Women's Access to Rural Land and the Dispute Resolution Mechanisms in Ethiopia: Case Study on West Gojjam Zone

Association for Human Rights in Ethiopia

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LIST OF ACRONYMS

ANRS	-	Amhara National Regional State
Art.	-	Article
CEDAW	-	Convention on the Elimination of all forms of Discrimination against Women
CSOs	-	Civil Society Organizations
FCCD	-	Federal Supreme Court Cassation Decision
FDRE	-	Federal Democratic Republic of Ethiopia
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic Social and Cultural Rights
NGOs	-	Non- Governmental Organizations
Proc. No.	-	Proclamation Number
UDHR	-	Universal Declaration on Human Rights
UN	-	United Nations

EXECUTIVE SUMMARY

Access to land, defined as the ability to utilize, control and transfer land, is fundamental to ensuring livelihood, economic well-being, eradication of poverty, sustainable development, democratization and political freedom in a rural community in the global south. For women, it is further about power and agency, politics and representation and gender equality. As a result, legal and policy measures have been taken at the global, regional and national levels to support and strengthen women's access to land.

In Ethiopia, cognizant of and to address historical injustice and marginalization, the Federal Constitution expressly recognizes women's equality in the use, control, transfer and administration of land and women's equality in the administration of family and common property. It further outlawed discriminatory laws, customary practices and state official decisions.

In light of these stipulations of the Constitution, the Federal government and Amhara National Regional State (ANRS) have enacted family and rural land laws to ensure women's property and land rights. They prescribe equality of women in the household and common property administration, acquisition of rural land through a government grant (even have priority right), donation and inheritance, a mandatory requirement of the consent of both spouses in case of transfer of joint holdings, protection of legal interest of women in a time of transfer of land use rights during the marriage, issuance of joint landholding certificate when the land is held jointly by wife and husband or by other persons; and submitting the land disputes to once preferred resolution mechanism.

Nevertheless, these legislative measures meant to support and strengthen women's access to land are not practically implemented in Bahir Dar Zuria Woreda and Mecha Woreda of ANRS. In the case of married women, it is the husband who ultimately determines the utilization, transfer and administration of joint holdings, as such things are still perceived as 'paternal authorities' in the community. The husbands force wives to provide their consent during land transfers as it is mandatorily required by law. They are less likely to access land through donation and inheritance as it is assumed that they can get their husbands' land and leave the locality. The husbands register and get the certificate of the joint holdings by their sole name to claim sole entitlements. After divorce, if they have land, they are at liberty to freely utilize and transfer it as per the law. Nonetheless, in the practice it is revealed that the ex-husbands intervene with and encroach to the ex-wives land rights.

For most women who face rural land disputes in relation to property partition during divorce, land inheritance, boundary disputes and petitory action. The analysis of the Federal Supreme Court Cassation Decisions (FCCD) reveals that the Court is in favour of its ruling on matters related to women's access to land. Nevertheless, the customary dispute resolutions, as well as the court litigations, are not suitable to enforce their rights. The customary mechanisms are not independent and favour the men, though accessible and affordable. Most rural women lack the legal knowledge and financial capacity to enforce their land access rights in court litigation which is also time-consuming.

RECOMMENDATIONS

The following recommendations are provided to improve and strengthen women's access to land.

The Court of Law should:

- Follow the suit steps of the Federal Supreme Court's Cassation Decisions on matters related to women's access to land; and
- Establish a separate bench to litigate rural land matters.

The Executive should:

- Design a mechanism to provide a free-legal- aid services for rural women;
- Design a mechanism to mitigate corrupt practices prevailing in the land administration institutions in the process of land registration and certification;
- Create coordination and cooperation among the land administration, public prosecutor, and women, children and social affairs Offices;
- Engage in legal awareness and capacity building of rural women;
- Create legal awareness of women's access to land for the local elders; and
- Create community awareness of gender equality and fight discrimination against women on all spectrums.

The NGOs and CSOs should:

- Engage in gender equality advocacy works;
- Provide training to rural women, local elders, local administrators and judges of the lower courts on women's access to rural land and land dispute settlement mechanisms;
- Suggest policy options to address gender parity concerning access to land;
- Engage in legal empowerment of rural women; and
- Create community awareness about gender equality in accessing rural land and beyond.

CHAPTER ONE

1. INTRODUCTION

1.1.Background

In developing an agrarian economy in which the majority of the population is dependent on land, like Ethiopia, the question of secured and equal access to rural land for women is not only about effective governance, agricultural growth, capital accumulation and economic development. It is about agency and power, politics and representations at both national and local levels.[1] Apart from the general importance access to land is key for sustainable development, securing means of livelihood, poverty eradication, democratization and good governance, and the realization of certain human rights.[2] For women it is further a matter of gender equality that is concerned with how women's rights and interests in land can best be supported and strengthened.[3]

Because as the case in other matters, with respect to access to rural land, the past customary and statutory land tenure systems have marginalized women. Globally women own less land and have less secure rights over land than men. Women make up, on average less than 20 per cent of the world's landholders but make up an estimated 43 per cent of the agricultural labor force.[4] In Ethiopia, too, although the proportion of women's employment in the agricultural sector is 58%, their access to land is very limited.[5]

Consequently, throughout the globe, the statutory land tenure systems have constantly been changing to establish equal rights for women and men in relation to land. However, still, the efforts to protect local people's customary land tenure rights (including dispute resolution mechanisms) while also seeking to secure – in practice – the 'normative success' of legally established equal rights for women and men have caused gender parity in terms of access to land.[6]

Gender variability in accessing land as defined in the customary rules and, in some cases, reflected in statutory norms, particularly in the past, is an aspect and a direct reflection of

[1] P. Peters, 'Land appropriation, surplus people and a battle over visions of agrarian futures in Africa', Journal of Peasant Studies 40,3 (2013).
[2] K. Deininger (2003) *Land policies for growth and poverty reduction*. Washington DC. The World Bank. P. xx; Committee on Economic, Social and Cultural Rights. General comment No. 4: The right to adequate housing. *UN Doc. E/C*, 1991; Committee on Economic, Social and Cultural Rights. General comment No. 12: The right to adequate food. *UN Doc. E/C*, 1999.
[3] R. Kaarhus and S. Dondeyne, 'Formalising land rights based on customary tenure: community delimitation and women's access to land in central Mozambique', Journal of Modern African Studies,53,2 (2015).
[4] UN WOMEN, Facts & Figures, http://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures.
[5] CIFOR-ICRAF and IFAD, *Women's Land Rights in Ethiopia: Socio-legal review. Securing Women's Resource Rights Through Gender Transformative Approaches*, (2021).
[6] Kaarhus and Dondeyne, (n 3 above).

archaic patriarchal tradition in Ethiopia. In pre-1974 feudal Ethiopia, the power of administration of the family was regarded as the power of the husband–male, and land inherited by women was assumed to be lost to the family of the in-laws.[7] This is because of two factors. First, following the Judaeo-Christian tradition, a woman subdues her will to the wishes of her husband and in-laws after marriage. This is symbolized in the custom of moving out of her family to the house of her husband-apparently the family of in-laws. Second, the genealogical line follows paternal descent than maternal descent, that the ownership of assets like land to be known in communal memory through the paternal line of lineage.[8] Consequently, the possibility of women's claim for land and enforcement of their land rights through the dispute resolution mechanisms was unthinkable.

