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MINISTRY OF AGRICULTURE

MANAGING LAND DISPUTES IN ETHIOPIA

FINAL REPORT

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MINISTRY OF AGRICULTURE

Ethiopia

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Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
FLLC	First Level Land Registration
HoF	House of Federation
KLAUC	Kebele Land Administration and Use Committee
LA	Land Administration
LGAF	Land Governance Assessment Framework
PA	Peasant Association
SLLC	Second Level Land Certification
SNNP	Southern Nations Nationalities and Peoples
VGs	Vulnerable Groups

1. Introduction

In an agrarian society, like Ethiopia, where lion share of the population relies on land rights for livelihoods and welfare, access to land is fundamental to be capable of existence as a free and dignified human being. Conflict may virtually arise in any social setting. It is unavoidable in human society.

Ethiopia has had many land disputes, to the extent that land cases make up about 70% of the total cases in courts of law. There are a lot of avenues for resolution of land related disputes in Ethiopia. Land Administration Committees at local (kebele) level are by default the first institution of choice to attend to land disputes because they are local and provide virtually free judicial services. The second institution is the dual judicial system with two parallel court structures: the federal courts and the state courts with their own independent structures and administrations. State courts operate both at regional state, zonal and district (woreda) levels. The Land Administration Committees at kebele level, mediators at local level, and the courts at woreda, zonal, regional, and federal levels, handle land cases on a day-to-day basis. Administrative bodies also entertain land cases which are of administrative nature. There are also quasi-judicial institutions established to hold hearings on specific land matters (for instance on expropriation).

In addition, Ethiopia embarked at kebele level, village by village, on systematic adjudication and documentation of land rights by Land Administration Committees as part of first level land certification program which was implemented from the late 1990s to around 2010; many of the rural land cases were resolved during this program. Under the second level land certification program that followed, the incorporation of a cadastral index map and/or detailed survey of boundaries enabled better measurement and clarification of boundaries thereby helping to resolve even many more cases. This paper reviews experiences and results in addressing land disputes, based on staff experience and evaluations by government, donors, and researchers.

2. Description and Findings[1]

2.1. Overview of Land Disputes

Many conflicts in Ethiopia is related to land in one way or another. Land dispute is one of the major types of disputes in Ethiopia which has many causes. For instance, it is reported that land related disputes are claiming more than 70 percent of civil litigations, and 48 percent of homicide crimes in the Amhara Region Courts, one of the 10 regions of the country. This shows that the source of land conflict is wider than what was anticipated. Although the magnitude is different, the trend is similar in the other regions. One of the root causes is shortage of agricultural land added with high population pressure. Besides this, those having no/minimum land has very limited alternative means of livelihood other than agriculture. Holding right claim, boundary conflict, land encroachment, divorce and partition of land, land transaction related conflicts (rent, inheritance, donation, exchange), corruption by land administration officers, crimes committed or omitted related to land rights and the like are the major land related conflicts.

Even though land disputes constituted much of the court's cases, these were supposed to be handled through the formal judicial system. During the period of the military government, rural land dispute settlement was handled mainly by a local peasant association (PA) without a right to appeal to formal courts, and as a result the process was spoiled with corruption and inefficiency.

The first federal rural land administration and use proclamation was promulgated in 1997. This Proc. 89/1997 failed to address how to solve land dispute. Following this proclamation, regional states started promulgating detailed region-specific rural land laws and tried to incorporate rural land dispute settlement mechanism. The Federal Rural Land Administration and Use Proclamation 89/1997 was replaced with the existing proclamation in 2005 which among others has a guiding provision about dispute settlement mechanisms. One of the objectives of the existing rural land administration and use proclamation is to create conducive environment to resolve land disputes amicably and efficiently. The other objective is to reduce disputes through systematic registration and certification of landholdings. Land certification is the best measure to reduce land dispute and enhance tenure security among land holders and users. There is evidence that there is a significant decrease in the number of land disputes after land certification.

Unlike the rural land administration and use legislations, there is no specific urban land dispute settlement mechanisms, but it is treated based on urban lease laws.

