



THE GENDER IMPLICATIONS OF JOINT LAND TITLING IN ETHIOPIA

Ethiopia



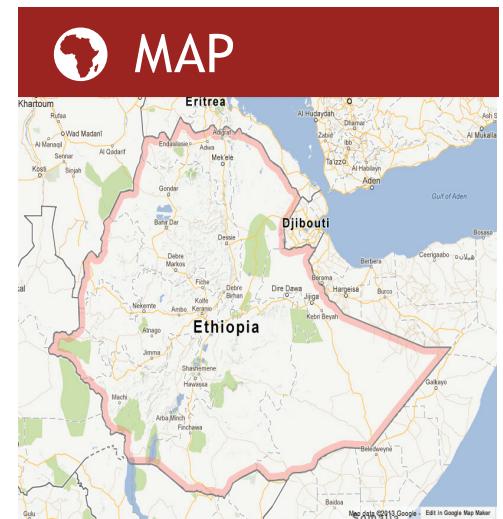
Young Women in Ethiopia. Photo: USAID

By Hirut Girma and Renée Giovarelli

INTRODUCTION

Ethiopia is the second most populous nation in sub-Saharan Africa, with a population of 82.9 million, and the eighth largest country by area, occupying 1.10 million square kilometers (World Bank, 2010). Much like other Sub-Saharan countries, the Ethiopian economy is highly dependent on the agriculture sector. Agriculture accounts for more than 50% of the Gross Domestic Product, 88% of exports, and 85% of total employment (Tenaw et al. 2009).

Land is a critical asset and a vital source of livelihood for the majority of Ethiopians. Land, however, is becoming increasingly scarce for numerous reasons: rapid population growth, high population density in productive areas, degradation of agricultural lands, urbanization, and competing demands from different users, including investors. In a time of growing land scarcity, women's subordinate socio-economic status heightens the importance of their access to, control of, and ability to benefit from land.



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Women's insecure rights to land can result in the loss of spillover benefits from national economic growth.



Women in Ethiopia. Photo: Oxfam

While Ethiopian women represent 49% of the national labor force and contribute significantly to agricultural production, they have not benefited equally from national economic growth (World Bank, 2010). Socioeconomic and institutional constraints impede Ethiopian women's ability to exercise their rights and benefit from the growing economy (World Bank, 1998). Gender roles, primarily informed by a patriarchal orientation, limit women's ability to effectively participate in public affairs (Stevenson, 2005). In addition, women's insecure rights to land result in the loss of potential spillover benefits from national economic growth, including a rise in net household income, and an increase in expenditures on food and education (Tesfa, 2002).

In recognition of the distinctive challenges faced by women and to capitalize on the positive development effects of empowering women, the Government mandated joint certificates of agricultural holdings between husband and wife (Bezabih and Holden, 2010). This mandate is part of the ongoing national efforts to formalize land holdings.

Understanding the preliminary gendered

(i.e. biased toward one gender or the other) impacts of joint titling in Ethiopia can contribute to enhancing the effects of land certification efforts. The success of land certification will be determined by existing pre-conditions, complementary policies, institutional capacity, community capabilities, and the degree of adherence to the certification process in the field. Moreover, certification is likely to have different impacts on the lives of this heterogeneous group of rural women whose challenges and opportunities are shaped by their membership in diverse cultural, ethnic, religious, and economic groups.

HISTORY OF WOMEN'S LAND RIGHTS IN ETHIOPIA

The tenure system of Ethiopia has undergone numerous reforms over the century to reflect the policies of different regimes. However, there has been considerable consistency in the basic principles of the land policy since the land reform of 1975. Prior to the revolution of 1974, land tenure was a complex system comprised of diverse tenure holdings: communal (*Rist*), grant land (*Gult*), private or freehold (*Gebbar tenures*), church (*Samon*), and state

(*Mederia Mengest*) (Tenaw et al. 2009). The regional variations in land holdings stemmed from a combination of diverse agro-ecological, cultural, and historical factors (Nega et al. 2003). During this period, more than 70 percent of fertile land was concentrated in the hands of the one percent of property owners (Tenaw et al. 2009). The majority of women were among the landless (Tesfa, 2002). Overall, the tenure systems failed to provide women with secure rights to land. To the extent that women could legally inherit land, they often failed to do so due to socio-cultural constraints that precluded women from exercising their rights (*Ibid*). The tenure system resulted in high tenure insecurity, low productivity, and inequitable distribution of land (Deininger et al. 2007).