During the Derg regime, too, there were statutory provisions that went against women's access to rural land. Particularly, the incorporation 'capability-based' land allocation approach and outlawing of the use of hired labour to cultivate the land are some of the legislative measures that have undermined women's equality rights in accessing rural land.[9]

In the post-1991 period, cognizant of the historical injustices and marginalization concerning women's land access and enforcement of their land rights, the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution introduces measures to address gender-based discrimination against women. Particularly, Article 35(7) of the FDRE Constitution states that '[women] have equal rights with men concerning use, transfer, administration and control of land.'[10] It has come up with 'affirmative action remedies to redress the past injustices committed against women.[11] Similarly, the Constitution requires that as of a principle judicial power to rest on an independent court of law and customary and religious dispute resolution mechanisms to entertain matters related with family and personal laws.[12]

Moreover, the subsidiary rural land laws of both the federal and regional governments enshrine the idea of equality of women and men in accessing, transferring, using, and administrating land.[13] Moreover, the regional rural land laws, including the Amhara region has incorporated different measures aimed at protecting women's land rights. The measures include, among others, outlawing and prohibiting discrimination based on gender from accessing rural land through a government grant, inheritance, or donation; issuance of joint land certification in a case when the landholding is held jointly by spouses; and requirement of the consent of the spouse or other persons during donating, renting, mortgaging the land

[7] B. Gebremichael, The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants And Pastoralists (LLD Thesis, University Of Pretoria, 2018), p 64.
[8] Ibid.
[9] A proclamation to provide for the public ownership of rural lands proclamation No. 31/1975. *Neg. Gaz.* Year 34 No. 26. 1975, Art. 4; B. Kebede. Administrative allocation, lease markets and inequality: 1995-97. *ESRC Research Group on Research Group on Wellbeing in Developing Countries, working paper 7*, 2004.
[10] Constitution of Federal Democratic Republic of Ethiopia (FDRE). Proclamation No.1/1995. *Fed. Neg. Gaz.* Year 1 No.1. 1995. Art. 35(7)
[11] Id, Art. 35(3).
[12] Id, Art. 79(1) and 34(5)
[13] The Federal Rural land administration and land use proclamation No. 456/2005. *Fed. Neg. Gaz.* Year 11 No. 44. 2005.

use rights, and inheriting the joint landholdings.[14] However, to what extent such protections are practically implemented, and are observed both in the formal and the customary dispute resolution mechanisms require an assessment and study. Consequently, this assessment aims to assess the implementation, and the formal and customary dispute resolution mechanisms' impact on women's access to land in Ethiopia, taking the West Gojjam Zone of ANRS as a case study.

1.2.Objectives of the Study

The study aims at:

- Reviewing the legislative measures taken to support and strengthen women's equal access to land;
- Assess the contribution of the rural dispute settlement mechanisms in ensuring women's access to land;
- Appraise the implementation and challenges of women's access to rural land; and
- Provide recommendations meant to improve the condition of women's access to rural land in Ethiopia.

1.3.Methodology

According to the FDRE Constitution in Ethiopia, the ownership of land belongs to the 'people's and state' of Ethiopia and is not subject to sale or other means of exchange.[15] Peasants and pastoralists have free access to land and immunity against eviction.[16] As a result, any person who wants to make a living from agriculture is entitled to get land from the government for free without discrimination based on sex. Moreover, the FDRE Constitution that recognizes the federal system of government apportioned power over land to the federal and state governments. The federal government has the power to enact laws concerning the utilization and protection of land whilst the prerogative to administer, land is the residual power of the States.[17] In line with the above Constitutional principles, the federal government and states have enacted their respective rural land laws.

Based on this context, the study employs a qualitative legal research approach. As such, it focuses on the quality of social meanings constructed in the data collected in the form of words empirically inquiring about the way women's access to land is regulated in the law, how it is implemented and how the land dispute resolutions mechanisms are contributing to the strengthening of women's access to rural land.

To that effect, in observance of the research ethical standards, the data is collected through content analysis of the different legal and policy instruments and judicial decisions, semi-structure interviews, and key informant interviews. The FDRE Constitution, the Federal Rural Land Proclamation No. 456/2005, and Amhara Region Rural Land Proclamation No. 252/2017 are analyzed in terms of ensuring women's equality right in accessing rural land

[14] Amhara National Regional State. Revised rural land administration and use proclamation No. 252/2017.
[15] FDRE Constitution, Art 40(3).
[16] Id, Art 40(4 and 5).
[17] Id, Art 51(5) and 52(2d).

and in the dispute settlement mechanisms. The FSCCD are also reviewed and analyzed to determine how far courts are effective in ensuring women's equal right to access rural land.

The Interviews are conducted with rural women in the category of married and unmarried, and household head and those that are not. In each category, we have conducted three interviews in each woreda/district of Bahir Dar Zuria and Mecha of the case study area. In total, twenty-four women selected through the help of gatekeepers from the respective woreda land administration professionals and based on convenient sampling were interviewed.

Key informant interviews are conducted with representatives from institutions directly involved with implementing women's access to rural land and land dispute resolution mechanisms. These institutions include Woreda Rural Land Administration Offices, Women's and Children Affairs Offices, Justice offices, Courts, and Local Elders who have taken part in customary dispute resolution mechanisms. One representative from each governmental institution and three local elders from each Woreda under study are interviewed as key informants. In total, fourteen key informant interviews are conducted.

The data was collected until we reached a point of data saturation. It was then qualitatively and thematically analyzed.

CHAPTER TWO

2. THE CONCEPT OF ACCESS TO LAND AND RURAL LAND DISPUTE RESOLUTION MECHANISMS

This part of the study provides a conceptual discussion about the idea of access to land and how it relates to land dispute resolution mechanisms. It deliberates on the essence of access to land, why it is important for the rural community and women in particular, and how dispute resolution mechanisms affect access to land.

2.1.The Concept of Access to Land and Its Importance to Women

The concept access to land is generally understood as *'the ability to use land and other natural resources, to control the resources and to transfer land rights to the land to take advantage of other opportunities.'*[18] It is related to individuals' and communities' ability to acquire, use, control and transfer land. It deals with the following three important property rights components per Edwin Baker's property functions.[19]

The first includes the welfare function, which refers to securing individuals' and the community's claim on those resources that the community considers essential for a meaningful life.[20] In any rural community, especially in developing countries like Ethiopia, land is the fundamental resource for a meaningful life. Thus, securing the demand for land for the rural community, including women, is an aspect of access to land.

The second element is the use-value function that describes the use and control of the land. It refers to the people's reliance on, consumption, transformation of the land in many of their self-expressive, developmental, productive and survival activities.[21] It requires the people who have acquired the land to have full power to determine how to use the land in the manner they think necessary for their survival but without undermining the state's power of land use regulation.

The third and final element is the sovereign function. This aspect of access to land provides people with the means to exercise power over others by enabling them to transfer the land right to others.[22] Accordingly, access to land entitles the right holder with an aspect of transfer rights to determine who can use it and in what way.

Consequently, in rural areas guaranteeing women's access to land is crucial to realize their economic as well as political freedom. Because, first, it is an economic resource and an important factor in the formation of individual and collective identity which in the day-to-day

[18] S. Raihan and *et al*, Access to land and other natural resources by the rural poor: the case of Bangladesh (2009). Available at https://mpra.ub.uni-muenchen.de/38621/; FAO, *Land access in the 21st century: Issues, trends, linkages and policy options* (2006).
[19] E. Baker. Property and its relation to constitutionally protected liberty. (1986) 134 *U. Pal. L. Rev.* 741–816.
[20] Id, p 745.
[21] Id, p 747.
[22] Id, 751.

organization of social, cultural and religious life. Second, it is an enormous political resource that defines power relations between and among individuals, families and communities under established systems of governance.

