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Gender dimensions of land tenure reforms in Ethiopia 1995-2020

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Gender dimensions of land tenure reforms in Ethiopia 1995-2020

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Abstract

This chapter investigates how land tenure reforms in Ethiopia have influenced the position of women in terms of land tenure security, access to land, decision-power over land within households, as well as the gendered impacts of these tenure reforms on land investments, land productivity, land renting, and household consumption welfare. It is based on a careful screening of the relevant literature based on its quality and critically examining the reliability of the causal effects in each study. As most studies are based on survey data, studies that have been able to provide reasonably robust quantitative assessments are utilized. The review concludes that there exists strong evidence that the low-cost land registration and certification reform in Ethiopia has contributed to strengthening women's land rights and decision-power over land and this has had positive welfare effects in female-headed as well as male-headed households. More research is needed to study the productivity and welfare effects of the ongoing 2nd Stage Land Registration and Certification reform but early findings indicate that it has contributed to formally document parcel-level land rights of women that are close to that of men even in the Tigray region where 1st Stage Land Registration and Certification was in the name of the head of household that in most cases was a man.

Key words: Gender, land rights, land registration and certification, joint land certification, impacts, Ethiopia.

JEL codes: Q15; K38.

1. Introduction

Ethiopia is a unique country in Africa in several respects. It is about the only country that has never been colonized. It has a long and well documented history through written records and archeological and historic monuments and buildings. Land has had a central role in the control of power and for the survival of its people for hundreds of years under challenging climatic conditions with recurrent droughts. Ethiopian culture is also traditionally characterized as patriarchal with strong male dominance. This chapter aims to assess how women's land rights have changed in Ethiopia over the last 25 years. Ethiopia embarked on the largest land reform process in terms of land registration and certification in any African country, starting in 1998. This started as a home-grown low-cost reform in one region and was implemented as a broad-scale participatory process without modern tools within ten years in the four largest regions of the country (Deininger et al. 2008). The reform therefore was implemented primarily in the highlands of the country where smallholder agriculture dominates while the more arid lowlands dominated by pastoralism largely were left untouched by the reform. From 2014 the country scaled up a 2nd Stage Land Registration and Certification (LR&C) that utilized modern tools and provided parcel-level certificates with maps and names of all land holders.

It is important to recognize some of the historical context and regional variations in the areas that were strongly affected by the reform. Some of this heterogeneity is summarized in part 2 of the chapter. In part 3 I outline the traditional positions of women and their situation just before the reform was implemented. New land laws were introduced in the country just before the reform was implemented, including a federal land law (proclamation), followed by regional land laws and regulations that opened for some variations across regions. Parts 4 and 5 highlight specific gender-related elements of the new land laws and assess the extent to which these were implemented and known and respected on the ground, by land administrations, and the court system responsible for enforcing the law and handling land-related disputes. Parts 6 and 7 look at the gender impacts of the 1st Stage LR&C and part 8 at the 2nd Stage LR&C before drawing the attention towards some important future challenges.

2. Historical context: Feudal time: up to 1974

The dominant tenure systems during the recent Feudal time were the private property and Church land in the south and the *gult*, *rist* and *chiguraf goses* systems in the north of the country. However, it is important to recognize the spatial and temporal heterogeneity in these tenure systems that I barely can scratch the surface of here.

2.1. Southern Ethiopia

Land rights in Southern Ethiopia were close to private property rights and were distributed in an inequitable way depending on historical events (Adal 2002). Such land could be sold or exchanged. The system was dominated by absent landlords and tenants. E.g. Cohen (1974) reported findings by national surveys undertaken by the Central Statistical Office with 37-73% of the smallholder farmers being tenants and 10-40% of the landowners being absentee owners who controlled 12-48% of the land, with the ranges showing the variation across locations.