[1] Extended information is taken from 2016 LGAF report

2.1. Institutions for Dispute Management

Federal and Regional land administration and use laws and court establishment laws show that there are various avenues for land dispute settlement. It starts from negotiation, goes to mediation, and then to formal courts. Line by line, religious courts also operate with prior requirements. The process of land related dispute settlement is shown in the next sections. Regional rural land laws are not similar in adopting provisions to resolve a land dispute. However, there is a similarity in that all regions recognize customary or village level mediation as starting point in dispute settlement stage. In all regions of Ethiopia, agreements reached through negotiation, compromise, or arbitration is encouraged. About half of disputes are resolved through locally established institutions before reaching the formal judicial system.

2.1.1. Negotiation by the Disputant Parties

The federal and regional rural land administration and use laws depicts that "where dispute arises over rural landholding right, effort shall be made to resolve the dispute through discussion and agreement of the concerned parties." The law gives the first chance to disputant parties to see and discuss their issue by themselves. Even courts recommend disputant parties for negotiation. This seems impractical but has an important role in solving land related disputes.

2.1.2. Mediation[2]

Mediation of land conflicts can provide an important way to resolve disputes in a relatively quick and inexpensive way compared to the court system. It also may serve to prevent disputes from spiraling into potentially violent conflict. Mediation is one form of alternative dispute resolution (ADR) and can itself take different forms. However, the core characteristic of mediation is that one or more meditators facilitate discussions between the opposing parties and enable the parties themselves to reach a mutually satisfactory agreement. The mediators do not impose decisions on the parties, and thus mediation may or may not end in agreement.[3] By contrast, in arbitration, another form of ADR, a decision is imposed by the arbiter (or arbiters) upon the parties. In Ethiopia, mediation in land disputes is recognized by the legal framework and practice. The legal framework enshrines that where the dispute could not be resolved by agreement, it shall be facilitated by a mediator to be elected by the parties to reach into agreement." In most of the regions, mediation is not a mandatory step which

[2] Extended information is taken from, Strategy to Address Legal Constraints of Women and Vulnerable Groups to Secure Their Land Rights, 2019

[3] One authority defines mediation as an alternative to violence, self-help or litigation that differs from the process of counseling, negotiation, and arbitration. It is the processes by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues to develop optional alternatives and reach a consensual settlement that will accommodate their needs. Mediation/conciliation is a process that emphasizes the participants' own responsibility for making decisions that affects their lives. It is therefore a self-empowering process. (Tefera and Mulugeta, 2009)

an aggrieved party (i.e. someone with a land right related complaint) must take before filing a court case. However, in Oromia and SNNPR, an aggrieved party is required to attempt mediation before taking a land case to court. A person cannot take his case directly to court without first trying mediation.

Care should be taken so that some groups will not be disproportionately affected by the mediation process. Local elders may be influenced by the culture. As compared with the general population, women and Vulnerable Groups are affected in different ways by mediation, which offers both advantages and disadvantages depending on the governing legal framework and the way it is practiced on the ground. In short, mediation offers a lower cost opportunity and is a less burdensome alternative to court litigation. It is considered generally as a better option, especially for woman and VGs who often have fewer cash resources than opposing parties. On the other hand, if the mediators tend to follow discriminatory cultural norms, are ignorant of gender equity guarantees in the law, and then attempt or succeed in imposing these views, then women and VGs may be better off going straight to court. It requires to train mediators on the formal laws in general and the rights and responsibilities of individuals so that they can consider these things during their mediation.

In areas where mediators tended to be knowledgeable of the formal legal land framework and understood the context in the communities better than the judges, mediation appeared a comparatively better option for women and VGs than formal court procedures. Relative to the general population, women and VGs are more constrained by their lack of capacity and resources to bring litigation cases and prove their case with the required evidentiary standards in a court of law. As a result, women and VGs risk losing their court cases unless supported by other organizations (such as legal clinics, pro bono lawyers, or justice office representation). One useful practice is that the judges will ask the parties to try mediation, and if the parties do so, then the judge will follow up on the case and provide support. If the parties do not choose mediation, or fail to arrive at an agreement via mediation, then the court case will.