Specifically, for rural residents in general and women in particular, access to land is important to secure their livelihood. It enables them to be uplifted from poverty.[23] It is also a means to define a person's social status in their community. For instance, the historical experience of Ethiopia entails that it is a source of pride, self-esteem, and social acceptance.[24] Furthermore, it enables rural communities to manifest and express their cultural values as it defines their way of life.[25] Finally, ensuring their economic freedom tends to capacitate them to make meaningful political participation and their voice to be heard loudly in the local decision-making process.[26] For women, it is further a matter of gender equality that is concerned with how women's rights and interests in land can best be supported and strengthened.[27] Consequently, throughout the globe, the statutory land tenure systems have constantly been changing to establish equal rights for women and men in relation to land.[28]

In contrast, in the absence of secured access to rural land, rural women may be forced out from their home and land upon the death of a husband, lack recourse when an abusive partner kicks them out, be excluded from decisions about the mortgage or lease/rent of their land, have no claim to compensation when an investor, corporation, or the government takes the land. Because women lack control over the land they depend on, they are less likely to be included in decision-making about land and are more susceptible to displacement and exploitation. This situation undermines their status and ability in the community to make meaningful political participation in the local decision-making process, exposes them to poverty, and further marginalization and inequality.

2.2. Land Dispute Resolution Mechanisms and Women's Access to Land

The idea of land disputes, in general, is understood as a social fact in which at least two parties are involved, the roots of which are differences in interest over the property right to land, the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it.[29] Regarding access to land, it refers to the disagreement or competing interests between two or more parties in the acquisition of land, land utilization, and transfer of land. Given the paramount roles it plays in the rural community, as discussed above, land access is the key factor that

[23] L. Cotula and *et al*, *BETTER LAND ACCESS FOR THE RURAL POOR, LESSONS FROM EXPERIENCE AND CHALLENGES AHEAD* (2006) FAO and IIED; Deininger (n 2 above) p xx.
[24] H. Jemma, *The Politics of Land Tenure in Ethiopian History* (paper presented to XI World Congress on Rural Sociology . Trondheim, Norway, July 25-30, 2004) p 3.
[25] Committee on Economic, Social and Cultural Rights, *Right of everyone to take part in cultural life, General comment No. 21* (2009) para. 15(c).
[26] Deininger (n 2 above) p xxi.
[27] Kaarhus and Dondeyne, (n 3 above).
[28] Ibid.
[29] Wabelo, Temesgen Solomon. "Approaches to Rural Land Dispute Resolution Mechanisms in the Ethiopian Rural Land Legislations: Regional States Based Analysis." *Law Env't & Dev. J.* 16 (2020): 95.

underlies land-related tensions and disputes. The causes of the disputes are shortage of agricultural land, political corruption and state capture, land grabbing, population growth, poverty and marginalization in access to land, and parallel application of customary and statutory land tenure rules.[30]

The prevalence of land disputes and the mechanisms of their resolution have a direct impact on women's access to land. The extent to which the land dispute resolution mechanisms are gender sensitive determines the women's ability to enforce their right to access land. The dispute resolution mechanisms are not identical across the globe. Modalities to resolve disputes in relation to rural land may vary across countries depending on the land tenure history, culture and stage of development of a given country. It can be either formal, where the land disputes are resolved through state machinery; informal, when the land disputes are resolved through out-of-state institution systems; or both. The formal mechanism can be through a quasi-judicial administrative entity or court litigation whereby one party becomes a winner and the other a loser. The effectiveness of these dispute resolution mechanisms depends upon the legal knowledge, affordability of the justice administration cost, and independence of the institution.[31]

The second land dispute resolution mechanism category is the customary dispute resolution mechanism. It is an out-of-state-institution dispute resolution mechanism that does not involve the use of legally defined procedures and rules. It, rather, uses culturally established institutions and customary rules. The outcome is not a winner-loser but a compromise that satisfies both sides and, in effect, maintains the social relations of the disputants.

On the other hand, both mechanisms may exist independently when each has its jurisdiction over a certain category of land disputes or interdependently, where matters seen under the customary dispute resolution mechanisms are subjected to the review of the state/formal institutions.

One may ask about the rural land dispute resolution mechanism that better serves and enforces women's land access. Taking the general practice of gender-based labour division prevailing in rural society, one may claim that the formal land dispute resolution mechanisms are a better means to secure and enforce women's access to land. However, this theoretical claim may not be true when the cost of enforcement is inhibiting one and the independence of the judiciary is doubted. Consequently, what is theoretically demanded to ensure women's access to land here is that the dispute resolution services must be equally accessible to women in terms of language, location and procedures.

[30] Id.
[31] Deininger (n 2 above) p 36; UN-HABITAT, *Land tenure security in selected countries* (2014) p 9.

CHAPTER THREE

3. THE LEGAL FRAMEWORK OF WOMEN'S ACCESS TO RURAL LAND AND RURAL LAND DISPUTE RESOLUTION IN ETHIOPIA

Recognizing the importance of women's access to land to sustainable development, eradication of poverty, democratization and gender equality, and the fact that women didn't have equal rights to access land in the past, international and national legal frameworks have designed to address the discrimination. This part, therefore, reviews the legal measures taken to ensure women's equality in accessing land at the international level and in Ethiopia. It further assesses the nature of rural land dispute settlement mechanisms adopted in Ethiopia and the judicial approach in ensuring women's access to land, taking the federal supreme court cassation bench practice.

3.1. International and Regional Legal Measures

With a firm belief that discrimination in access to and control over land is a violation of the human rights of women[32] Women's equal rights to land and property are grounded in core human rights instruments. The Universal Deceleration on Human Rights (UDHR),[33] the International Covenant on Economic, Social and Cultural Rights (ICESCR),[34] International Covenant on Civil and Political Rights (ICCPR)[35] and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) have all provided protection to the women's land and property right.[36] Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples emphasized the special attention to be paid and protection against all forms of violence and discrimination to be afforded within the indigenous community.[37]

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, on the other hand, stipulates:

- recognition of the equality of women as principles of implementation of the guidelines,
- special measures/positive discrimination towards women to ensure de facto equality,
- equality of women in access to land, inheritance and bequeath the same,
- obligation on the state to take the necessary legal and policy measures to overcome obstacles women are facing concerning access to land and to defend their land rights,

[32] H. Tura, Women's Right to and Control over Rural Land in Ethiopia: The Law and the Practice, *International Journal of Gender and Women's Studies*, 2(2), (2014) p 141.
[33] Universal declaration of human rights. *UN General Assembly*, *302*(2) (1948).
[34] *International Covenant on Economic, Social and Cultural Rights* . adopted 16 Dec. 1966, 993, U.N.T.S. 3, Annex to G.A. res 2200(XXI), , UN.
[35] *International Covenant on Civil and Political Rights.* adopted 16 Dec. 1966, G.A. res 2200(XXI), UN GAOR, 21 Sess., Supp. No. 16, UN doc A/6316,, 993 U.N.T.S. 3, UN.
[36]
[37] United Nations Declaration on the Rights of Indigenous Peoples, adopted 13 Sept 2007, G.A Res 61/295, UN.

- state to design a participatory process of decision-making when women are affected parties, redistributive programs should guarantee women's equal access to land, and
- accessibility of the dispute resolution services in terms of location, language and procedures.[38]

The World Conference on Women through which the Beijing Declaration and Platform of Action was adopted also stresses the need to achieve equality in the enjoyment of land and property rights. It highlights member states commitment to ensure women's equal access to land, formulate and implement related policy, undertake legislative reforms to guarantee women's equality to access land, and address discriminatory practices.[39]

Other human rights mechanisms and UN entities have asserted that women's land rights are essential for achieving substantive equality and eradication of many forms of discrimination. Such mechanisms are a fundamental precondition to the realization of the rights to an adequate standard of living, including food and housing, health and life, work, cultural identity, and participation in civil and political life.[40]

The CEDAW Committee issued General recommendation No. 34 on the rights of rural women qualifying "rural women's rights to land, natural resources, including water, seeds, forestry, as well as fisheries, as fundamental human rights."[41] General Comment No. 16 of the UN Committee on Economic, Social and Cultural Rights on the equal right of men and women to the enjoyment of all economic, social and cultural rights requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.[42] Similarly, the Beijing Declaration, in Article 35, states that governments should ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, etc., as a means to further the advancement and empowerment of women.[43]

Furthermore, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol), under Article 19, provides that women shall have the right to the full enjoyment of sustainable development.[44] 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.[45]

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[38] FAO, Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, *FAO Council* (2012).
[39] Beijing declaration and platform for action. UNWOMEN (1995).
[40] Working Group on the issue of discrimination against women in law and in practice, *Insecure land rights for women threaten progress on gender equality and sustainable development* (July 2017).
[41] Committee on the Elimination of Discrimination against Women, *General recommendation No. 34 on the rights of rural women* (2016).
[42] CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, 11 August 2005, E/C.12/2005/4
[43] Bejing Declaration (n 39 above).
[44] Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, adopted 11 July 2003, the 2nd Ordinary Session of the Assembly of the Union.
[45] Ibid.