2.2. Northern Ethiopia

In contrast, in Tigray in northern Ethiopia there were two customary tenure systems in the highland areas. The most well-known is the *rist* system which has existed for long and also gained importance with increasing population pressure and involved inheritance of land within the family. The other system, *chiguraf goses* (*shena* in some areas) may have emerged during the 19th century and facilitated land access through membership in a community but without inheritance within the family (Bauer 1973; Bruce 1976; Weldu 2017). This system facilitated land access to immigrants and was used in areas with excess land. People who had temporarily migrated could get land again when they returned. The system lost popularity when land was getting scarcer and land was reserved for residents in the *rist* system through bequeath of land within the family. The *chiguraf goses* system was combined with a system called *quenchi* and meant equal sharing of land. Land was redistributed to obtain equal sharing of land and committees were established to ensure equal sharing and allocating land of equal size also to immigrants. With increasing population pressure and in-migration the resistance against this increased and the *rist* system had become dominant before the 1974 revolution. In periods with a lot of migration and abundant land *chiguraf goses* had provided advantages over the *rist* system. The *rist* system gave priority to the anterior landholders and also resulted in less egalitarian land distribution.

Both systems implied a dominance and favoring of men over women in land access. *Chiguraf goses* allocated land to those with a whip or oxen and men were those cultivating the land with oxen. While the system addressed landlessness, it allocated less land to single women while women with children got as much land as male-headed households.

The emperor Haile Selassie was overthrown by the Derg military regime in 1974 and a radical land reform was introduced taking land from the land-rich and distributing use rights to land in an egalitarian way with emphasis on household needs and ability to cultivate.

3. Traditional positions of women

Women in Ethiopia traditionally have a weaker position than men within households as well as in society overall as the Ethiopian culture is patriarchal and men are regarded as heads of households, except in the case of single, divorced and widowed women with separate households and no husband. Women rarely take up leading positions in society and typically stay at home and are responsible for taking care of children and other household chores. The husbands are also traditionally responsible for the farming activities while women only help with certain farming activities such as planting, weeding and harvesting. In a study in Oromia and SNNP regions in Southern Ethiopia, Holden and Tefera (2008) found that 27-46% stated they were participating in land investment and production decisions and 23-37% were involved in decisions regarding use of farm income.

The patriarchal Ethiopian societies implied that when land was passed from one generation to the next, it was typically with a partrilineal and patrilocal system implying that the sons received the land from their parents and the wives moved to the home of their husband's family upon marriage. Unmarried daughters could stay with their parents and possibly also get some land if they remained unmarried. In cases of divorce the wife may not receive any of the land unless she has children and would then have to return to her own family, where she may still be given some land.

The traditional weak position of women is also illustrated by the marriage system with arranged marriages. Even in parts of Southern Ethiopia kidnapping marriages were quite common until recently. Holden and Bezu (2014) found that 6% of a sample of married women in SNNP and Oromia regions were married after having been kidnapped.

Ethiopian agriculture is dominated by oxen-ploughing systems and ploughing with oxen is considered a male task. Female-headed households that lack adult male labor therefore commonly have problems cultivating their land and typically resort to renting out much of their land to male-headed households with oxen, mostly with sharecropping contracts. The implication is the reverse-tenancy system with poor (often female-headed) households lacking oxen and male labor renting out their land to typically male-headed households with oxen and surplus male labor. Still, however, it is a frequent finding that land productivity on owner-operated land is lower for female-headed than male-headed households (Holden, Shiferaw and Pender 2001; Bezabih et al. 2016).

Holden and Bezabih (2009) also found that land productivity on land sharecropped out by female-headed households was lower than land productivity on land sharecropped out by male-headed households. They attributed this productivity differential to female landlord households being less able to select efficient tenants and being more likely to rent out their land to inefficient in-law tenants, in line with anecdotal evidence that in-laws take control over land of female landlords. This is evidence of their tenure insecurity and weaker bargaining power and therefore limited ability to screen, select and evict tenants before land certification was implemented in Ethiopia, contributing to lower land productivity and welfare losses for their households.

