Taking Enforcement of Women's Land Claims in Ethiopia Seriously

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1. Introduction

Women's access to and control over land is crucial in economic empowerment and poverty reduction. Its economic value aside, equitable access to land is in the interest of a just society as the value of equality and dignity underpins the concept. In view of this, Ethiopian laws have promoted land rights of women who according to Central Statistics Agency of Ethiopia constitute at least half of the country's population (CSA 2007). The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) contains relevant provisions to protect women's land rights (Articles 35 and 40). The country has also ratified different international human rights instruments that in one way or another have implications on the State's obligation to protect women's land rights.[3] Moreover, Ethiopia has set up institutions including the Federal Supreme Court (FSC) and the House of Federation (HoF) that serve as the guardians of constitutional rights.[4] The HoF, the upper house of the Parliament, has the authority to interpret the Constitution while the FSC has the highest judicial authority in the country with its cassation rulings having a binding effect across all levels of federal and regional courts. The FSC has been rendering decisions of national importance with respect to land rights of women. Likewise, the HoF has entertained cases of similar subject matter when the issue of constitutionality has been called for. The HoF receives assistance from the Council of Constitutional Inquiry (CCI) in the course of its effort to interpret the Constitution.[5]

Both the HoF and the FSC are expected to play significant role in relation to women's land rights. Since the HoF is an institution with a final say over constitutionality of laws, decisions, and customary practices in the country, it is an important forum where actions that undermine women's land rights can be remedied. While irregularities may occur in the process, its mandates under the constitution positions it to safeguard women's land rights by creating a uniform and positive constitutional interpretation through its decisions. Likewise, the FSC may entertain matters related to women's land rights falling under its jurisdiction when presented for its consideration. Given its decisions from the cassation jurisdiction can serve as precedent to other subsidiary courts in the country, it is expected to elaborate and elucidate land rights of women as enshrined in the constitution, international standards, and subsidiary national legislation. This is important

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[3] The FDRE Constitution provides that the fundamental rights and freedoms contained in Chapter Three shall be interpreted in conformity with the Universal Declaration of Human Rights, International Covenants on Human Rights, and international instruments Ethiopia has ratified (Article 13(2)). These international instruments are considered to be part of the law of the land (Article 9(4)).
[4] These two organs have been rendering decisions related to land. Several land related cases concerning women have been published in the various volumes of the FSC Cassation Bench. Likewise, decisions of the HoF are being published under its series of journals.
[5] The CCI is an institution established by the FDRE Constitution. It is comprised of eleven members of whom eight shall necessarily have legal background while the remaining three shall be designated by the HoF from members (FDRE 1995, Article 82). When there are alleged controversies over provisions in the Constitution, claims will be presented to the CCI, which it shall critically consider whether or not the matter entails constitutional interpretation. The CCI then presents its opinions on the matter to the HoF for verdicts if it requires constitutional interpretation (FDRE 1995, Article 84/1).

in guiding lower courts how to tackle similar cases submitted to them. Further, as indicated below, the FSC established a separate department dedicated to follow-up the execution of its judgments, which is yet to fully develop (World Bank 2010). This arrangement, leading to improved enforcement of judicial remedies, may present a better chance for women judgment holders to enforce remedies granted by the FSC in their favor.

Since the decisions of the HoF and FSC are final with no possibility of appeal (though the decisions of the FSC can be reviewed by the HoF on the basis of constitutional interpretation), what would normally remain is their enforcement. Owing to the highest and final nature of the decisions of these two institutions, the scope of the chapter is delineated to a closer examination of the HoF and FSC. This is, of course, without disregarding the fact that decisions of lower courts may also have a final nature and enforceability so long as not contested by the concerned party. The time-honored maxim "justice delayed is justice denied" goes beyond mere timeliness in disposition of cases. If we accentuate 'Justice', as we should, the saying should also relate to the enforcement of decisions passed by appropriate institutions. Even though women's land rights are legally recognized and legal institutions may render decisions in favor of women landholders, often times the decisions may remain either ill enforced or unenforced. The enforcement of judgments at the various levels of courts is generally unsatisfactory and even more challenging in case of land disputes, calling for the need for the establishment of a specialized mechanism (CCI Forum 2019).[6] A range of factors contribute to the weak enforcement of judicial decisions including entrenched customary practices, women`s lower economic status as well as knowledge and capacity gaps (Odeny 2013). The situation in relation to women's land rights exhibits a state in which legitimate interests are given constitutional and legal recognition but not duly enforced at the same time. Thus, the underlying general argument of this chapter is a decision not enforced is a decision not given at all and hence amounts to denial of justice.

Therefore, the core objective of this chapter is to examine the existing challenges in the enforcement of land related decisions of the HoF and FSC and the possible remedial roles different stakeholders can play. This is done by interrogating the repertoire of normative and institutional measures to assist women landholders benefit from these judicial decisions favoring them. The chapter offers a range of recommendations to address the problem which has a far-reaching human rights and development implications. Methodologically, the chapter is largely based on desk review of primary and secondary sources with limited interviews held at the CCI.[7] We believe that the chapter will be part of relevant contributions to ongoing discourses and further research on enforcement of judgments and the enforcement of women's land claims, which can be used by policymakers, researchers, and other stakeholders.