The Kebele Land Administration and Use Committees (KLAUCs) facilitate the mediation process and sometimes they served as mediators themselves. These committee members are directly elected by the community and are better off in terms of knowledge of the laws. Besides the committees, the kebele land administration expert plays a facilitation and coordination role in the process of mediation and land dispute resolution processes. Most of the time local elders and religious leaders serve as mediators to solve land disputes. They are very much respected by the community and their mediation role is pivotal.

2.1.3. The Role of Woreda Land Administration and Use Offices in Solving Administrative Land Disputes

Administrative issues are resolved by the woreda land administration office. But there is no clear provision as to what cases are considered as “administrative.” Besides this, the woreda land

administration office plays a pivotal role by providing evidence to courts when court cases are opened by parties.

2.1.4. The Role of Quasi-Judicial Institutions

There are also other types of land related dispute hearing tribunals operating in urban areas: municipal courts and clearance and compensation hearing tribunals. Urban municipal courts operate on some limited level. When the city administration becomes a party, municipal courts are the ones to hear the case. In the event of expropriation of land, there might be claims related to compensation, public purpose or ownership/holding rights. In this case the urban land clearance and compensation hearing tribunal which is responsible to the city administration and possesses a qusi-judicial power, will hear the case. The urban land clearance and compensation hearing tribunal is administrative body with quasi-judicial power, and the judges put in this tribunal are not legally trained judges but people working within the urban land administration institution, and this makes their competence questionable at best. They have neither clear procedure to follow during dispute settlement nor legal knowledge to interpret the law.

The new Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation number 1163/2019 and its implementation regulation number 472/2020 has established new quasi-judicial bodies called "Complaint Hearing Body and Appeal Council." Regional States, Addis Ababa and Dire Dawa City Administrations are obliged to establish Complaint Hearing Body and Appeal Hearing Council which shall have jurisdiction to entertain grievances arising from decisions related to expropriation, valuation compensation and related matters. The details about how to bring complaints and appeals in one hand and decide on those complaints and appeals are enshrined in the laws.

2.1.5. Regular Courts (Woreda/District, High/Appellate, and Supreme Courts)

Regular courts (woreda/first instance, high, and supreme) are recognized as having binding power over all disputes including one emanating from land. The woreda court (lowest hierarchy of the formal judicial system) is the first formal dispute settlement arena where well-trained judges reside over the land related dispute matters. Based on the geography, a woreda on average has 25 kebeles under its administration. The woreda court basically entertains both civil and criminal cases and land issues are categorized as one part of civil litigation. Since the magnitude of land related disputes is large, in some courts (E.g. Amhara) a separate bench is dedicated to hearing land related cases only. Legally speaking, the woreda court is the first instance court for formal litigations as village level dispute settlement is categorized as informal.

The cost is affordable to rural disputing parties since dispute settlement committee is closely available to the public and takes less time to resolve cases. However, if the dispute cannot be resolved amicably through negotiation or arbitration or if one of the parties prefers not to settle the case by arbitration,

the disputing parties need to go to regular woreda court. This causes relatively higher transaction costs since disputing parties need to travel longer distances and incur higher costs. Of course, the court fee is small as already mentioned above. In urban areas, there are municipal/woreda/first instance regular courts to entertain land dispute cases.

Appeal is accessible but requires more money, time, and knowledge of law. Appeal is available to disputing parties to take their case to higher courts. But this demands longer time and higher costs and especially not affordable by women and the poor. In all urban and rural land related dispute settlement systems, a right of appeal is recognized. Any decision given by a woreda/first instance/municipal court is appealable to a regional or federal high court. Any decision rendered by woreda/first instance Sharia court is similarly appealable to a High Sharia Court. If the court decides in favor of the appellant, the aggrieved party has further right to appeal to Regional or Federal Supreme Court. And if there is any error of law in the decision of either of the Supreme Courts, the cases may finally be taken to the Federal Cassation Court, which is the highest appellate court in the country.