When it comes to inheritance of land within families, Holden and Tefera (2008) investigated this in Southern Ethiopia and found that the oldest son was most likely to inherit land but also unmarried sons are likely to inherit land from their parents while daughters were much less likely to inherit land, even if they were unmarried. They also investigated the sharing of land for divorced persons and found that men were most likely to get all land and women were most likely to get no land upon divorce before the new land laws were passed.

Polygamy is quite common in Southern Ethiopia. Holden and Tefera (2008) found that polygamous wives were likely to have some land on their own, but they were less likely to have participated in public information meetings about the land reform than monogamous wives.

4. Land laws: Are they ensuring gender equity?

Ethiopia introduced new land laws (proclamations) and regulations, first at federal level and then at regional level, allowing for some differentiation in the laws across regions, but without contradicting the federal land laws. These laws provided the basis for the land registration and certification reforms in each region and were also followed up by more detailed regional regulations. Two important elements of these laws were the equal sharing of land by husband and wife upon divorce and the required consent from the spouse in case of renting part of the family land to outsiders.

Holden and Tefera (2008) found just after the implementation of joint land certification that most men and women expected to share the land equally upon divorce, which demonstrates a clear break with the tradition that men in most cases retain all the land. More than 60% of the wives also expected to keep the whole family land if the husband were to die. In the past it was common that in-laws took the land or required the widow to marry the brother of the late

husband to be able to stay on the farm. They reported a case where the widow refused to remarry within the family of the late husband and found another man and got a child with him. The in-laws then came and killed their newborn baby.

In SNNP region the land law was modified such that land brought into marriage by a person would also be individual property in the case of divorce. Since men traditionally inherit and wives upon marriage move to the husband's home, this modification of the law may render wives landless upon divorce and cause continued landlessness of women. However, the joint land certification process included the names of wives on the land certificates of married households, indicating that their husbands did not claim individual land rights even though they brought most of the land into their families. However, it remains uncertain how this will affect the next generation. It is possible that men will claim individual rights to land when marrying.

Kumar and Quisumbing (2015) concluded that the Family Law (Code) together with the land registration has contributed to more favorable outcomes for women in asset distribution after divorce with possible long-term distributional and welfare implications. They found that women's perceptions on the right of women to share land equally upon divorce has been strengthened from 1997 to 2009.

5. Is the knowledge of the law and practice of the law granting gender equity?

A study in Oromia and SNNP regions of the early gender impact by Holden and Tefera (2008) provided baseline information about the position of women within households as well as their knowledge of the recent land laws regarding gendered land rights. About half of married men and women were aware of the new land laws and that land should be shared equally by husband and wife upon divorce. 35-64% (cross-community variation) of the wives and 32-53% of the men were aware that they had the right to deny their husband to rent out family land. The knowledge of other aspects of the law was poorer among men and women. The joint land registration and certification may have contributed to this higher awareness of the gender aspects of the law. They also asked whether men and women agreed with the joint certification of husbands and wives and equal sharing of land. 75-82% of the women and 70-82% of the men agreed to joint certification and 68-87% of the wives and 53-77% of the husbands agreed with equal sharing of land upon divorce.

To what extent are the land laws practiced by the court system in relation to land disputes?

> "It is those with mobile phones that win the cases in the courts" stated by a female in a focus group discussion in Sashemene, Oromia Region (Holden and Tefera 2008).

Other females who had taken their lost cases from the kebele court to the district court and won the case, faced the problem that the administration at the kebele level did not help them enforce the decision of the district court so they did not get back their land anyway (Holden and Tefera 2008).