The chapter starts with a brief discussion on women's land rights in Ethiopia by highlighting the important frameworks and the efforts the government puts towards implementation followed by a section that provides an overview of the Ethiopian judiciary and the HoF. The next section documents the manner in

[6] The forum organized by the CCI in August 2019 regarding decisions involving rural land in the country alluded that the challenge in the execution of land claims and emphasized the need of special benches. Specially, the remark by the President of the FSC, serving as the chair of the CCI, alluded that the enforcement rate of decisions on rural land by the HoF is at low level. Among the many reasons is the inconsistency between federal and state rural land laws in several contexts

[7] While the chapter does not base itself on empirical study and the authors did not undertake extensive field data collection, interviews were conducted with a member of the CCI, Ato Getachew Gudina, in September 2019 and November 2019 to draw proper insights on the matter. The interviews mainly focused on the nature of cases frequently presented to the CCI, the number of cases related to women's land rights, and whether the decisions of the HoF on women's land rights are receiving due enforcement.

which customary systems are recognized in the State legal system in an attempt to show how customary practices have gotten recognition and serving as a stepping stone to ease enforcement of decisions involving women's land rights. The chapter then examines enforcement of decisions of the HoF and the FSC regarding land related litigations that involve women along with the challenges thereof. The final section presents the different strategies that could be implemented to enforce decisions of the two institutions and realize women's land rights

2. Women's Land Rights in Ethiopia

The right to property, particularly land, is one of the fundamental rights vested to human kind. Discrimination in access to and control over land is both "a violation of the human rights of women and a barrier to economic development" (Tura 2014, 141). The protection of women's land rights provided under international and domestic legal frameworks put a direct linkage to their livelihood and right to life. As rightly argued by Branco, Article 3 of the Universal Declaration of Human Rights (UDHR) may serve as a basis for linking the right to land to inalienable right to life, demanding that it should meet the minimum standards of human dignity and needs to be enjoyed with freedom and safety (Branco 2014, 1222). This implies that no one shall be arbitrarily deprived from enjoying her/his human rights, which is innately equal and inviolable, except for lawful limitations that may be imposed. It is long established under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) that States parties have the duty to ensure equal right of men and women to the enjoyment of all rights guaranteed under the covenants.[8] Accordingly, women are accorded equal protection with men on economic, political and other affairs, including rights over land.

The Convention on the Elimination of Discrimination against Women (CEDAW) requires States parties to ensure women's access to agricultural credit and loans, marketing facilities, appropriate technology, and resettlement schemes, among others (Article 14). The Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its General Recommendation No. 34 also pointed that rural women often have only limited rights over land and natural resources compared to men. Women suffer from discrimination in relation to land rights in many regions, where men's domination have been witnessed. The Committee recommended that "member States should take all the necessary measures … to achieve rural women's substantive equality regarding land and other natural resources" (CEDAW 2016, 17). It further requires States parties to design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes, and practices, which obstruct women's rights to land in particular (CEDAW 2016, 17).

Furthermore, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol), in its Article 19, provides that women shall have the right to full enjoyment of sustainable development. As such, the Protocol urges States parties to take all appropriate measures, *inter alia*, to promote women's access to and control over productive resources such as land, and guarantee their right to property. In this respect, the African Union, African Development Bank, Economic Commission for Africa Consortium (2010, 8), noted that it is necessary to "deconstruct, reconstruct and reconceptualise" existing laws as well as customary norms and practices that concern women's access to and control over

[8] Article 3 of both Conventions provides for the principle of equality between women and men.

land. This by far is important provided women remain primary users of agricultural land in most developing societies (ibid, 9). Efficient and productive use of land requires that land rights of women are best strengthened through several mechanisms. This should be in compliance with equal rights for women to inherit and bequeath land as well as co-ownership of registered land with spouses (ibid, 15). The Ethiopian legal system provides frameworks to protect women's land rights. The FDRE Constitution enshrines fundamental principles that guarantee equality of women and men in all areas of life with a strong affirmative action clause aiming to enable women to compete and participate equally with men in all spheres of life (FDRE 1995, Article 35). Women's equal rights are given emphasis owing to the historical inequality and gendered discrimination women suffered under previous governance as well as traditional and cultural practices. The FDRE Constitution confers explicit recognition and protection to the right to property under Article 40 and specific reference to women's right to acquire, administer, control, use and transfer property under Article 35 (7), which in particular encompasses their equal rights with men with respect to use, transfer, administration and control of land. Land belongs to state.

The Revised Federal Family Code also recognizes equality of men and women in all aspects particularly in relation to ownership and administration of personal and common property during marriage and equal division of property upon divorce (Article 90). Furthermore, rural and urban land laws, at the federal and regional levels, recognize the rights of women over land. These laws, however, specify preconditions to access land. According to Article 5(1) of the Federal Rural Land Administration and Use Proclamation (No 456/2005), any citizen who wishes to engage in agriculture as a livelihood has the right to access rural land for free. As advancement towards access and control over productive resources including land is crucial for improving women's economic empowerment, the Ethiopian Government has exerted efforts to secure this through land certification. Under the Second Growth and Transformation Plan (GTP II, 2015/16-2019/20), the Government of Ethiopia that land certification improved women's status and their bargaining power with their spouses and within the community at large. The Government reported that upon the implementation of the national land certification program, million women have acquired land use certificates either jointly with their spouse or separately which has surpassed 10.5 million as of 2019 and will continue to grow as part of the GTP (FDRE 2019a). Additional efforts were made by the Government such as ensuring mainstreaming of women's land rights in government activities. The Government has, for instance, enacted legislation that requires all federal government institutions to integrate women's interests in their respective policies, laws, development programs and projects (FDRE 2018b). These endeavors alone, however, do not ensure the concrete realization of women's land rights in the country. Enforcement is one of the major concerns with respect to translating these rights into reality. In fact, providing substantive rights will be mere stipulation unless there are mechanisms for enforcement. This is worsened by insufficient institutional frameworks and enforcement mechanisms of gender equality. Physical, financial and linguistic inaccessibility of the FSC and the HoF to the local community hinders women to take cases to these institutions. For example, despite the large geographical size of the country, both institutions are centrally located in Addis Ababa. Due to this, people residing in the peripheries may be prevented from bringing cases that should have been lodged to this organ due to distance and financial implications. In effect, as distance increases, the chance to present cases will also be diminished (Gebremeskel and Alebachew 2018, 59–60). This is one concrete challenge restricting rural women from presenting their grievances to the FSC and HoF. Similarly, while courts have been established at the federal, regional, and local levels, large rural society and weak infrastructure creates situations in which formal courts are inaccessible to the community living in the peripheries.