Following the 1974 revolution, the Marxist oriented Derg regime nationalized all rural land. The Derg regime distributed user rights to households, barred most transfers of user rights with the exception of limited transfer through inheritance, and prohibited the hiring of labor to cultivate land (Holden and Tefera, 2008). To accommodate new households, the initial nationwide land distribution was followed by periodic

Land registration at the household level often meant registering land exclusively in the name of the male.



→ Ethiopian Farm. Photo: Homelands Productions

redistribution (Holden and Tefera, 2008). These measures contributed to a decline in productivity, soil degradation, and considerable tenure insecurity (Nega et al. 2003).

Although the 1974 land reform promised a more equitable distribution of available land, the prohibition against hiring labor adversely affected women's land rights. Women did not generally plough land due to the traditional division of labor, yet were prohibited from hiring labor to do this work. Female heads of households were at a particular disadvantage, and unable to benefit equally from the land allocation scheme (Tesfa, 2002).

Similarly, land registration at the household level often meant registering land holdings exclusively in the name of the traditional head of household (Gebrehiwot, 2007). In regions where polygamy is practiced, registry at the household level exacerbated the tenure insecurity of multiple households as the land registration records merely reflected one of the several households (*Ibid*). The households of subsequent wives were excluded from the registration process and thereby deprived of the corresponding rights to land. In addition, the limited

registration of marriages and divorces often intensified the tenure insecurity of polygamous wives.

Under the 1995 Constitution of the Federal Democratic Republic (FDRE) of Ethiopia, land continues to be vested in the State and is not subject to sale (FDRE Const. art. 40(3)). However, farmers have additional rights, including short-term land renting and the hiring of labor to cultivate land holdings (Witten, 2007).

In addition, the Government decentralized the land administration process by delegating it to the nine semi-autonomous regions of the country (FRLAUP 1997: 2005). Following the Federal Constitution and guided by the general principles of the Federal Rural Land Proclamation, the regional states, including Amhara, Oromia, SNNP, and Tigray, subsequently enacted their respective land proclamations. In 2010, the regional states of Benishangul-Gumuz and Gambella enacted their regional land proclamations (Abza, 2011). Most regional proclamations include restrictions on migration, the maximum size of land to be rented out, and the duration of rental contracts (Deininger et al. 2007).

According to the Constitution, farmers who wish to earn their living from farming are entitled to land without charge (art. 40(4)). This universal access to rural land provision can be enforced through administrative reallocation of land, which could pose a threat to tenure security (Deininger et al. 2007). The Revised Federal Rural Land Proclamation permits redistribution of land under limited circumstances (art.9 (2)). At a regional level, the SNNP and the Tigray region land proclamations do not explicitly rule out land redistribution, while the Oromia region proclamation prohibits land re-distribution except in irrigable land, and the Amhara region proclamation makes redistribution conditional on landholders' support (Ali, 2011).

LEGAL FRAMEWORK

The Constitution accords women equal rights with men in regards to the use, transfer, administration, and control over land (art. 35 (7)). Women enjoy equal treatment in the inheritance of property and the disposition of marital property (*Ibid*). Moreover, the Constitution explicitly prohibits laws and customary practices that

discriminate against women (art. 35(4)). The gender responsive provisions of the Constitution are reinforced through other national legislation such as the Rural Land Proclamation and the Family Code. The Civil Code, which was enacted in 1960, governs inheritance matters. The Rural Land Proclamation provides that all regions shall confirm the equal rights of women with respect to the transferring and bequeathing of holding rights (FRLAUP 2005). Furthermore, the revised Family Code recognizes community property among spouses (Revised Family Code 2000, art. 62 - 63).