These legal measures at the international and regional levels require domestication of the measures and reforming national legal and policy frameworks. Consequently, the Ethiopian government has also taken serious legislative measures to ensure women's equal access to land.

3.2.National Legal Frameworks

3.2.1. The Federal Constitution

The first national legal measure to ensure women's equal access to land is the FDRE Constitution. The Constitution enshrines fundamental principles that guarantee equality of women and men in all areas of life with a strong affirmative action clause aimed at enabling women to compete and participate equally with men in all spheres of life.[46] Due to historical inequality; gendered discrimination women suffered under previous governance and traditional and cultural practices there is an emphasis on the equal right of women. The FDRE Constitution confers explicit recognition and protection of the right to property under Article 40. It has specifically referred to women's right to acquire, administer, control, use and transfer property under Article 35 (7), which encompasses their equal rights with men concerning land use, transfer, administration and control. The same provision has recognized women's equal treatment in property inheritance.

Besides express outlawing of customary practices which discriminate against women, the FDRE Constitution, by incorporating a self-declared supremacy clause, has made any law, customary practice or decision of an organ of state or a public official which contravenes it unconstitutional.[47] It means that any customary practices, state laws, or decision of any state organ or public official discriminating against women's land access is null and void. While recognizing the religious and customary dispute resolution mechanisms in private and family matters, the Constitution has also emphasized that it be based on the consent of the disputants.[48]

3.2.2. Subsidiary Laws

In line with the Federal Constitution's framework, subsidiary laws dealing with women's property and land rights are amended accordingly. Particularly, to support and strengthen women's equal access to land, the subsidiary laws provide legal protections in terms of equality in household and common property administration; equality of acquisition of rural land through a government grant, donation and inheritance; mandatory requirement of the consent of both spouses in case of transfer of joint holdings; protection of legal interest of women in a time of transfer of land use rights in the marriage, issuance of joint landholding certificate when the land is held jointly by wife and husband or by other persons; and submitting the land disputes to once preferred resolution mechanism.

[46] FDRE Constitution, Art 35.
[47] Id, Art 9(1).
[48] Id, Art 34(5).

3.2.2.1.Equality of Household and Common Property Administration

Following the FDRE Constitution, one of the fundamental changes introduced under the federal and the Amhara State Family Codes is assigning the power of family administration jointly to the husband and wife.[49] Previously, under the Civil Code, the husband was regarded as the head of the family.[50] Such designation has put women in a lesser status in the administration of the family and undermined their property rights.

One of the consequences of the change made in the Federal Revised Family Code and the Amhara State Family Code has ensured women equal power to administer the common property irrespective of the form of marriage. Be it religious marriage, marriage concluded in front of an office of civil status, or marriage concluded according to custom, the tradition that considers the husband as the head of the family has no place.[51] The wife has equal power to administer the family and the common property.

Moreover, with regard to the determination of common property, both family codes have enshrined stipulations that ensure women's property rights. These are considerations of income derived from personal efforts of the spouses or common property after the conclusion of the marriage as common property, all property acquired by the spouses during marriage by an onerous title shall be common property unless declared personal, and property donated or bequeathed conjointly to the spouses as common property unless and otherwise indicated in the donation or will.[52] Furthermore, the codes have stipulated a legal presumption that 'all property shall be deemed to be common property even if registered in the name of one of the spouses, shifting the burden of proving to the spouse who claims sole entitlement.[53]
These legislative measures will have great importance regarding women's access to land, particularly from a married woman's perspective:

1. It avoids the possibility of sole land entitlement by the husband on the landholdings acquired after the conclusion of marriage through a government grant.
2. Concerning the use of landholding by the husband before marriage, it provides the wife with the equal right to use and own the income.
3. In the case of a landholding acquired through donation and bequeathed to one of the spouses to claim the sole entitlement, the claimer must prove that this fact is mentioned in the donation or will.
4. The registration and certification of land in one spouse's name doesn't make it a sole entitlement.

Rather, it is presumed as a common holding shifting the burden of proof to the spouse who claims the sole entitlement.

[49] The Federal Revised Family Code, Proclamation No. 213/2000, Art. 62; ANRS Family Code, Proclamation No. 79/2003, Art. 77 and 79.
[50] he Civil Code of the Empire of Ethiopia. Proclamation No. 165/1960, Art 635(1).
[51] The Federal Revised Family Code, Art 1; The ANRS Family Code, Art. 12.
[52] The Federal Revised Family Code, Art 62; The ANRS Family Code, Art. 73.
[53] The Federal Revised Family Code, Art 63; The ANRS Family Code, Art. 74.

3.2.2.2.Equality in Acquisition of Rural Land

Apart from acquiring land through market means like rent or crop sharing, the subsidiary rural land laws of the federal government and Amhara National Regional State adopt three important means of rural land acquisition. These are government grants, donations and inheritance.

The government grant of rural land is Ethiopia's constitutionally sanctioned land acquisition method. Under Article 40(4 and 5) of the FDRE Constitution, any Ethiopian based or willing to base their livelihood on rural land is entitled to get rural land without payment or for free. The constitutional right to free access to land for all needy nationals is further regulated in the subsidiary laws as the Constitution has made deferral. Accordingly, the federal and the Amhara National Regional State rural land laws have come up with certain requirements that nationals need to fulfil to access rural land for free.

The rural land laws prescribe two cumulative conditions to access rural land for free. The first one is the desire to engage in agriculture for a living and as the only or main profession to derive one's means of livelihood.[54] This requirement by itself presupposes two things. The claimant must be someone who doesn't have a means of livelihood or whose livelihood means are insufficient, and he/she must also be someone who desires to engage in agriculture and utilize the land for agricultural purposes. The second common requirement is an age requirement. In relation to age, the implementing laws make two kinds of stipulation – a principle and, seemingly, an exception. The principle is that to acquire rural land for free, a person must have attained 18 years or above.[55] Nevertheless, the laws incorporate an exception to this. They imply that minors who haven't attained the age of 18 may exceptionally access rural land for free in cases where they have lost their parents. In such cases, they may acquire the right to use rural land through legal guardians.

In addition to the above two requirements, the ANRS rural land law has come up with a third requirement, which is not mentioned in the federal counterpart. It is the residency requirement. A person must establish that he/she is a resident of the state where he/she claims land for free.[56]

Apart from the above conditions, the rural land laws don't discriminate based on sex to access rural land for free. Rather, the laws even more specifically mentioned the women's right to access land for free to provide emphasis. Particularly, Article 5(2c) of the Federal Rural Land Proc. No. 456/2005 states that:

> *'Women who want to engage in agriculture shall have the right to get and use rural land.'*[57]

The ANRS Rural Land Proc. No. 252/2017 also expressly mentions that without discriminating based on sex or any other ground, residents of the region have the right to free

[54] Proc. No. 456/2005, Art 5(1); Proc. No. 252/2017, Art 10.
[55] Ibid.
[56] Proc. No. 252/2017, Art 10.
[57] Rural Land Proc. No. 456/2005, Art 5(2c).

access to land.[58] It further puts women on the priority list in land allocation and promises to design a mechanism to implement it.[59]

For accessing rural land through donation and inheritance, the federal and the ANRS laws have stipulated the conditions in a gender-neutral way. Any person, irrespective the gender orientation, who fulfils the conditions enshrined in the rural land laws can get rural land through donation and inheritance from a peasant. The federal rural land law provides:

> *'Any person who is member of a peasant farmer… family having the right to use rural land may get rural land from his family by donation, inheritance…'*[60]

This provision mentions two important requirements to get rural land through donation and inheritance. First, the person must be a member of a peasant farmer family. The same law defines family members based on two cumulative requirements. These are the residency requirement and the dependency requirement. The residency requirement demands that a person regarded as a member of a peasant family must permanently live with the peasant. The dependency requirement, on the other hand, requires that a person share the livelihood of the peasant farmer.[61] When a person fulfils these two requirements cumulatively, he/she is considered a family member of the peasant to acquire land through donation and inheritance.