3. Roles of the FSC and HoF in Enforcing Women's Land Rights

The FSC and HoF are central among the different institutions bestowed with the role to defend women's constitutional rights in Ethiopia. The FDRE Constitution conferred on the FSC a final judicial power over federal matters and a cassation power over any judicial matter in the country (Article 80). It has also vested the authority to interpret the Constitution in the HoF (Article 62(1)). The mandates of these institutions have hence paramount importance in the protection of women's rights, including the right to land. Both institutions have the power to make decision over matters pertaining to women's land rights.

The role of the judiciary in general and the FSC in particular in relation to women's land rights has two dimensions. The first aspect is the case where the FSC entertains matters related to women's land rights under its ordinary jurisdiction. This is when women are involved either as complainants or respondents in a particular case presented to this court. In such cases, the FSC gets the chance to make decision that elaborates and elucidates land rights of women as enshrined in the FDRE Constitution and international standards (Daley et al. 2013, 7). The second dimension is the case where the FSC handles complaints in its cassation jurisdiction in which it reviews lower courts' decisions for basic error of law. The decisions passed by the FSC under its Cassation Division serve as precedent for similar cases dealt by lower courts.

The FSC has the mandate to review and make final decision(s) on cases processed by courts provided the decisions contain a *prima facie* case for basic error of law (FDRE 1995, Article 80 (3a)). Such decisions rendered by the FSC Cassation Division, with not less than five judges, are binding on federal and regional courts at all levels (FDRE 2005b, Article 2(4)). An integral part of the two dimensions, the FSC has a an administrative department for merely following-up the execution of its decisions; however, the role of this department is not strengthened mainly due to the absence of a separate bench responsible for the execution of decisions rendered by the FSC.[9] Despite the existence of execution benches in the federal court structure that are operational at lower court levels, this is lacking at FSC level. There are, however, ongoing efforts to establish specialized benches that follow-up the execution of FSC's decisions, which can help women landholders to process their cases timely.[10]

The HoF is 'composed of representatives of Nations, Nationalities and Peoples' of Ethiopia (the FDRE Constitution, Article 61 (1)), among others, with the authority to interpret the FDRE Constitution.[11] The HoF has been rendering decisions that meaningfully influenced the country's legal system, including land related cases involving women litigants (FDRE 2019). It operates with the CCI to pass decisions on constitutional interpretations. The role of the CCI is to forward recommendations to the HoF on the constitutionality of a specific case after conducting a thorough investigation. The CCI does not pass a final decision on its own rather it is up to the HoF to accept, modify or reject the recommendation(s) or call upon the CCI for clarification (FDRE Constitution 1995, Articles 83 and 84 (1-4)). Nonetheless, recommendations forwarded by the CCI are believed to positively influence the outcomes of cases to a significant degree (Getahun 2007, 84). Among the many recommendations the CCI has made so far, forty

[9] Interview with Ato Getachew Gudina, member of the CCI, November 2019.
[10] An assessment of the performance of federal courts reveals that enforcement of judgements is rather long and protracted process, which suggests urgent measures to be taken. The creation of specialized execution benches was taken as a first step. However, it is yet uncertain how much this has improved the overall enforcement perfomarnce.
[11] It also plays pivotal role in the prevention and management of conflicts between regional states (FDRE 1995, Article 62).

of them have been published in the first issue of its journal. Of these, twenty cases are property related, among which more than eleven cases involved women either as complainants or respondents (CCI 2018).

As a final authoritative decision maker on constitutional matters, laws and practices that are found to undermine women's land rights can be rectified by the HoF to the extent of annulment. According to Article7(2) of Proclamation No 251/2001, interpretations of the HoF pertaining to fundamental rights and freedoms enshrined in the Constitution shall be made in a manner conforming to the principles of UDHR, international covenants on human rights, and other international instruments adopted by Ethiopia. This is an important modality to help secure women's rights in relation to land through the decisions of HoF.

Taking these international human right frameworks seriously by the HoF has the potential to provide advanced protection to women's property rights as indicated in section three above, adherence of the interpretations of domestic laws and practices to such international standards shall presumably benefit women and the wider society. Yet, even if Proclamation No. 251/2001imposes duty on concerned parties to observe and execute decisions passed by the HoF (Article 56(2)), the FDRE Constitution and subsidiary laws are devoid of mechanisms for the HoF to follow on the enforcement of these decisions. Hence, although the HoF can potentially contribute to the protection of women's land rights through the interpretation of the FDRE Constitution and international instruments, the normative framework set by the Proclamation neither empowers the HoF to execute its decisions nor mandates it to follow-up or monitor.