However, property inherited by a spouse or acquired prior to marriage is considered personal property (separate property), unless a marriage contract states otherwise (Revised Family Code art. 57). While this is a common provision in many Civil Code countries, given the prevailing patrilineal inheritance and virilocal/patrilocal residence systems (in which a wife takes up residence in her husband's community) in Ethiopia, this provision can significantly compromise wives' right to land as they are not likely to inherit land from their natal families. Therefore, husbands are more likely than wives to be named on the land certificates (Holden and Tefera, 2008).

Women also possess full testamentary rights under the Civil Code (Civil Code, 1960). However, the Civil Code restricts the right of a spouse to transfer personal property by testament to the other spouse because separate property must pass to blood relatives by testament (World Bank, 1998). Therefore, contrary to some customary practices in which a widow would automatically inherit the land of her deceased husband, she does not have the legal right to inherit the separate property through intestate succession (i.e. an alternative means of distributing property that has not been disposed of by a valid will) (ARD, 2008). This legal prohibition is potentially mitigated by provisions such as Article 5 of the Rural Land Proclamation (Derg Land Reform Proclamation of 1975), which states that a spouse would have the right to use the land of the deceased spouse (PORLP, 1975).

Without the inclusion of the wife's name on certificates, some women risk losing the right to claim half the rights to land in the event of divorce or on the death of the husband (Holden and Tefera, 2008). Moreover, for women entering into a marriage without land, their rights to land are contingent on the type of agreement entered into during marriage (Teklu, 2005). Such agreements vary by individual

circumstances and may depend on the local customary practices (*Ibid.*). In addition to recognizing civil, religious, and customary marriages, the revised Family Code also recognizes the irregular unions of cohabitating couples that could otherwise enter into a marriage (ARD, 2008). Property acquired during a consensual union of three or more years (informal marriage) is common property (Revised Family Code art. 102 (1)).



FACT

Without the inclusion of their names on land certificates, women risk losing the right to claim half the land in the event of divorce or being widowed.



Rural Ethiopia. Photo: threesftf



Although the formal legal system explicitly recognizes the equal rights of women and prohibits discrimination against them, discriminatory application of the laws, enforcement challenges, high illiteracy rates, and socio-economic constraints often preclude women from exercising their rights (Adal, 2005). Discrimination against women includes the allocation of smaller and less fertile plots to female-headed households. One study found that, on average, female headed households were allocated 1.7 hectares, while male-headed households were allocated 2.2 hectares (Kumar and Quisumbing, 2010). Various social norms related to lineage, marriage practice, and inheritance considerably affect women's rights with regards to access to and control of land. For instance, the patrilocal system of residence often operates to exclude women from controlling land (Adal, 2005). Similarly, while polygamy is not permitted by federal law, it is customarily practiced in an estimated 6.5% of marriages in Ethiopia (OECD, 2012). Subsequent wives in polygamous relationships often lose rights to land and other assets when a marriage occurs.

JOINT TITLING

Although the first registration of land in Ethiopia dates as far back as 1909, and land certificates have been issued since 1998, joint titling was only introduced in 2003 (Holden and Tefera, 2008; Deininger et al. 2007). The Government, with the support of its development partners, has undertaken arguably the largest low cost land certification program in Sub-Saharan Africa (Deininger et al. 2007). It employed a participatory and decentralized approach through Land Use and Administration Committees (LACs). These committees are comprised of elected community members and require the participation of at least one female member (Deininger et al. 2007). In accordance with the Federal Land Administration Policy, land holders granted use rights are to be provided with a Book of Holding containing an official certificate (Ibid). At present, the land records contain textual data, an estimated plot size, and the names of the landholders of the adjacent plots (Abza, 2011). As of March 2010, the joint



→ Ethiopian woman holds the land certificate in which she is named. Photo: USAID

certification program had registered a majority of rural land in the densely populated regions of Amhara (87%), Oromia (85%), SNNP (84%), and Tigray (97%) (Ibid).