The second condition is that to get land through inheritance and donation, the person must have the right to use rural land. It refers to those individuals who want to engage in agriculture as a living and only/main profession to derive one's means of livelihood and who attained the age of majority. Consequently, if women fulfil these two cumulative conditions, they can access rural land through donation and inheritance.

The ANRS rural land law has taken a different approach in governing getting rural land through donation and inheritance. To get land through donation, in addition to the above two criteria, it requires the person must be a resident of the region.[62] It has also broadened 'the family member' essence by adding children or grandchildren who don't fulfil the requirements to determine family members as beneficiaries of land donation.[63] Besides, under ANRS rural land law, any other person who has the right to use rural land and who has produced a written document to prove that she/he has served or has been serving the landholder can get rural land through a donation from the landholder.[64]

Regarding land inheritance too, the ANRS rural land law has broadened the beneficiaries. First, it entitles any person who is engaged or willing to engage in agriculture for a living to access rural land through a public will made by the deceased landholder.[65] Second, intestate succession which allows the deceased children, parents and other family members respectively who are engaged in or want to engage in agriculture to inherit land.[66] For inheritance, the law considers persons residing permanently in towns bordering the rural

[58] Proc. No. 252/2017, Art 5(2).
[59] Id, Art 5(6), 10(4), 12(3).
[60] Proc. No. 456/2005, Art 5(2).
[61] Id, Art 2(5).
[62] Proc. No. 252/2017, Art 11, 16(1).
[63] Id, Art 16(1a).
[64] Id, Art 16(1b).
[65] Id, Art 17(1).
[66] Id, Art 17(5).

areas who engaged in a permanent job earning the least income but supporting their living on an income generated from the rural land as eligible.[67]

As inferred from the rural land laws, women have an equal right to get rural land through donation and inheritance as far as they fulfil the conditions laid out in the laws. The laws don't enshrine any stipulation that may create discrimination against women. Certain stipulations, like 'a person who has served or has been serving the landholder' as a criterion to get land through donation, as the case in the ANRS law more fitting to women than men as naturally, women are more caring.

3.2.2.3. Consented to Transfer Joint holdings

The other important protection afforded to women's access to land, in the form of having control over the land, is the need to secure their consent in case of transfer of their conjoint holdings. The general assessment of the federal and the ANRS rural land laws reveal that rural land use rights are transferable through joint investment, rent, donation, inheritance, land exchange and mortgage.[68] Particularly, if the joint investment, rent, donation, land exchange, and a mortgage is going to happen to the conjointly held landholding with women, it is mandatorily required to secure the women's consent as a validity requirement of the transactions.

The federal rural land law stipulates an express requirement of securing the consent of all the members who have the right to use the land in case of land rent. Nevertheless, this doesn't mean that the consent of the members who have the right to use the land, including women, is not required in the other transactions. Rather, it applies for the same reason. In the case of the ANRS rural land law, an express reference to secure the consent of the *husband and wife* or all the members who have the right to use land is made regarding donation and land exchange.

In sum, with respect to joint holdings of husband and wife or in any other joint holdings of rural land to which women are a party, securing their consent about any transaction held on the land use rights is mandatory and a validity requirement. Such requirements basically aimed at empowering women to control how land use rights are utilized and ensuring their participation in the decision-making of the transactions.

3.2.2.4. Protection of legal interest of women in time of transfer of land use Rights in the Marriage

Although women count for half of the country's population and 58% of the agriculture force, women in Ethiopia have had limited access to land and land rights. Their roles as landholders and farmers have long been disregarded in social practices and customs. The 2018 data indicates that among the agricultural landholdings, only 15% held by women as private holdings and 40% jointly.[69] Men hold the rest, 45% as private holdings.[70] Consequently, one of the measures taken to address this gender parity is to protect married women's interest in transferring the husband's private holdings through donation and inheritance.

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[67] Id, Art 17(11).

[68] Proc. No. 456/2005, Art 5(2), 7(1 and 3); Movable Property Security Right Proclamation No. 1147/2019, Art 2(27); Proc. No. 252/2017, Art 16-20.

[69] FAO, *The gender gaps in land rights* (2018).

[70] Ibid.

The ANRS rural land law has incorporated a condition that the transfer of the spouse's private holding through donation and inheritance. It states that the land donation is invalid if it is made in a way that harms the landholder's minor children or other family members or if it does not leave enough shares to them.[71] Here the essence of 'family members' can incorporate the other spouse, mostly the wife, who permanently lives with the husband landholder depending on his livelihood. Similarly, the transfer of land use rights through testate succession shall be invalid if it disinherits minor children or harms the spouse's legal rights as a family member.[72] The possibility of protecting women's land interests in this way applies only to married women.

3.2.2.5. Joint Registration and Issuance of Land Certificate

Land registration and certification is an important means to prove entitlements. This happens when:

- it is done for all landholders and landholdings in the least cost manner, which the landholders can afford;
- the process itself must unfold in a manner that enables the public to participate in the identification of the true landholders and the boundary thereof in an impartial way and the violation of such impartiality resulting in a liability; and
- the evidentiary role of the registration and certification must be conclusive, unless it, itself is contested.[73]

In line with these principles, the federal, as well as the ANRS rural land laws, stipulate land registration and certification be conducted for all types of landholdings. They also require the certificate to be issued in the joint holders' name if it is jointly held.[74] The ANRS law, to ensure impartiality and local community participation in the process requires that the demarcation of boundaries be conducted with the agreement of the adjacent parties and in the absence of agreement, with the recommendation of the local elders.[75]

Moreover, to make proper and fair registration and certification, it introduces a liability clause and a right to appeal to a higher administrative authority to be discharged thereof. Any landholder aggrieved with the land measurement and delineation is entitled to complain to the next higher administrative authority for reconsideration of the case. It also entitles the aggrieved party to appeal and demand judicial review in a court of law. Additionally, if the landholder sustains damages due to the fault of the registration and certification process, the law establishes civil liability for the government body at fault and authorizes court action to claim the compensation.[76] This institutional accountability element of the registration and certification of land rights has the tendency to protect landholders from the illegal deprivation of their land rights in the process itself.

In relation to the evidence role of the land registration and certification, the ANRS law regarded it as conclusive evidence to prove entitlement unless itself contested. It states:

[71] Proc. No. 252/2017, Art 16(3).
[72] Id, Art 17(3).
[73] Gebremichael (n 7 above) p 50.
[74] Proc. No. 456/2005, Art 6(4); Proc. No. 252/2017, Art 35(3).
[75] Proc. No. 252/2017, Art 33-34.
[76] Ibid.

'[t]he person who is granted the land holding certificate in his name shall, unless a contradictory written document is submitted, be considered legal holder of the land.'[77]

From the perspective of women's access to land, the above legislative measures with respect to land registration and certification are promising to ensure their equality.

3.2.2.6. Permissive Rural Dispute Resolution Mechanisms

The last important legislative measure taken to support and strengthen women's access to rural land is leaving the option to select a particular land dispute settlement mechanism to enforce their land rights. The above-discussed legal protection afforded to women's land access alone is not guaranteed to secure women's access to land in Ethiopia. Because the possibility of undermining women's access to land not only results from the making of government rules, but also from their applications. As a result, an independent, affordable, and accessible, in terms of location, language and procedure enforcement mechanism, is necessary to enforce the rights at the time of specific challenges.