4. Challenges in the Enforcement of Judicial Remedies Granted by FSC and HoF over Women's Land Claims

Ethiopia faces problems in the enforcement of laws and court decisions (World Bank 2010, 86). Poor record of execution of decisions is noted in the country at large both in terms of number and quality. This problem becomes particularly severe when it comes to enforcing decisions related to women's entitlement to land. Studies show that women's rights to land have been adversely affected by issues related to weak enforcement of judicial awards (World Bank 2010). Although the FSC and HoF grant remedies for women's land disputes, their decisions face enforcement hurdles. Rights and privileges accorded to people can only be fully realized when an enabling environment and appropriate forums are available to enforce those rights; enforcement is further crucial for implementation of contested rights. Enforcement of decisions is an area attracting judicial attention not only in Ethiopia, but also globally (Odeny 2013). Unless decisions are enforced, it is of little worth for litigants who spent time, energy and money on judicial proceedings. The capacity of the judiciary and other responsible organs in enforcing decisions is essential to maintain rule of law and ensure access to justice. The failure to enforce effectively decisions timely and efficiently, however, makes the legal system untrustworthy and undermines the proper administration of justice.

4.1 Recognition of Customary Systems in the State Laws

Customary systems have unique role in addressing law enforcement needs, enforce community rules, and mediate and resolve local conflicts (Knight 2010). They exist in most communities to govern certain societal relationships. Even though customary systems operate not necessarily due to the absence or inaccessibility of government infrastructures, this factor may constitute one of the key drivers to over reliance on them.

Plural legal order comprised of both the formal and customary systems could co-exist in a legal system simultaneously constituting "legal pluralism".[12] The concern, however, with customary norms is that some individual or groups' rights, particularly those of women, are often overlooked because of the importance it places on communal solidarity at the expense of individual rights. This can be attributed to deeply entrenched prejudice against women within various customary norms and practices (Knight 2010).

Long-lived patriarchal traditions and customary practices in the society have disadvantaged women in socio-economic and political spheres leading them to exclusion, marginalization and poverty. The prominence of customary systems obsessed with patriarchal traditional norms promotes systemic discrimination of women in key institutions. In effect, this presents challenges to the State that has the duty to uphold human right standards without discrimination. This requires particular emphasis considering that key decisions in matters concerning land that affect women's land rights may have their foundation in such kinds of institution. Plural legal orders exist in Ethiopia as a result of existence of diversity across the country in way of life, language, cultures and practices. Customary systems have gained recognition in the State system through the FDRE Constitution. Article 37 (1) of the FDRE Constitution proclaims that "everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power". Also, Article 35(4) allows "the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute". Customary rules can further be recognized and incorporated into the legal system provided they are in line with the FDRE Constitution. If a certain customary practice is found to be contrary to the FDRE Constitution, it will, legally speaking, be void. In effect, the status of legal pluralism is highly dependent on the compliance of customary systems with the FDRE Constitution. Article 9 (1)) clearly stipulates "The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect". However, even though the approach to legal pluralism envisaged under the Constitution attempts to harmonize the different customary rules with State laws, such approach has not been effectively translated into reality due to institutional constraints especially weaknesses in enforcement of land rights of vulnerable social groups such as women.

Rural land laws in the country give place to customary land rights and institutions, including dispute resolution mechanisms concerning rural land. The laws encourage and urge parties to first settle dispute through customary practices before resorting to the formal court systems.[13] This arrangement, *inter alia,* is relevant to promote customary systems to get better recognition in the statutory land tenure. Despite the positive roles customary institutions may play within the community in terms of greater physical, financial and linguistic accessibility, they are at times diminished by formal institutions handling women's land claims. Conversely, enforcement of decisions of the FSC and HoF is also often impaired by customary rules

[12] While legal pluralism could mean different things depending on the prevailing context, it may refer to "the incorporation or recognition of customary norms within State law or to the independent co- existence of indigenous norms and institutions alongside state law" (Mohammed 2011, 93 – 94).

[13] See Article 12 of the Federal Rural Administration and Land Use Proclamation; Article 28(1) of Tigray Rural Land Administration and Use Proclamation No. 136/2007; Article 34(1) of the Benshangul Gumz Rural Land Administration and Use Proclamation No. 85 /2010; Article 52(1/b) of the Amhara National Regional State Rural Land Administration and Use Proclamation No. 252/2017.

as customary elders often pressurize women who have already obtained favorable court decisions to settle such decisions outside the court system to their detriment. To avert this problem and to get the best out of customary systems, integration of the State law and the customary systems appears important. Nonetheless, the benchmark must always be that such integration affords better protection to women's land rights. This is of important consideration as the integration could be self-defeating due to conflict between the formal system and customary systems with respect to dealing with human right matters, particularly those which affect women. Mohammed (2011, 96) observed that uniform application of human rights could be a real challenge in the presence of legal pluralism:

> Different normative ordering recognized under the Constitution could, therefore, constrain the uniform application of human rights enshrined under the Constitution as their underpinning norms and processes are obviously bound to differ in many instances. This is most visible with respect to the constitutional guarantee of the rights of women in general and gender equality in particular vis-à-vis the treatment of women in the customary and religious laws and systems.