The certification process and the decentralized nature of land administration have resulted in regional variation in the program. For example, different regions commenced the land certification program at different dates. Consequently, significant variation exists in the share of certificates issued jointly and individually. While the regional state of Tigray did not mandate joint titling and issued a majority of certificates in the name of the husband, the Amhara, SNNP and Oromia regions required joint certification (Deininger et al. 2007). Furthermore, the Amhara and SNNP regions required photographs of both spouses on certificates while the Oromia region only required the photograph of the husband (Ibid). One study speculates that the considerably higher number of certificates issued exclusively in the name of the husbands

in the Oromia region as opposed to the lower incidence in the Amhara and the SNNP regions may be attributed to the requirement to include the photographs of wives in the joint land certificates in the latter (Ibid).

In the case of polygamous marriages commonly practiced in some parts of the SNNP region, certificates were to be issued in the name of the head of the household and the first wife while subsequent wives received certificates in their own names (Holden and Tefera, 2008). However, resistance by polygamous men required some modification to the initial plan such that certificates could be issued jointly to the husband and his wives on a single certificate; or joint certificates could be issued to each household with the husband's name listed first on the certificate with his first wife and, following, the name of each subsequent wife on the their respective joint certificates (Holden and Tefera, 2008). In the Oromia region, all wives were registered on a single certificate;

FACT

Inspite of federal regulations requiring the inclusion of at least one female member, only 20 percent of Land Use and Administration Committees include women.

however, future wives cannot be added onto the certificate (ARD, 2008).

WOMEN'S AWARENESS AND PARTICIPATION

Women's ability to assert their land rights and to benefit from land certification depends on women's awareness of their land rights, their ability to invoke such rights, and society's acceptance of the formal laws governing women's land rights (Teklu, 2005; Verma 2007). In regards to access to information and participation in the land certification process, preliminary studies indicate significant disparities between men and women (Kumar and Quisumbing, 2010). While there appears to be some regional variations regarding the extent of the differences, a study conducted in the Oromia and SNNP regions found that on average women's knowledge and participation in the early stages of the land registration process were lower than that of their male counterparts (Holden and Tefera, 2008). A later nationwide study confirmed the gender gap in awareness and information (Kumar and Quisumbing, 2010). Studies revealed that written information concerning the certification process and the laws was not equitably disseminated among men and women (Deininger et al. 2007). The poor households were also significantly more likely to have received oral information than the relatively well-off households (Ibid).

In spite of the federal regulations requiring the inclusion of at least one female member in the LACs, women were generally highly underrepresented in the LACs. Only 20% of LACs included female members (Ibid). According to one study, some government officials and local leaders elected not to promote women's participation in the LACs, as the field-based public registration of land requires traveling from plot to plot (Kanji et al. 2005). To the extent that women were represented in the LACs, women members did intercede

to defend women's rights (Kumar and Quisumbing, 2010). Moreover, the presence of female members in the LACs motivated female-headed households to participate without discouraging male-headed households' participation (Kumar and Quisumbing, 2010). Women's representation in the LACs also corresponds with a heightened expectation of equitable distribution of assets upon divorce (Ibid).

POSITIVE IMPACT

Land certification has raised public expectations in rural Ethiopia. In general, it has improved tenure security for both men and women (Holden and Tefera, 2008). The perception of increased tenure security also extends to polygamous households. Both husband and wives in polygamous households in Southern Ethiopia perceived their tenure security to have increased, with later wives perceiving a greater increase in their tenure security, possibly due to their weaker initial position as compared to first wives (Ibid). In addition, the inclusion of wives' names on land certificates enhances public expectation of an equitable division of land upon divorce or the death of a spouse (Ibid). Studies also indicate a modest positive effect of certification on female agricultural productivity (Bezabih and Holden, 2010). Although joint certification appears to have had a limited effect on women's ability to influence household farm management decisions, it did contribute to their increased influence in land rental decisions in regions where rental contracts required the consent of a spouse following joint certification (Holden and Tefera, 2008). Strong traditional values governing intra-household farming decisions might explain the continued male domination in this arena (Ibid).