In our studies of land conflicts in the Oromia, SNNP and Tigray regions we hired law students to review a large number of woreda court decisions regarding land disputes to identify the nature of such disputes and the decisions made by the judges. One of the things they assessed was whether the court decisions were according to the land laws. The students found that the law was not typically followed in many such cases. The knowledge of the law, and especially recent changes in the law were typically not well communicated to or known by local court judges. Even the knowledge of the land laws was very poor among kebele and woreda land administration representatives (Holden, Bezu and Tilahun 2016; Holden and Ghebru 2016a; Holden, Deininger and Ghebru 2010). In the case of Tigray, we found that this was good for female-headed households who were breaking the law and renting (sharecropping) out more than 50% of their land because they were not capable of managing the land themselves. There was confusion not only at local level but also at higher levels whether the land law restriction of not being allowed to rent out more than 50% one's land applied to sharecropping as well as fixed rent contracts. However, when we dug deeper into the sentiments of the different types of agents, land administration representatives were also more likely to favor that female-headed households not able to farm the land themselves should be allowed to rent out all of it without losing their land (Holden, Bezu and Tilahun 2016). This shows that the law is not always followed and this can even sometimes be to the advantage of women.

6. Land registration and certification: First Stage and Gender Equity

The 1st Stage Land Registration and Certification (LR&C) started in 1998 in Tigray Region and was more than 80% completed by 1999 in the highlands of the region where smallholder agriculture dominates and most of the population lives, when the war with Eritrea broke out. The process was run without any donor support and was an extremely low-cost and participatory process with paper-based documentation and no use of computers. Neighborhoods walked the fields together and demarcated land parcels and for every parcel the neighboring parcel holders were registered and jointly agreed on the parcel borders. Areas were

measured with local tools (rope). Parcels were organized under households in the registry and household level certificates were issued in the name of the household head, listing the plots, their size, location, land quality, and names of neighbor parcel owners. With husbands being heads of households this system implied that most land was registered in the name of male heads and one may fear that this could lead to weaker land rights of women within male-headed households and through inheritance to more skewed and gender distribution of land.

Dokken (2015) assessed the land distribution of female-headed versus male-headed households after the 1st Stage LR&C in Tigray based on a stratified random sample of households and found that female-headed households had 23% less land on average than male-headed households. Holden and Tilahun (2020) made a similar calculation based on complete land registry data for 11 communities and found that female-headed households on average had 27% less land than male-headed households. On average family size is smaller for female-headed households so when assessing land per capita the land per capita was 5-8% lower for female-headed than male headed households.

In the Amhara, Oromia and SNNP regions 1st Stage LR&C started from 2003-2004 and names of both husbands and wives were included on the land certificates. In SNNP photos of husbands and wives were also included on the certificates. These changes were stimulated by a growing gender awareness and donor support in these regions. These interventions appear to have strengthened women's land rights and decision-power within households in these regions.

Melesse, Dabissa and Bulte (2017) assessed the effect of joint land certification on women's empowerment in the Amhara region. They constructed a comprehensive index to capture women's empowerment in multiple dimensions, being a combination of seven sub-indices. Joint land certification was positively correlated with the overall and six of the sub-indices indicating a strong association between joint certification and women's empowerment. The surprising finding was that the sub-index most closely related to land, involvement in land-related decisions, was not significantly correlated with joint land certification. They also found that uncertified women were less likely to be literate and lived further away from their parents than certified women. While the results from their cross-section data indicated that women were empowered in areas that had been certified compared to in uncertified areas, the empowerment indices were low in all areas, demonstrating that there is still a long way to go before women are equally empowered like men. However, it may take time for the effects to penetrate into household decision-making that is largely influenced by cultural norms.