Effective enforcement of remedies awarded by the FSC and HoF is affected primarily by customary norms that may in most cases refute women's right to own, administer and control over land. It is noted that "persistent cultural and customary attitudes also work against implementation of women's rights" (Gashaw 2015, 63). Women do not often have customary right to inherit land from their family, and control and ownership over land during marriage is often assigned to the husband (Tura 2014, 137).

Customary systems operate commonly in several communities in the country; this may prevent enforcement of judicial decisions rendered in women's favor since, as indicated above, traditional elders incline to force women to settle entitlements duly recognized in court decisions in a way that compromises their legitimate interests given recognition in those court decisions (ibid).Therefore, the manner customary systems are operating deserves closer attention given their application may present challenges in the enforcement of decisions relating to women's land rights.

4.2 Institutional Constraints

Women face critical challenges in the enforcement of their rights over lengthy court procedures that take years until a final decision is given by the FSC. Most cannot afford costs of the prolonged litigations and enforcement proceedings (Tura, 164). As the World Bank (2010, 73) stated while an ''overly speedy trials as an equally injurious vice – it is evident that lengthy delays can defeat a legitimate plaintiff and also discourage people from taking cases to the courtroom''. Lengthy court proceedings as well as enforcement problems also affect both women and men. Indeed, lack of enforcement of decisions of the FSC and HoF could be a challenge both to men and women as much of the reasons behind lack or inadequacy of enforcements may affect them. However, the effect of non-enforcement of judicial awards is much more cumbersome to women as opposed to men taking into account the former`s economic disadvantaged position and prevalence of entrenched gender insensitive customary norms in the society.

It must be noted that the magnitude of non-enforcement of decisions of the FSC and HoF cannot easily be established owing to the fact that the Ethiopian justice system lacks adequate information in this regard (World Bank 2010, 85). However, the problem is acknowledged to be huge and has long gained attention

from the FSC leading to exploring alternative institutional solutions to tackle the matter as part of the institutional reform within federal courts (World Bank 2010, 87). On this basis, the FSC has developed a targeted work plan to properly enforce judgments, leading to the expansion of specialized benches ('execution benches') in federal courts to handle the proper execution of judgments. These benches are expected to speed up execution of decisions and avoid prolonged cases that usually consume the time and resources of the courts. The benches, once they intensify their progress rates, can serve as an important forum for women judgment holders to secure the enforcement of decisions rendered in their favor. Nonetheless, we believe that the problem cannot be solved by simply creating specialized benches and setting targets but also the development of effective approaches to properly monitor enforcement in a gender sensitive manner.

Furthermore, there is overcrowding of land claims before judicial bodies in Ethiopia as most civil cases presented to the courts are dominated by cases related to land (Woldegebriel 2016, 47). Owing to this and the particular challenges in enforcing decisions pertaining to land disputes, the 2019 Forum organized by the CCI give due emphasis in establishing special land tribunals that will primarily entertain cases relating to rural land administration.[14] The need to establish special tribunals dealing with land matters is attributed to the increasing number of land cases coming to the courts. The land tribunals may ease the implementation of decisions by the courts which would extend to execution of decisions rendered in favor of women concerning their land claims. However, such efforts cannot completely tackle the enforcement challenges and other strategies shall also be adhered to. The following section presents a range of strategies to help women judgment holders in respect to their land rights.

5. Strategies to Enhance Enforcement of Women's Land Claims Awarded by FSC and HoF

In several developing countries, there is a gap between existing gender sensitive land laws and policies and their implementation. Ethiopia is not an exception in this regard. Even if existing laws provide mechanisms to secure women's access to and control over land, implementations have been witnessed to be challenging. The World Bank (2010, 88) noted that "in some sense, the courts' success in speeding up the time to judgment has pushed those seeking to delay justice to focus on this further step—if you cannot hold off judgment then you can prevent collection of the award levied against you". This implies the need for enforcing decisions rendered by the courts, which otherwise, would delay justice. Addressing enforcement issues is, therefore, an entry point to fully realize women's rights over land and may have several implications for policymakers, executors and other stakeholders in their efforts to implement women's land rights. In effect, proposing strategies aiming to enforce decisions regarding women land rights by relevant institutions appears timely. This section, thus, discusses some of the strategies that may facilitate effective enforcement of land related decisions rendered by the HoF and FSC in favor of women. These are, by no means, one-size-fits-all strategies, rather proposals for consideration in policy, law and institutional reform to tackle the various problems.

[14] Interviews with Ato Getachew Gudina, a member of the CCI, September 2019.

5.1. Strengthening Women's Role in Land Governance

Women's role in land governance, which is related to empowerment of women, contributes to realize their rights over the resource. Women's empowerment is one of the key strategic objectives of the Sustainable Development Goals and the Growth and Transformation Plan of the Ethiopian Government. The African Union Agenda of 2063 also aspires to see fully empowered women with equal access and opportunity in all spheres of life, including the rights to own and inherit property (Para 20). Effective governance of land demands the participation of women both at policy formulation and implementation with the view to ensuring gender-equitable land tenure system. For this, meaningful representation is central to create favorable conditions for women (Gashaw 2015, 63). In this regard, FAO (2018, 57) reported:

> …women's participation in land governance strengthens their land rights as well as improves land governance overall. When women are represented in land management and administration institutions, those institutions are more likely to create new rules (or strengthen the existing ones) to protect women and minority groups' rights, promote alignment of local rules with national and international laws that protect women's and minority groups' land rights. Not only these, women managers, when well positioned in land administration and management institutions, are more able to influence the decision-making process so that women's land rights can be strengthened.