While it is true that the cost of initial dispute settlement is affordable to majority of rural and urban disputing parties, the cost of dispute in appellate courts is higher especially to rural people who are forced to travel repeatedly to urban centers. In urban areas, there are municipal/woreda/first instance regular courts to entertain land dispute cases. Of course, the cost may not be as cheap as that of the traditional dispute settlement since disputing parties are required to pay court fee and sometimes fee for legal support. And if the case is further taken by appeal to a high court and thereby to Supreme Court, people will incur more cost and time. In case of high court, rural people may be required to travel hundreds of kilometers to bigger urban centers. Appellate courts are expensive to rural poor not because the court fee is as such big but because they need to pay higher expenses for such costs as fees for legal assistance, transportation, accommodation, and food.

Conflicts in the woreda court are mostly on average resolved within 6 months for more than 90% of cases. This is because of the court reform introduced in Ethiopia that requires judges to dispose cases in their hands within fixed period unless the cases are found to be complicated. If all evidence is readily available, cases may be decided in less than three months. However, there are many ups and downs until all evidence is completed. Woreda courts usually demand evidence from woreda/kebele land administration offices, and because of the poor recording and preservation of data, the office in turn demands the evidence from the local land administration committee. The committee again calls public meeting and collects evidence from the public discussion and sends such finding to the LA office and thereby to the court.

The federal supreme court cassation bench is established by Federal Courts Proclamation Reamendment Proclamation number 454/2005 Art. 2(4). According to this provision “Interpretation of a low by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels. The cassation division may however render a different legal interpretation some other time.” The main aim of this provision is to create

uniform interpretation of laws. As per art. 2(5) the Federal Supreme Court shall publish and distribute decisions of the cassation division that contain binding interpretation of laws to all levels of courts and other relevant bodies." Until now volume 23 of the collection of these decisions is published and distributed to which there are land related cases in it.

2.1.6. Religious Courts

There are also religious courts recognized by the constitution as operating side by side with regular courts. The federal Constitution under Article 78.5 recognizes the possibility of establishment of “religious and customary courts” besides the regular courts. As a result, Sharia courts are established at Federal and Regional levels. The consent of both parties is necessary for the Sharia courts[4] to entertain the case according to Islamic laws.

2.1.7. House of Federation (HoF)

It interprets any decision, action, or law about its constitutionality. The HoF has the authority to interpret the Constitution itself and the constitutionality of laws, decisions, and actions (Articles 62 and 83 of the Constitution). According to proclamation 251/2001 the powers of the HoF are enshrined in detail. The House shall make the final decision upon draft proposal of constitutional interpretation submitted to it by the Council of Constitutional Inquiry. Land cases are among those which are brought to the HoF for constitutional interpretation. Most of the time claimants alleged that decisions given by courts are against the constitutional provisions. There are many instances where the HoF reversed court decisions saying that they are unconstitutional.

[4] Federal Courts of Sharia Consolidation Proclamation no. 188/1999

3. Impacts (of the Change) on Effectiveness and Efficiency, and any Other Benefits

Institutions for providing first instance conflict resolution are accessible at the local level in most communities at no cost or affordable cost. As already mentioned above, dispute settlement mechanisms are established at the lowest administrative unit of most areas and are accessible to the public. They are affordable and accessible to the public even if they have capacity problems.

In the regions where first level registration is exercised, the dispute settlement committee is established at kebele level by nominating three representatives from the three sub-kebeles. The committee members serve the public freely for 3-4 years. Their task is to encourage the disputing parties to solve their problems through conciliation and negotiation. In some regions, they directly involve the committees to help both parties to resolve their disputes. In regions where land administration (LA) offices are effectively established at kebele level, the committee is monitored by the kebele LA officer. In others, the woreda LA or the woreda administration gives direction.

Large scale and low-cost land registration (both FLLC and SLLC), especially in rural area, has found a significant positive impact on reducing conflict, land tenure security and women empowerment based on recent studies conducted. There are many studies to this regard. Having tenure security reduces the likelihood for a farm household to experience land disputes by about 40% (Salvatore Di Falco et' al, 2016). Besides this, the title deeds (FLLC and SLLC) are used as conclusive evidence before the court of law. This is especially very relevant for women landholders, as this decreases land related illegal encroachments and illegal possessions towards women's land. Besides this, low-cost and large population coverage dispute resolution instruments using "negotiation and mediation" via Kebele land administration and use committees; elders and religious leaders means a lot for the rural community as this saves the labor, money and time of landholders in one hand and maintaining relationship of the litigants, and its superiority over creating win-win solutions on the other which would have been invested in dispute settlement had these mechanisms were not in place. This increases investment on land and in turn to productivity.