The federal and the ANRS rural land laws have introduced both the customary and the formal rural land dispute settlement mechanisms in an optional way. With the assumption that the customary dispute resolution mechanisms are affordable, accessible, and provide amicable solutions, the laws encourage land disputes to be resolved through them.[78] Nonetheless, a party aggrieved with the decision of customary dispute settlement is entitled to take the case to the formal state machinery. Federal law, for instance, suggests disputes related to rural landholding right to be resolved through discussion and agreement of the concerned parties first. If it is not resolved through agreement, an attempt to be made to resolve through the mediation of local elders elected by the parties. [79]

In the same fashion, the ANRS rural land law also gives the option to the disputant parties to settle their rural land disputes by first attempting through the out-of-courtroom dispute resolution mechanisms or taking direct court actions. It requires the concerned parties to resolve their dispute through agreement first; if they fail to reach an agreement, they must try to resolve it through the mediators they elected. If the mediation doesn't work again, the case can be instituted in the woreda court.[80] Here referring the case to the customary dispute resolution mechanisms is not mandatory. The concerned party can take direct court action. This optional approach creates a conducive land rights enforcement approach for women.

The provision of legal protection to women's access to land in legislative measures is halfway to ensuring women's equality to access to land in Ethiopia. Its full picture is seen when legal measures are implemented in practice. Consequently, the next part analyses how far the above-discussed legal protections afforded to women's access to land are practically implemented and whether the practice of rural dispute resolution mechanisms truly ensures women's equal access to land.

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[77] Id, Art 35(5).
[78] Proc. No. 456/2005, Art 12; Proc. No. 252/2017, Art 52.
[79] Proc. No. 456/2005, Art 12.
[80] Proc. No. 252/2017, Art 52›

3.3. Judicial Approach to enforcing Women's Access to Land: The Federal Cassation Bench Experience

Judicial enforcement of women's access to land is one way of protecting the violation of their access rights in the application of the law. Its effectiveness can be measured based on the quality of the decisions made, among other things. Consequently, this section attempts to review the decisions rendered by the Federal Supreme Court Cassation Bench (FSCCB) on cases related to women's access to rural land. The reason for the selection of FSCCB decisions is two-fold. First, decisions show the entire decision of the lower courts. Second, the decisions, particularly the way of interpreting laws, have a binding effect on the lower courts. One important thing to note here is that cases reviewed may not come from the ANRS. Nonetheless, the approach of the FSCCB in deciding reviewed cases may not change if the cases came from the ANRS since what is considered here is the line of interpretation it employs.

The cases are mainly related to the women's access to land through donation, inheritance, and widow protection from land dispossession. In relation to accessing land through donation, the FSCCB the two decisions, Ato *Manalew Teka vs W/ro Etenesh Teka,* and *W/ro Tejetu Urga vs Ato Gemeda Reba* are worthy of analysis.

In a case between *Manalew Teka vs Etenesh Teka,*[81] the court stated that the transfer of use right through agreement to a person should not bar the latter transfer of the land by the landholder through donation. The fact of the case shows that the respondent obtained land from her father through donation, which is now under the possession of the plaintiff. The plaintiff argued that he gained the land based on a mutual agreement with the father of the current respondent, and the land cannot be transferred through donation. The plaintiff raised this factual issue in the FSCCD. This court held that the agreement between the plaintiff and the defendant's father should not bar the landholder from transferring the land to others through donation and the *donee* woman from acquiring the land.

The case of *W/ro Tejetu Urga vs Ato Gemeda Reba*[82] is about whether the rural landholding donated as a wedding gift from the parents to a newly married couple can be reclaimed for the non-fulfilment of the form required of the contract of donation. The applicant, who was the plaintiff in the lower courts, claimed that rural landholdings donated as a wedding gift during their marriage from the parents of her husband constitute common property and were subjected to partition in the dissolution of the marriage.[83] The respondent, who was the donor of the landholding and intervened in the suit, on his side claimed that the disputed landholding is my private holding and is registered and land-related taxes were paid in my name.[84]

The first instance court ruled that as the plaintiff and defendant (the husband) had been possessing and using the landholding, the respondent who intervened in the suit don't have

[81] File No. 119557 (July 26, 2016) the Federal Supreme Court Cassation Decisions, Vol. 20 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, May, 2017) 148.
[82] File No. 113973 (01 January 2016) the Federal Supreme Court Cassation Decisions, Vol.19 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, August 2016) 83.
[83] Ibid.
[84] Ibid.

any right although the landholding is registered and land-related taxes are paid in his name.[85] The High Court where an appeal lodged, on its side, reversed the first instance court's decision arguing that contract of land donation wouldn't have been made orally; but for its validity, it must be made in written form and registered in the concerned authority.[86] It also argued that since the plaintiff and the defendant haven't acquired the landholding in the legally defined way, the mere possession and use of the landholding doesn't establish legal possession irrespective of the phrase "the land we will acquire from our father" in the contract of marriage.[87] Aggrieved with this decision the applicant appealed to the Oromia State Supreme Court. In its appellate jurisdiction, the court reversed the High Court's decision and ruled that since the actual users of the landholdings were the applicant and her spouse, the respondent was not entitled to claim the landholding he hadn't been using by citing the fact the holding is registered in my name.[88] This decision was reversed by the CB of the same court reiterating that the contract of land donation must be in written form and must be registered.[89]

It was against this decision that the applicant brought the case to the FSCCB. The bench, on its side, notes that the applicant, with her husband, had been using the holding, and the respondent has transferred his use right to the formers. On this basis, it decided that since farmers have 'the use right of rural land', the interruption and non-use of the use right for a long period upon transferring it to others has the effect of depriving former holders for the benefit of the actual users.[90] It, further, claimed that the *mere absence of written and registered contract of the donation doesn't result in deprivation of the actual users of 'the use right' while it is fact the former holder has donated the landholdings and he use right is interrupted for long period*.[91] Consequently, it reversed the Oromia State Supreme Court's Cassation Decision and affirmed that the non-fulfillment of the form requirement in land donation contract is not a valid ground to deprive the *donee* woman as far as the existence of the contract and the interruption of the use right of the donor is proved in other means.[92] Although the decision raises other legal issues, the approach of the FSCCB is in favour of the opportunity of women to get rural land through donation.

With regard to inheritance too, there are two important cases whereby women were inheritors of rural land. These are *W/ro Zemu Asfaw vs Ato Mehamed Asfaw* and *Ato Adugna Gudeta vs W/ro Beshadu Gudeta and two others*. In the *W/ro Zemu Asfaw vs Ato Mehamed Asfaw* case, the plaintiff requested the FSCCB to rule that her right over rural land be respected.[93] The fact of the case is that the plaintiff was registered as a family member with

[85] *W/ro Tejetu Urga vs Ato Gemeda Reba (n 82 above)* pp 83–84.
[86] Id p 84.
[87] Ibid.
[88] Ibid.
[89] Id p 85.
[90] Ibid.
[91] Id p 86.
[92] Ibid.
[93] *Zemu Asfaw and Ato Mehamed Asfaw*, File No. 109697 (August 6, 2015) the Federal Supreme Court Cassation Decisions, Vol. 18 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, January, 2016), 169.

her grandparents in the landholding certificate since 1983 EC. Until 1996 EC, she was living in Saudi Arabia and came back and claimed the land she should have inherited from her grandparents. On the other hand, the defendant argued that the plaintiff cannot be a family member of the family and she shall not claim rights over the land. The woreda court decided in favour of the plaintiff as she is registered in the holding certificate as a family member and produced evidence of that. The high court reversed the decision claiming that the plaintiff does not qualify for the requirements for a family member. The case is further appealed to the FSCCB.