Steps taken by the Ethiopian Government in empowering women to control and administer their land are much to be desired. This is because even if regional state land laws, family laws along with the FDRE Constitution and land registration program have facilitated women's access to and control over land, women still face multiple challenges in making informed decisions over their land. Especially in the event of disputes and dissolution of marriage, they are more disadvantaged than men.

Increased role in making decisions over land could be important in enforcing the decisions passed by the HoF and the FSC. This can be successfully achieved by making women joint title holders through land registration, and sole holders while not married, which is already underway. Negotiations and decisions should be made with the consent of women. To do so, however, women need to be aware of their rights and take part in land governance institutions.

5.2. Establishing Land Tribunals

The previous section recalls the limited performance of the FSC's department set up to follow through the execution of its decisions mainly due to the absence of a separate bench responsible for judgment executions. As a result of this and other emerging trends, such as the increasing flow of cases relating to land, the FSC proposed to establish land tribunals. We think the proposed initiative by the FSC to establish tribunals that specifically deal with land matters in the courts would go a long way for realizing the enforcement of land rights. The establishment of the land tribunals is ideal and timely considering most cases entertained by several courts in the country are related to land. World Bank's assessment of civil cases in selected *woreda* courts of Amhara, Oromia, Tigray and South Nations Nationalities and People Republic (SNNPR) regional states revealed that piloted courts are dominated by cases related to land issues, 53percent of all civil disputes at national level. Regional states have their fair share of land dispute cases; 49.9 percent in Amhara, 55.6 percent in Tigray, 59.8 percent in Oromia, and 60 percent in SNNPR

(Woldegebriel 2016, 47). The figures show that courts across regions are dominated by land related disputes making it difficult to entertain cases and follow-up on the enforcement of decisions effectively. The establishments of land tribunals can thus contribute through a specialized bench entrusted with the execution of decisions made by the courts. Such benches will be able to give special attention to women judgment holders in their effort to execute decisions secured in their favor. This is of particular importance for women judgment holders in land disputes. The establishment of the benches, however, should not be confined to the federal level only. Extending the benches across all regional states up to local levels would be instrumental.

However, given the fact that the establishment of land tribunals is unlikely to materialize in the near future, proposing alternative or complementary approach to remedy the enforcement problem would be desirable in the short-term. This would require the FSC and HoF to set up and strengthen mechanisms that follow-up and monitor the enforcement of their decisions. This arrangement can facilitate the enforcement of decisions and at the same time serve as a stepping stone for the establishment of land tribunals.

5.3. Engaging with Customary System

The interplay between customary frameworks and formal laws may have greater implications on the implementation of land rights. The CEDAW Committee (2016, 17) stated that "States parties should pay special attention to customary systems which often govern land management, administration and transfer, particularly in rural areas, and ensure that they do not discriminate against rural women". It further requires member States to strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights on natural resources, including but not limited to land through, for example, community para-legal services (CEDAW 2016). In Ethiopia, a country where customary norms are widely accepted and practiced, it is important for such norms to function alongside the State system. In fact, the FDRE Constitution recognizes customary practices so long as they do not contradict the former (Article 9). Knight (2010, 285) remarks that, "when closely analyzed, customary and statutory legal systems are not as divergent as may be thought. Lawmakers may start by working to understand customary laws and then identifying areas of overlap that may be useful for creative integration of statutory and customary land law".

An attempt to dismiss all customs neglects a wide range of practices, which have positive implications for women's lives (UN HABITAT 2006, 30). The mere replacement of customary systems with statutory rules may not improve women's tenure security since custom still provides legitimacy and influences policy and decision makers to a certain degree. Customary practices are often more appealing to local communities than statutory laws (FAO 2018, 47). On this basis, therefore, dialogue with elders and opinion makers at a community level is necessary to raise awareness and find ways in the effort to harmonize customary norms with the statutory rules (USAID 2016, 3).

Customary practices are accessible to rural women at a community level. It has relatively low cost of enforcement and effective enforcement of decision based on local social networks (Fiseha 2013). Incorporating the customary system with the legal structures thus enables women to benefit from court decisions. Involving community elders in land related decisions e[illegible]resistance during enforcement. In Sera Leone, for instance, some public institutions involve traditional authorities in resolution of disputes (Conteh

and Alemahu 2016, 33). Likewise, Ethiopia has various customary practices that can substantially support the State system and fill the gaps left thereof, which the government shall properly utilize.

However, it has to be noted there are customary systems that prevent women from realizing their land rights. According to FAO (2018, 47), the recognition of customary land tenure has been criticized for weakening women's land rights. Most customary practices enable women to access land only through male relatives (ibid). Thus, cautions have to be taken in endorsing customary systems as part of the statutory rules not to reinforce discrimination and the exclusion of women as landowners. Customary rules are unwritten which makes it susceptible to misinterpretation by power holders, leaving women vulnerable and marginalized at risk of dispossession in the name of "custom" (ibid). Hence, the incorporation of customary practices and dialogue with customary leaders shall be made with utmost care to ensure harmony with human rights standards.

