016, "Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All", *Issues 2016 Brief*, p. 8.

<sup>227</sup> Jerold S Auerbach, 1984, *Justice Without Law?*, p. 143-44.

multiplicity, accessibility, and protracted time for decisions.<sup>228</sup> Women lack awareness of how to apply a case before CCI/HoF including the possibility to submit applications by post or email.<sup>229</sup> There is also procedural multiplicity that requires women to exhaust the formal justice system that range from Woreda courts up to the highest appellate court of cassation divisions of Federal/State Supreme Court before a case reaches the CCI.<sup>230</sup> Furthermore, rural women face insurmountable problem to physically access CCI since the secretariat of CCI is located in Addis Ababa without having any branch offices in the country. Furthermore, CCI is not financially accessible because of the costs of transport, accommodation and other legal service fees an applicant incurs to access the office and its services. Another barrier is the protracted period that takes CCI/HoF to decide on a case which is on average extended to three years. Although HoF is required to decide on constitutional disputes within 30 days upon receiving recommendations of CCI on the matter under the FDRE Constitution,<sup>231</sup> the recent Proclamation requires the House to make its decision in a short time.<sup>232</sup> Given the fact that the House meets twice a year,<sup>233</sup> it is not tenable for the it to make decision in time. Similarly, the law on the power and responsibilities of CCI does not provide the span of time within which a case has to be entertained and decided by CCI. Thus, these factors have resulted in delays in decision making processes.

Despite these barriers, CCI gives priority to cases that are brought by women and provides free photocopy services. It has also referred to some cases for legal aid support to various institutions though it has not yet established a formal referral system. Though this is

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<sup>228</sup> Forum of Federations, 2022, Policy Brief: Land Inheritance Rights of Women and Girls in Ethiopia, p. 2.

<sup>229</sup> *Supra* note 68.

<sup>230</sup> Brightman Gebremichael Ganta, *supra* note 53, p. 322.

<sup>231</sup> Article 83 (2) of the FDRE Constitution and Article 13 the previous Proclamation which is now repealed (Proclamation 251/2001) provides that the HoF shall decide a constitutional dispute within 30 days upon receiving CCI's recommendations on the matter.

<sup>232</sup> Article 18 of Proclamation No. 1261/2021.

<sup>233</sup> Article 68 of Proclamation 1261/2021.

a good practice, it needs to be accompanied by other legislative and institutional measures to make CCI physically and financially accessible to women and ensure speedy decisions.

According to Charles Epp, “support structure for legal mobilization” is necessary to realize access to justice.<sup>234</sup> These structures include “right advocacy organizations, right advocacy lawyers and source of financing”.<sup>235</sup> These support structures include NGOs and rights advocates who can provide services by bringing actions on behalf of vulnerable groups or whenever there is a need for strategic litigation aiming to bring structural changes including through public interest litigation or class action. The constitution and the subsequent laws do not prohibit public interest litigation and allow any individual or association to bring a case in the interest of the public. The experience of CCI demonstrates that this has been utilized in various cases such as in the case of *Kedija* where Ethiopian Women’s lawyers Association (EWLA) brought a case against the constitutionality of Sharia Court decision which was not based on expressed consent of the applicant when a case was adjudicated before the Sharia court.

Measures to improve access to justice also require other non-legal actions to ensure social inclusion. This implies that removing various social, economic, and political barriers is necessary to ensure access to justice. These barriers may involve financial, educational, and gender-related problems as well as other issues social status. These barriers cannot be solved only through litigation. Litigation has no power to address these barriers unless it is supported by actions of the government and non-governmental organizations.<sup>236</sup>

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<sup>234</sup> Charles Epp, 1998, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago, IL: University of Chicago Press), p. 3.

<sup>235</sup> Epp, *ibid*, p. 2-5.

<sup>236</sup> Hurter, *supra note* 8, p. 416.



## Conclusion

The adoption of regional laws on land has resulted in discrepancies in the protection of women's land rights. The lacunae in the laws, lack of legal awareness and gaps in the implementation of rural women's land rights have resulted in CCI to be overloaded with rural land related cases. Some of these cases could have been corrected by courts based on the constitutional rights provided to them under the Constitution. The CCI should not have acted as an organ for judicial review mechanism including enquiring about the evidence presented in the courts.

The legal gaps observed relate to women's land inheritance rights, land as common/personal property during marriage and the effects of polygamous marriages on women's land rights. It is important that land laws are reviewed to make them gender responsive by analyzing their implication for gender equality. Though the CCI has been applying a gender responsive approach and an intersectional approach in some of its decisions as constitutional interpretation methods, this should be supported through various measures including legislative amendment and adoption of an elaborated gender responsive constitutional interpretation methods.

Women's access to constitutional adjudication should also be improved by giving priority to cases involving women's rights not only to cases that are applied by women. Based on support structure for legal mobilization doctrine, access to constitutional adjudication can be realized when there are non-restrictive standing rules, removal of barriers to access including physical and financial barriers and through speedy/expedited disposition of cases. Legal awareness at grassroots level on rural women's land rights provided by government organs and legal institutions should be strengthened. It is also imperative to facilitate the availability and accessibility of legal assistance to rural women. Strengthening the implementation of land governance and administration to address challenges related to recording and verification systems is also an important step towards the protection of rural women's land rights.