The court examined the residence requirement with the landholder in deciding whether the plaintiff shall inherit the land. According to the court, the fact that the plaintiff stayed abroad shall not preclude her from succeeding her grandparents. The court cited relevant provisions of the regional law to support its position. The decision is an important milestone to protect the land inheritance rights of women in most cases; practically it is women who move to another place, especially in marriage, who fail to fulfil the residency requirement as defined in the law.

On the other hand, the fact of the case *Ato Adugna Gudeta vs W/ro Beshadu Gudeta and two others* is that the applicant (the brother of the respondents), who was the defendant in the first instance suit, had lived with their mother possessing and using the latter's 6.5 hectares of rural landholdings.[94] Upon the death of their mother in 2011/12 he made the landholdings be registered in his son's name and continued to utilize it. He further claimed that he has possessed and used the landholdings since 1975, and it is his holding, not inheritance land.[95]

The current respondents who were plaintiffs (two of them intervened in the suit), claimed and sued the applicant to share with them the inheritance of their mother's rural landholdings in the Oromia Region, Sululeta Woreda/first instance/ Court. Citing the Region's Rural Land Proclamation No. 130/2007 Article 16 and Regulation No. 151/2012, the court ruled that since the respondents are living in other places and since the applicant has been living with the deceased, the applicant has the priority right to inherit and the respondents don't have the right to participate and share the inheritance land.[96] The appellate High Court also affirmed the decision of the first instance court stating that the respondents were not using the landholdings being a family member. The cassation bench of the Oromia State Supreme Court, where the cassation application was made, on the other hand, reversed the decision of the lower courts on the ground that the applicant didn't claim priority rights in the lower courts and the priority rights conception in the region's rural land laws deals only about his share in the inheritance but not aimed at depriving respondents of taking part in the land inheritance.[97] Hence, the bench held that the respondents have equal rights to share the inheritance land.

[94] File No. 108106 (07 March 2015) the Federal Supreme Court Cassation Decisions, Vol.18 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, January 2016) 158.
[95] Ibid.
[96] Id pp 158–159.
[97] Id 159.

It was against this decision a cassation application was instituted to the FSCCB. In its decision, the bench recognized that initially, the applicant had been claiming the holding as personal holding, and it became inheritance landholding during the hearing. It affirmed the decision of Oromia State Supreme Court cassation bench decision on the same ground of reasoning.[98] In that way, the Cassation bench's decision protected the women inheritors who live away as a result of marriage from being deprived of inheritance land by those who have possessed and used the land for a long time.

The final important case for the purpose of this research is the case related to the protection of widows from dispossession. The case *Chulame Muleta and Sobeke Muleta vs Chuleshi Kelebesa* is a good instance to illustrate this matter.[99] The fact of the case is that the applicants who were the plaintiffs in the first instance Court have claimed the restitution of the family landholdings, which the respondent's deceased husband (brother of the applicants) were jointly using with their mother, arguing that the respondent doesn't have any right to possess and use the holdings and to acquire title deed.[100] The respondent on her side raised two alternative arguments. The first one is a preliminary objection to the claim being barred by the limitation period. The second one is that she claimed that the landholding was given to her husband in donation from his parents, and upon the death of one spouse, the living one has the right to register the holding in her name and to use and possess it.[101]

The first instance court decided the case against the respondent stating that the holding belongs to her deceased husband's parents and a wife cannot inherit her husband.[102] The High Court where the first appeal was lodged; on the other hand, after confirming that the landholding belongs to the deceased's parents but not donated to, reversed the lower court's decision and entitled the respondent to get 1/8th of the holding.[103] In the second appeal, the Oromia State Supreme Court reversed the decision of the lower courts believing that the holding was donated to the respondent's deceased husband and citing the Oromia State rural land laws it ruled that the respondent has inherited the holding and she is not duty-bound to either to share or to vacate it.[104]

It was against this decision that the cassation application was lodged with the FSCCB. The FSCCB also affirmed the decision of the Oromia State Supreme Court's CD implying that although about the existence of the contract of donation the lower courts have reached different conclusions, the ultimate and final say on the question of facts rests on the Oromia State Supreme Court appellate bench.[105] Consequently, it has taken due note of the fact that the deceased husband's parents had donated the landholdings and the holdings were not

[98] Ibid.
[99] File No. 138286 (03 October 2017) the Federal Supreme Court Cassation Decisions, Vol.22 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, September 2018) 314.
[100] Id p 314.
[101] Id pp 314–315.
[102] Id p 315.
[103] Ibid.
[104] Ibid.
[105] *Chulame Muleta and Sobeke Muleta vs Chuleshi Kelebesa* (n 99 above) p 316.

family holdings but the common property of the respondent and her deceased husband.[106] Citing Article 35(5) of FDRE Constitution that guarantee women with equal right in the use, control, transfer, and administration of land; Article 6(13) of the Oromia State Rural Land Proclamation No. 130/2007 that states spouses equal sharing of holdings registered by their name in the time of divorce; and Article 15 of the Oromia State Rural Land Regulation 151/2012 that provides for the validity of the holding certificate to be maintained for the alive spouse when it was issued in both name as a common holding, in its decision the FSCCB confirmed the Oromia Supreme Court's appellate decision.[107] This approach to address the land access of widows is very protective and enhances women's land rights.

[106] Ibid.
[107] Id p 317.

CHAPTER FOUR

4. THE PRACTICE OF WOMEN'S ACCESS TO RURAL LAND AND THE CONTRIBUTION OF DISPUTE RESOLUTION MECHANISMS: THE CASE OF MECHA AND BAHIR DAR ZURIA WOREDAS

This part of the research devoted to assessing whether the legal protection afforded to women's access to land in Ethiopia is practically implemented. Taking the empirical evidence collected from the right-holders (women), implementing government offices (Women, Children and Social Affairs Office, Rural Land Administration Office, Justice Office), and enforcing judicial bodies (Woreda Court) and local elders, it analyses the general status of women's access to land, women's equality in the acquisition of rural land through allocation, donation and inheritance, Challenges of Women's access to land, the impact of culture and tradition on women's access to land, the Contribution of rural land dispute settlements to women's equal access to land, and the way forwards to enhance Women's access to land. The data are collected from the Mecha Woreda and Bahir Dar Zuria Woreda of ANRS.

4.1.The General Status of Women's Access to Land

All the key informants are aware of the legal recognition of women's equal right to access to land, and they are in support of that. However, they also recognize that women's equal access to land has not been realized yet, though it has been improved.

The interview with rural women, on the other hand, reveals three kinds of results. Some of them are unaware of the law that ensures women's equality in rural land. Some others know that the law sanctions women's equality to access land but question its practicability. The rest, on the other hand, states that women access rural land not because of the law but out of comity and women's ability to enforce their rights. However, almost all of them recognize that a woman with legal awareness, financial capacity or support has a better opportunity to secure her rights.

The key informants further note that the status of access to land for all rural women is not uniform. Differences exist between female-headed households and male-headed households.

4.1.1. Situation of women in Male headed households

In male-headed households, women struggle to control and administer rural land. Because it is their husbands who administer and control it, on the other hand, it may be claimed that they have relatively secured land resources, as they have land certificates together with their husbands. They transfer their land together with their husbands. However, as the key informants stated, women enjoy such rights not because the community and husbands recognize the right of women but simply because legal procedures require the official involvement of women in land use and transfer. They can also share the land with their husbands as all legal procedures are fulfilled. However, sometimes, husbands deceive their wives in land transfers. Women lack access to land information. In many cases, husbands don't provide full and genuine information about the land transfer and land rent practices.

A woman's name is often not registered as a co-holder of rural land, even if the land was gained by grant or donation. The husband conspires or bribes the land registration body and excludes the wife's name. Hence, upon divorce, she will have no evidence that supports her claim.