5.4. Exploiting the Roles of Ombudsman and Human Rights Commission

Institutions such as the Ombudsman and Human Rights Commission can push for the enforcement of decisions involving women's land rights to a certain level. The Ethiopian Institution of the Ombudsman was established, under Article 55(15) of the FDRE Constitution, with the objective to promote good governance. As the Ombudsman is mandated to investigate and help remedy maladministration in the executive branch, there is a room for such an institution to contribute to the enforcement of decisions involving women's land rights. The Ombudsman gives priority to creating awareness to government organs to avoid maladministration in their daily functions. When maladministration occurs, the Ombudsman holds them accountable by investigating and recommending possible actions. This is of central importance for women judgment holders who enjoy remedies awarded in their favor but not enforced for reasons related to ill administration by both the courts and other law enforcements authorities. Once grievances on lack of enforcement are lodged to this institution, it considers the matter in line with its working procedures to pressure institutions or parties that fail to enforce judgments.

Likewise, the Ethiopian Human Rights Commission was established with the mandate to promote and protect human rights in the country by virtue of Proclamation No. 210/2000 in accordance with Article 55(14) of the FDRE Constitution. The Ethiopian Human Rights Commission works to ensure that constitutional human rights and fundamental freedoms are well promoted and protected through human rights education, advocacy, monitoring; research with respect to the country's human rights situations; investigating into and addressing human rights violations; as well as paying particular attention to vulnerable groups (FDRE 2000). The Commission's mandate is instrumental to play a valuable role in enhancing the protection of human and democratic rights in the country. It can also be of an important forum to facilitate the enforcement of judgments involving women's land rights. As lack of enforcement court judgments threatens women's rights in general, the Commission is expected to give particular focus in the enforcement of decisions passed on behalf of women judgment holders. Moreover, the human rights promotion role shall extend to awareness creation for women especially on enforcement of their rights and court decisions.

5.5. Expanding and Enhancing Quality of Legal Aid Services

In the past years, both the government and civil society organizations (CSOs) have been active in providing free legal aid services to vulnerable groups within communities, including women (Alemahu 2012). Legal aid centers in law schools in universities, courts, and CSOs provide free legal service for those who cannot afford to pay. There are, however, challenges such as inaccessibility of these centers to the rural community as most are located in towns and cities farther from rural women. This suggests the need for the government to expand the services to remote areas. Researchers recommended the government should facilitate free legal aid services, with a primary purpose of empowering women to enjoy their rights to land (Tura 2014, 48; Alemahu 2012; Tafesse 2011, 164). Issues such as, where to seek execution of judgments, against whom execution claims shall be sought, the time of applications for execution claims and how women can avoid the negative force of customary practices need to be properly communicated to concerned women. Further, legal aid services should also be utilized to represent women in courtrooms and ensure the enforcement of judgments given in their favor.

5.6. Maximizing the Role of Civil Society Organizations

CSOs contribute to national development priorities through mobilization of foreign funds, provision of education and skill trainings, provision of materials and equipment, creation of business opportunities, and the enhancement of community participation and ownership, among others (Yntiso 2017, 39). Focusing on women, CSOs have worked in Ethiopia and elsewhere on economic empowerment including skill trainings, credit and saving, in-kind or cash transfer, integrated women empowerment programs, and market access facilitation (ibid). Accordingly, there have been positive results on women's economic gains. In the past years, the legal framework was not encouraging for CSOs involvement in the area of enforcement of decisions concerning women's land rights as the regulatory framework under Proclamation No. 621/2009 largely curtailed civic space and undermined CSOs' working on the protection of human rights in general (Alemahu 2012). Pursuant to this legislation, the government had been "forcing rights organizations to change their mandates, scale-down their activities or terminate their operations" (ibid, 36). Coupled with the limited capacity of government institutions to deal with implementation of human and democratic rights so far, the diminished engagement of CSOs in human right affairs put women's land rights at risk.

There is a sign of hope though under the new CSOs proclamation, though. Proclamation No. 1113/2019, under its Article 62(9), states that "an organization which is established for the benefit of the general public or third parties shall ensure that its activities take into account the interests of women, children, persons with disabilities, the elderly and others exposed to threat or vulnerable groups of the society". The law further encourages all organizations to have the right to engage in any lawful activities to accomplish their objectives (FDRE 2019b, Article 62 (1)). The new proclamation further lifted the prohibition put on foreign and foreign-funded CSOs from engaging in advocacy and human rights work. It encourages CSOs to engage in advocacy and lobbying for legal and policy reforms. Due to this, it is a timely call to encourage CSOs to engage in the enforcement of women's land rights through different strategies. It is, thus, important to utilize the role CSOs can play in enforcing decisions of the FSC and the HoF on women's land rights. In addition to the provision of legal services to women who are struggling to enforce their land rights, CSOs can be instrumental in advocating women's land rights and developing the capacity of women, communities and institutions.

CSOs in different countries work in the area of legal support and representation for women. This particularly includes providing legal advice or pursuing cases on behalf of affected people. For example, in Uganda, CSOs have pursued a legal case against the Ugandan government on behalf of an indigenous community, to restore communal land rights whereas in Guatemala they have facilitated resolution of land conflicts by providing legal, surveying and mediation services in a multidisciplinary team (UNDP and ILC 2008, 44). While these services are not done specifically in the area of enforcement of judicial remedies awarded in favor women's land related claims, they can be used to encourage CSOs in Ethiopia to proactively engage on women's land rights issues through their advocacy and legal service. Once the central problems of enforcement of decisions rendered in favor of women on their land rights and the strategies for enforcement are revealed within this chapter, it is of the opinion of the authors that CSOs can extend their services to enforce decisions.