About 50 percent of land disputes are resolved at kebele level through negotiation and conciliation, with help of mediators, at no cost to disputants; and woreda (district) courts are effective and efficient, with more than 90 percent of their cases resolved within 6 months.

4. Recommendations

In weighing the advantages and disadvantages of mediation, a regime of optional mediation is the better option to protect and advance the land rights of all including women and vulnerable groups. Mediators apply discriminatory cultural norms which affect women and VGs disproportionately. This supports a case for better training to ensure that they do not overstep their authority or impose decisions. Building a system that works with check and balance is another thing. Besides, mediators must be responsible for their actions.

Programs be implemented to train mediators in both the substantive land law and techniques of mediation, even though it is optional, to protect the rights of women and VGs who do opt for mediation. Institutionalization of such capacity-building activities should be undertaken by the court system or justice offices, with oversight and auditing of mediators' performance.

Strengthening local mediators through provision of training, legal materials, and work offices so that to enhance their capacity to settle disputes cheaply and efficiently. Gender and Social Inclusion could be part of the capacity building program.

Supporting local legal aid centers established by universities, Civil Society Organizations (CSOs), government justice offices will be very important actions. These centers can assist the poor and vulnerable groups in their litigations.

A separate land court or bench is very important. When separate land courts/benches exist, they can solve land related cases in time and effectively. Judges working in this bench will be knowledgeable and have the capacity to entertain cases. For this purpose, judges need to be well trained on land laws.

5. Lessons and Challenges for Other Member States

⇒ "Negotiation and Mediation" – deployed by kebele land administration and use committees, local elders, and religious leaders low-cost and large population coverage dispute is key for the rural community as this saves their labor, money, and time in one hand and maintaining relationship of the litigants, and its superiority over creating win-win solutions on the other. Besides, recognizing informal dispute resolution mechanisms through negotiation and mediation is crucial as mediators have better information, evidence, and knowledge on rural land cases.

⇒ A system of Mobile/circuit bench is applied for land related cases for accessibility of the service. It is a system where judges at some time move towards rural areas for specific period and entertain land cases. This is a system of bringing the service closer to the rural community to save their time, energy, and money. Judges give appointment to different cases before they move the areas.

⇒ Plasma based hearings are practices especially at the federal supreme court cassation bench level. This helps people to attend the hearing at their regional capital courts. This as well saves the cost, time and energy of litigant parties.

⇒ The Ethiopian Human Rights Commission (EHRC) has established 111 Free Legal Aid Centers country-wide to provide legal aid to the most vulnerable groups (including but not limited to women, children, elderly, disabled, …) at no charge. It has invested more than US$266,513 in the Free Legal Centers. Besides, Representation by the government prosecutors, CSOs, universities for weak parties in the country has paramount importance in protecting the land rights of these groups. Legal clinics are meant to provide legal aid services to the vulnerable section of the society who cannot otherwise have access to justice.

⇒ The provision of free legal aid services can be provided directly by state institutions, or it may facilitate the provision of the same to the needy in society by allowing non-state actors like non-governmental organizations (NGOs), civil society organizations (CSOs), and other professional organizations and academic institutions to provide this kind of support. This support may take the form of 1) mandatory/voluntary pro bono services by licensed advocates or government institutions (for instance, public defender, court appointed counsel, the Ethiopian Human Rights Commission (EHRC) which has established 111 Free Legal Centers country-wide), 2) legal aid programs run by professional associations or NGOs (the Ethiopian Lawyers' Association (ELA), Ethiopian Women Lawyers Association under its Legal Aid Program), and 3) legal aid clinics established by law faculties within public universities. Law faculties of public universities also provide legal aid services.

⇒ Mainstreaming gender in land dispute resolution processes, especially women participation rates in the staffing of formal courts, quasi-judicial and administrative institutions, and local level informal institutions that facilitate negotiation and conciliation, with the aim of achieving a participation rate of at least 50 percent.

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