Holden and Tefera (2008) assessed the early impacts of land certification and found a tendency of increased involvement by wives in land-related decisions soon after the joint land certification had taken place in their study areas in Southern Ethiopia. Only 3-6% of men and women at that time (2007) believed that joint land certification would lead to more involvement of women in land-related decisions within households. In a follow-up study of the same sample by Holden and Bezu (2013; 2014) five years later, wives had become more involved in farm management decisions and particularly in crop choice and land rental decisions. They found a substantial improvement of women's empowerment over the period 2007-2012. Husbands who preferred the traditional weak position of women hindered the empowerment of their wives while more generous husbands had more empowered wives who more actively participated in land-related decisions within the household. Holden and Bezu (2014) found that the proportion of wives who claim all their land rights increased from 41 to 72% from 2007 to 2012. They also found evidence of awareness effects and intra-village social process effects that jointly had contributed to strengthen the involvement of women in land-related decisions. This indicates that with time the effect of the land tenure reform on women's empowerment has increased. The extent of change varies from household to household and depends on personal and community characteristics.

Another finding in our studies in Southern Ethiopia were that the position of polygamous wives was strengthened by the land law and land registration and certification, in a process of negotiations. First, the husband should only have the name on the certificate with the first wife, while second and additional wives should have their own certificates without the name of the husband. The polygamous men refused to accept this, and it was agreed that their names should also be on the certificates with their additional wives. Later a rule was also introduced for the sharing of land in case a husband wanted to take another wife. He would then have to share his half of the land with the second wife without influencing the land share of his first wife. This law should reduce the incentives to marry additional wives and it is worth follow-up studies what has happened to the implementation of these laws.

7. What are the productivity and welfare effects of strengthened land rights for women?

Holden and Ghebru (2016b) outline the relations between tenure reforms, tenure security and food security of households and some of the complexities of identifying these links. Quite a few studies have investigated the links between land certification, tenure security and land

productivity and investment in Ethiopia. Holden, Deininger and Ghebru (2009) used household farm panel data from Tigray and found that land certification had increased investment in tree planting and land certification and enhanced land productivity. Holden, Deininger and Ghebru (2011) showed that land certification had enhanced tenure security particularly for female-headed households who had become more willing to rent out their land. Holden and Ghebru (2013) showed that land certification had particularly enhanced the consumption welfare of female-headed households and Ghebru and Holden (2013) showed that this contributed to improved food security of their children as evidenced by an improvement in their body mass index.

Bezabih et al. (2016) used household farm panel data from Amhara region and found that land certification also there had enhanced tenure security, land rental market participation and land productivity and particularly so for female-headed households.

Muchomba (2017) used household panel data from the four first regions that implemented 1st Stage LR&C and looked in particular at male-headed households and whether it made a difference whether the head of households received certificates (Tigray region) or whether the spouses received joint certificates (Amhara, Oromia and SNNP regions). He assessed welfare effects in terms of household expenditures on healthcare, homegrown and purchased foods, clothing and education. Among the interesting findings were that joint certification and perceived tenure security among women were positively associated with expenditure on clothing for women and girls and negatively for men and boys, pointing towards strengthened bargaining power of women. Another interesting finding was that head-only certification (Tigray) was associated negatively with the probability of illness which is consistent with the finding of Ghebru and Holden (2013) that certification enhanced the nutrition status of children in that region. Joint land certification was also positively associated with the value of home-grown foods which is consistent with the finding of Holden and Bezu (2013; 2014) that women got more involved in land related decisions such as crop choice and land renting decisions. Women put more emphasis on self-sufficiency in food production and therefore were more reluctant to rent out land in Southern Ethiopia where joint certification was implemented. Muchomba (2017) found that expenditure on education was negatively associated with joint certification possibly indicating that women put less emphasis on education relative to that of men.