5.7. Bridging Capacity and Awareness

One of the reasons hindering the full realization of women's right to land is lower level of awareness among women (Atinkut 2016, 7). To overcome such a problem, it is recommended to conduct awareness-raising programs with the aim of strengthening women's knowledge on land rights and context-relevant guidance on how to claim these rights (USAID 2016, 3). The capacity building and awareness creation should extend to community elders, lawyers, State officials and other stakeholders that have direct or indirect roles in the enforcement of decisions regarding women's land rights. The enhancement of such stakeholders' capacity would help them observe the relevant laws in the process of execution of judgments.

Having the required information will help women develop the confidence to claim the decisions rendered in their favor. With this strategy, it is relatively easy to help the majority of rural women to push for the enforcement of decisions by the HoF and FSC over their land rights. Moreover, forums should be created for customary authorities to educate State administrative officials and lawyers about the basic rules of customary land systems and for State officials and lawyers to create awareness on State rules relevant to their jurisdiction. These will contribute to the enforcement of decisions rendered by the two institutions in favor of women (Gashaw 2015, 63).

5.8. Institutionalizing Women's Participation in Decision-making

While women make about 51 percent of the Ethiopian population, they have minimal political and public participation. Shimelis Kassa's analysis expounds that "lack of commitment for increased women's participation and absence of sufficient political knowledge about women's representation have been some of the problems for poor participation of women in the politics" (Kassa 2015, 5). In the absence of equal participation of women in the political and governance process, the desire for sustaining democracy would become unwarranted. In spite of this, it is undeniable that women's involvement in political, social, and economic affairs is showing improvement from time to time though not still significant. If one looks at the number of seats held by women in current national parliament in Ethiopia, it accounts for 212 or 38.76 percent in the current tenure of the Parliament. While the number is still low compared to the seats held by men (335), it is by far an encouraging figure (Inter-Parliamentary Union 2015).

Moreover, following the 2018 political reform with the coming into power of a new administration under Prime Minister Abiy Ahmed, measures were taken to place women in top decision-making positions including in the judiciary. The number of women judges at the FSC has increased over the years and the first female Chief Justice was appointed in 2018 (FDRE 2019a). This is an encouraging start considering the limited participation of women in judicial positions in Ethiopia. To ensure that this change will have an enduring effect, it is imperative to create opportunities for women to participate at all levels in government. These changes at federal level need to be institutionalized to nurture women's participation at low level government administrations. Women's participation in decision-making at all levels of government administration can challenge the existing multi-layered hurdles with respect to enforcing remedies awarded by FSC and HoF. By voicing the concerns of women and spearheading relevant changes, female officials can make an impact directly or indirectly for women judgment holders to have their decisions enforced (Gashaw 2015, 63).

While putting women at public decision-making in all government structures seems to be a long term strategy and may not always directly tackle enforcement hurdles, in the long run, it may serve to expedite decisions rendered in favor of women with respect to their land rights. We think that women in relevant positions will likely be responsible and concerned to hear grievances of women who are prevented from securing enforcement of decisions favoring them and a solution for enforcement hurdles could more probably be at the table. The requirement under Proclamation No. 1097/2018 that federal executive bodies shall work towards the incorporation of women's interests in policies, laws, development programs and projects can be properly leveraged for women's land rights through the active participation of women in decision-making in key institutions. Arguably, this may contribute to improved enforcement of women`s land claims.

6. Conclusion

Ethiopia`s national laws recognize women's access to and control over land. Likewise, the laws of regional states declare equality of women regarding land rights. The country has implemented rural land registration program, which has led to the recognition and protection of women's land rights. Institutions are put in place including regular courts and an organ that adjudicates constitutional issues to safeguard women's land rights. The HoF and the FSC have been pronouncing decisions that help to elaborate the rights women have in the existing legal framework. Although the decisions of such institutions are usually clear and easy to apply and execute, as the practice shows, there are acute problems regarding the enforcement of decisions, particularly in land disputes involving women with favorable judgments.

Decisions rendered by these institutions are final and irrefutable with the possibility of FSC's decision reviewed by HoF for constitutional interpretation. However, lack of effective enforcement of these 'final' decisions prevents women landholders from benefiting from the existence of such forums. The existence of legislation stipulating substantive land rights by itself is not sufficient in ensuring the protection of women's land rights. Decisions delivered by judicial and pertinent administrative bodies need to be enforced. The existing trends show poor enforcement of decisions rendered by the HoF and the FSC. An intervention is thus needed to strategize enforcements. The chapter argued in favor of devising a set of strategies that can be implemented by HoF and FSC to enhance the enforcement of their decisions. These strategies include empowering women in land governance; pushing for the setting up of the intended land

tribunals in the courts; systematic incorporation of customary systems in State laws by correcting their defects; strengthening and refocusing the functions of the Institution of the Ombudsman and the Human Rights Commission; expanding quality and accessible free legal aid service to reach rural women; designing mechanisms to exploit the potentials of CSOs to consider enforcement of land related decisions in their strategic priorities; bridging capacity and awareness gaps; and institutionalizing women's participation in public decision-making structures and in the judiciary. These strategies, if applied effectively, are believed to provide better protection of women's land right by enhancing enforcement of judicial remedies awarded by relevant federal and regional institutions. This will ultimately contribute to government's effort to empower women and achieve an all-inclusive development in the country.