REGISTRY MAINTENANCE AND UPDATING

Maintenance and systematic updating of records to reflect the transfer of use

rights is imperative to sustaining the positive effects, reliability, and credibility of the system. Ambiguous allocation of responsibilities, unclear procedures for updating records and the absence of clear guidelines for updating the land registry in some regions have led to differences in record keeping in and between regions (Deininger et al. 2007). This coupled with a lack of reference to the registry book when registering leases is likely to compromise the accomplishments of the land registration (Ibid). Furthermore, owing to women's secondary status within their communities, they are likely to be disproportionately impacted by disputes arising from gaps in record keeping.

RECOMMENDATIONS

Preliminary assessments of the gendered impact of joint land titling in Ethiopia are generally favorable and offer valuable lessons. However, further in-depth assessments are necessary to ascertain the long term impact and analyze the strengths and weaknesses of the land certification process. The following recommendations address the key challenges to date and identify areas requiring further research.

GENERAL RECOMMENDATION

- Develop gender implementation guidelines for the titling of the remaining agricultural lands, pastoralist lands, and possibly house plots with a view toward strategically and comprehensively addressing gender issues in implementation.

LEGAL FRAMEWORK

- Increase the scope of land certification to include house plots to protect other key interests in land and employ an integrated approach to land administration. A house plot is not only a source of shelter but also a source of income, credit (collateral), and legal identity.
- Adequately address the issue of land registration in the context of polygamous

marriages. While the federal regulations outlaw polygamy, it is customarily practiced in some regions.

- Research the extent to which women are able to enforce their rights, placing particular emphasis on the institutional and socio-economic constraints impeding women from exercising their rights.
- Promote the registration of births, marriages, and deaths to facilitate the effective enforcement of women's land rights.
- Evaluate the legal support available to women, the accessibility of these services, and the extent to which disputes result in positive outcomes for women in accordance with the law.
- Review the regulations of traditional systems with mandates to adjudicate land disputes as these systems are often the first recourse for rural communities.

RAISING AWARENESS

- Conduct continuous and coordinated awareness campaigns on the socio-economic barriers impeding women's land rights and the public benefits of women's land tenure security using a gender-sensitive approach.
- Prioritize the training of women, land administration staff, and community members on the need for and benefit of women's involvement in the land certification process.

PARTICIPATION OF WOMEN

- To foster the meaningful participation of women in the titling process, assess the causes and consequences of women's lack of participation.

- Consider establishing the LACs at the sub-village level instead of at the village level to enable more women to participate.

- Review the duties and time commitment of LACs members with the view of facilitating women's active participation given their traditional roles as primary caretakers and other productive roles.

- Provide training for women on public speaking and other leadership skills to empower them to participate in community affairs.

- Invest in the education and training of women for positions in land administration.

IMPACT OF LAND CERTIFICATION

- Conduct in-depth analysis to better understand the gendered impact of land certification including the implementation challenges and the spillover benefits at the household level.
- Conduct comparative analysis of the effects of different regional joint titling regulations on women's land rights.

- Conduct studies to evaluate the extent to which women's participation in land markets has improved.

IMPACT OF LAND CERTIFICATION

- Conduct in-depth analysis to better understand the gendered impact of land certification, including the implementation challenges and the spillover benefits at the household level.
- Conduct comparative analysis of

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- Conduct studies to evaluate the extent to which women's participation in land markets has improved.

RECORD KEEPING

- Develop mandates that clearly delegate responsibilities for updating registries, and provide guidelines as well as clear modalities for the systematic updating of land registries.

- Introduce a systematic mechanism for referencing the registry when registering new transactions, including new leases.

- Sensitize communities and land administrative staff on the importance of updating land registries as transactions occur, and the costs of failing to do so.



Northern Ethiopia. Photo: Diedre Sorenson

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