8. Land registration and certification: Second Stage and Gender Equity

The 2nd Stage LR&C has ensured close to equitable gender distribution of documented land rights. We do not know the degree to which this has had an impact on within-household decision-making and such impacts are likely to vary a lot from no impact at all to a strong recognition and involvement of wives into household land-related decisions. We know little about the actual local processes regarding whose names were included on the land registries and certificates. E.g. a PhD-student of mine did a case study in Tigray and found some alarming indications that names of persons that had been dead for many years appeared on some parcel level certificates and people received a bunch of certificates for their plots but were unable to tell which certificate belonged to each of their plots. However, I have no basis to assess how common such problems are. Definitely, there is room for a lot more research on the real on-the-ground impacts of the 2nd Stage LR&C. I expect a lot of heterogeneity even though the process has been very standardized from the top[1]. Pre-existing heterogeneities are likely to lead to heterogeneity in the interactions between the standardized top-down approach and local heterogeneities. For example, the quality and timing of 1st Stage LR&C may matter for the incremental effects of the 2nd Stage LR&C. The variation in the gender emphasis in the 1st Stage LR&C has implications for the incremental effect of the gender emphasis in the 2nd Stage LR&C. Some areas were never reached with 1st Stage LR&C, some areas experienced piloting of approaches that were closer in design to the 2nd Stage LR&C, such as pilot areas funded by SIDA, USAID, GTZ, and FINNIDA, and other areas were exposed to 1st Stage and 2nd Stage LR&C reforms with varying distance apart and of different quality.

Holden and Tilahun (2020) combined 1st Stage and 2nd Stage LR data to assess gender distribution of land in Tigray where the distance between to two reforms is the largest. It is also an interesting case from a gender perspective because the 1st Stage LR&C only issued certificates and registered the land in the name of heads of households. Some have worried that such an approach could lead to more gender discrimination (Lavers 2017; Joireman 2008; Whitehead and Tsikata 2003). The 2nd Stage LR registered all holders and issued parcel-level certificates and by combining 1st and 2nd Stage LR data from the same communities in Tigray, Holden and Tilahun (2020) were able to assess the extent to which male household heads registered the land only in their own name as that was done in the 1st Stage LR. Based on complete land registry data from 11 municipalities (*tabias*) and 31,500 farms they found in the

[1] There is some variation in implementation approaches as well, depending on who the donor is, regional law variations, alternative technical and administrative solutions chosen.

2nd Stage LR that 48.8% of the land was registered to women and with little variation across communities. This may be a result of the top-down emphasis in the 2nd Stage LR to include especially wives but also other household members in the parcel-level land registries. It could, however, also be influenced by the relative strong role of women in communities in Tigray that also may be due to women's active participation in the armed struggle against the Derg regime. Lavers (2017) also notes that the ruling party Ethiopian People's Democratic Revolutionary Front (EPRDF), already when fighting against the Derg, emphasized enhancement of women's rights and promoted land registration to improve women's tenure security and land access. It is difficult to separate the effect from land registration and certification from other parallel processes that have strengthened women's positions in the Ethiopian society. Donors, media, women's associations, political parties, government bodies, civil society more broadly, and the growing awareness and acceptance in the minds of Ethiopian men and women are all likely to have had an influence in one way or another.

9. Future challenges

Continued rapid population growth in rural areas is a major challenge to future land access for all in Ethiopia. Landlessness is growing and farm sizes shrinking (Holden and Tilahun 2020). This tends to erode the constitutional right of all rural residents without another livelihood option to access land for subsistence. With the recent land laws also stipulating minimum farm sizes, this also restricts inheritance rights of children living on small farms. It also restricts the opportunity to share land equally among spouses upon divorce. Co-management of land among divorced and children on small farms is also challenging. The result may be disguised fragmentation.

Given the growing landlessness and inheritance rules and the need for alternative livelihoods for youth, we may wonder whether women are at a disadvantage in non-farm employment? Recent studies of a large sample of resource-poor rural youth that have been eligible to join youth business groups and have been allocated rehabilitated communal lands have female members that on average have less assets, lower incomes and less education than male members (Holden and Tilahun 2019). They are also much less likely to own a mobile phone and to become group leaders or group board members (Holden and Tilahun 2018). This shows that young women in Ethiopia continue to be disadvantaged and are among the most resource-poor and vulnerable. There is a need for more targeted policies to give them equal opportunities in the ongoing rural as well as rural-urban transformation processes.

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