## References

- Abebaw Abebe Belay and Tigistu G/meskel Abza. 2020. "Protecting the Land Rights of Women through an Inclusive Land Registration System: The Case of Ethiopia". *African Journal of Land Policy and Geospatial Sciences*, 3(2).
- Afar National Regional State. 2009. Rural Land Administration and Use Proclamation No. 49/2009.
- Amhara National Regional State. 2017. Revised Rural Land Administration and Use Proclamation No. 252/2017.
- Anchinesh Shiferaw Mulu. 2019. "The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia." *Mizan Law Review*, 13(3), 419-441.
- Assefa Fiseha. 2007. "Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)." *Mizan Law Review*, 1(1).
- Assefa Fiseha. 2017. "Constitutional Adjudication through Second Chamber in Ethiopia." *Ethnopolitics*, 16(3).
- Auerbach, Jerold S. 1984. *Justice Without Law?*. Oxford University Press, United Kingdom,
- Benishangul Gumuz National Regional State. 2018. Rural Land Administration and Utilization Proclamation No. 152/2018.
- Brightman, Gebremichael Ganta. 2018. "The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants and Pastoralists." PhD diss., University of Pretoria. South Africa.
- Cappelletti, Mauro. 1981. *Access to Justice and the Welfare State*. Springer, Netherlands.
- Cappelletti and Garth. "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective." *Buffalo Law Review*, 27(2). 181-292.

CEDAW recommendation on women's access to justice. 2015.

Central Statistical Agency, Ethiopia Demographic and Health Survey," Addis Ababa, Ethiopia, 2016.

Dereje Feyissa. 2020. 'The Praxis of Combating VAW in Ethiopia: A Political Interpretation'. *DIIS Working paper* 2020:10.

Doss, C. & Meinzen-Dick, R. 2020. 'Land Tenure Security for Women: A Conceptual Framework'. *Land Use Policy*. Vol. 99.

Epp. Charles. 1998. *The Rights Revolution: Lawyers. Activists. and Supreme Courts in Comparative Perspective* (Chicago. IL: University of Chicago Press).

FDRE. 1995. Constitution of the Federal Democratic Republic of Ethiopia. Proclamation No. 1/1995. *Federal Negarit Gazeta*. 1st year No. 1.

Federal Democratic Republic of Ethiopia. 2005. Rural Land Administration and Land Use Proclamation No. 456/2005. *Fed. Neg. Gaz.* Year 11 No. 44. 2005.

Forum of Federations. 2022. *Land Inheritance Rights of Women and Girls in Ethiopia: A Desk Review*.

Forum of Federations. 2022. Policy Brief: Land Inheritance Rights of Women and Girls in Ethiopia.

Forum of Federations. N.D. Desk Review on Women's Land Inheritance Rights: The Right of Women to Access to Justice on Constitutional Adjudication in Ethiopia: With Focus on Access to Information

Francioni. 2007. Access to Justice as a Human Right. Vol XVI/4.

Gedion T. Hessebon and Abduletif K. Idris, 2017, 'The Supreme Court of Ethiopia: Federalism's Bystander Chapter in Courts' in Nicholas Aroney and John Kincaid (eds.), *Federal Countries: Federalists or Unitarists?* University of Toronto Press.

Geraghty. T. and Geraghty. D. 2011. 'Child Friendly Legal Aid in Africa' in *Child Friendly Legal Aid in Africa*. UNICEF and UNDP. UNDOC.

Grossman and Sarat. 1981. 'Access to Justice and the Limits of Law' in Gambatta May Foster (eds.), *Governing Through Courts*.

Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu. 2019. Power of Land Administration under the FDRE Constitution. *Journal of Ethiopian law*, 31.

House of Federation. 2017. *Journal of Constitutional Decisions*. 2009 E.C. 2(2).

Hurter. Estelle. 2011. "Access to Justice: To Dream the Impossible Dream?". *The Comparative and International Law Journal of Southern Africa*, 44(3).

Mgbako. Chi and et al. 2008. Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights. *Fordham International Law Journal*. 32(1).

Mintewab Bezabih and Dagye Goshu. 2022. Land Issues in Ethiopia: Trends. Constraints and Policy Options. *Policy Working Paper 06:2022*. Ethiopian Economic Association (EEA).

Mustefa Nasser. 2018. Methods of Constitutional Interpretation in Constitutional Dispute Settlement in Ethiopia. (unpublished LL.M thesis). School of Law. Addis Ababa University.

Ndedi. Alain Aime and Kingsly. Mau. 2017. *The Role of the Rule of Law in a Developmental State in the African Context*.

OECD. 2016. "Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All". *Issues 2016 Brief*.

Oromia Regional State. 2023. Oromia Rural Land Use and Administration Proclamation No. 248/2023. *Megelata Oromia*.

FDRE. 2021. - A Proclamation to Define the Powers and Functions of the House of Federation of the Federal Democratic Republic of Ethiopia. Proclamation No. 1261/2021.

FDRE. 2013. A Proclamation to Re-enact for the Strengthening and Specifying the Powers and Duties of the Council of

Constitutional Inquiry of the FDRE. Proclamation no. 798/2013.

Raday. Frances. *Access to Justice*. HRC Mandate Holder. WG Discrimination against Women in Law and Practice.

Romano. Chiara. 2013. Land and Natural Resources Learning Initiative for Eastern and Southern Africa (TSLI-ESA). Case Study Report: Strengthening Women's Access to Land in Ethiopia.

Secretariat of Council of Constitutional Inquiry. 2018. Recommendations of Council of Constitutional Inquiry. *Journal on Constitutional issues*, 1(1).

Somali Regional State. 2013. Rural Land Administration and Use Proclamation No. 128/2013. *Dhool Gaz.* 2013.

Southern Nations, Nationalities and Peoples Regional State. 2007. Rural Land Administration and Utilization Proclamation No. 110/2007. *Debub Neg. Gaz.* Year 13 No. 10. 2007.

Takele Soboka Bulto. 2011. "Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory". *African Journal of International and Constitutional Law*, 19.

Tigray Regional State. 2014. Rural Land Administration and Use Proclamation No. 239/2014