Even if she is registered as a co-holder, elders usually give a higher share to the husband during the division of their common property following divorce. In such cases, indigent women accept the decision by the influence of the elders. Sometimes, though they get their share by court or elders' decision, their ex-husbands may forcefully snatch their land.

Mergeta Adige Eshite, Public Prosecutor from Bahir Dar Zuria Woreda, states that:

> *"In my perception ¼ of married women who jointly receive land by grant during the 1989 E.C land distribution lose their right. Those women who were counted as joint holder during that time have not received a certificate in their name. Most of the time, this was done by intentional acts of their husband. Culturally, women are not encouraged to participate in such issues. They did not present when the land was measured. When holding certificate was issued their husband take their photo too but they did not give them to the certificate issuing body. Husbands conspire with or bribe the land register personals and exclude women from the registration. Up on divorce, indigent women required us to claim their share. But, when we claim documentary evidence from the woreda land administration committee we found that the land was registered only by the name of their husband. In this way many women lost their land right. The other problem is that sometime when the 1989 land distribution committees required proving who received the land during the then distribution, they are bribed by the strong party and gave false testimony."*[108]

Our interviewee a right-holder, W/ro Gebeya Geremew from Bahir Dar Zuria Woreda, is worthy of mentioning. She states:

> *"During the 1989 land distribution I was married but after the land was counted in our name as common property my husband conspired with the land administration workers and got the certificate only in his name. I learned this fact after years up on his death. Since the holding certificate was issued in his name, I got nothing. After death of my husband, I married another man and gave birth to two children. However, upon the latter's death in 2011 EC, his elder son, whom he has from his previous marriage, took the whole land. I would get land during the 1989 land distribution if I were not female. My stepson would not deny my children's right to inherit their father's land if I were not female."*[109]

W/ro Yalemork Negussie reports a similar story:

> *"When I got married my husband's mother gave us land to build a house to reside in and to support our livelihood. On the land, we built three houses and cultivated the land with annual and permanent crops. Upon divorce, he denied the whole fact and said the land belonged to his mother."*[110]

W/ro Fasika Hailu also explains her experience as follows:

> *"I was married in 2007, and in 2008 land was distributed for landless people. During that time, my husband argued that the land must only be counted in his name. He justified that "only one year has passed since he married me, and that he was not sure whether our marriage sustains. If not, she will take half." The land distribution committee was convinced by his argument and excluded me.*

[108] Interview with Mergeta Adige Eshete, public prosecutor at Bahir Dar Zuria Woreda Justice Office (Dec. 13, 2022, Bahir Dar).

[109] Interview with W/ro Gebeya Geremew, resident of Mekat Dingay Debalo kebele, Bahir Dar Zuria Woreda (Dec. 15, Mekat Dingay Debalo).

[110] Intervieiw with W/ro Yalemwork Negusie, resident of Wonjita Kebele, Bahir Dar Zuria Woreda (Dec. 16, 2022, Wonjita).

My husband and I have two children under the age of seven. My stepsons, took the whole land upon my husband's death by disregarding their sisters' right to inherit. I came here as a guardian on behalf of my daughters."[111]

When it comes to renting land, women are required only to sign. Their husbands do not provide them with full information or consult them. The wife's participation in the land rent is just because the law demands so. An anonymous arbitrator from Mecha Woreda and Aynimogn Chanie from Bahir Dar Zuria emphasized this fact as follows:

"With respect to land rent the husband and the wife have equal say. This is because unless the woman gives her consent any land transfer could not be legally recognized. But sometimes even if the women refused to transfer her husband may force her to sign."[112]

Furthermore, the husband may engage in a land donation in a determinant way to the wife. Gebeyew Molla, the public prosecutor from Bahir Dar Zuria, explains this incident:

"Their right is also affected by donation. Though the law requires donation has to be posted in public place for not less than 15 days to enable any interested party to contest the donation, sometimes, it is implemented secretly. Hence, their land may be transferred to a third party by donation without their knowledge."[113]

Married women's participation is low in what land should be sown, how much fertilizer and what best seeds are needed for one hectare of land. They are not equally participating in land use activities. Generally, as Gebeyew Molla, a public prosecutor from Bahir Dar Zuria Woreda Justice Office, notes, 'such things are considered and perceived as paternal issues.'[114]

4.1.2. **Situation of women headed households**

Women-headed households have a better right to use, transfer, and control. If she uses the land, she decides on such issues. But, if she leases or gives it to another person in sharecropping, she has no such right on her land. It is up to the person who cultivates the land. Women-headed households refuse to rent land as the lessees attempt to evict them for long use. Furthermore, the key informants also indicated that if the land belongs to a woman, it is assumed that they do not know the border properly so that the bordering farmland holder can take away their land. Some tenants of the land also register the land in their names over time, denying the women, making them enter into unnecessary disputes, and resulting in unnecessary expenses.

In terms of transferring land, they have better opportunities than married women. But, when they transfer some of the land to their sons and the son is provided with the opportunity to cultivate the rest of the land, the sons betray their mother by saying that all the land has been given to them.

However, the situation of the divorced-female-headed household is different. Particularly, when they got land in the common property partition after divorce, they didn't freely use, control and administer their holdings. Habtamu Addis from the Land Administration Office of Bahir Dar Zuria Woreda illustrates their situation as follows:

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[111] Interview with W/ro Fasika Hailu, resident of Kimbaba kebele, Bahir Dar Zuria Woreda (Dec. 17, 2022, Kimbaba).

[112] Interview with Anynomous elder arbitrator 1 (Dec. 12, 2022, Mecha Woreda); Interview with Ayinmogn Chanie, Elder Arbitrator, Yinesa Kebele, Bahir Dar Zuria Woreda (Dec. 18, 2022, Yinesa).

[113] Interview with Gebeyew Molla, public prosecutor at Bahir Dar Zuria Woreda Justice Office (Dec. 13, 2022, Bahir Dar).

[114] Ibid.

> *"Upon divorce the husband prohibits his ex-wife not to lease or use the land given for her. Sometimes, men forcefully take women land. In such cases, women who have no idea where to go to ensure their right through formal justice system, either hopelessly leave the land to the snatcher or bring the case to the local elders. When the case is presented to the local elders most of the time their decision is influenced by culture and decide the case in favor of the male, particularly in disputes related with divorce and inheritance."*[115]

Key informants from the Land Administration Office of Mecha Woreda also stated that many conspiracies are made at the kebele administration level to take the land of women-headed households. The case of one of the interviewees from Mecha Woreda proves this fact. She says:

> *"I have been spending my time in domestic space. I have never been out in public spaces. My mother died when I was a child. My father went to the battlefield during Derg and never came back. He did not return and died there. It was my uncle who managed my father's land. Years later, I heard from someone that my uncle had registered my father's land in his name so that I couldn't own the land. When I asked my uncle, he refused to give me the land."*[116]

Women key informants stated that because women are not physically fit, unlike men, men threaten them and take their land, cheat them with a small amount of money and take their land with a long lease. One of them from Mecha Woreda declares:

> *"Because women are believers, men easily trick them. They even threaten us when we take our cases to court to demand our rights. Now I came to court, but my uncle threatened to kill me. Few years ago, someone grabbed my land and registered it under his name. Because I accused him, he stabbed me with a knife, and I was saved after treatment at a Hospital."*[117]

Table 1: Land Access status of women

Social status	Access to Land practices				
	Getting	Using	Controlling	Transferring	Administering
Male headed household	√	√	X	√**	X
Women headed household	√*	X	√***	√	√

√**: as per the law, both the husband and the wife have to agree and sign to transfer land. However, the husband is more influential and doesn't consult the wife about the transfer. Husbands use wives to sign and make the transfer legal.

√* as per the law, women have the right to get land. However, due to tradition, favour is given to men. So that there were limitations in the allocation of land to women households during 1996/7, the year of land distribution. Moreover, women face challenges in having land when they get divorced.

Key informants from the traditional arbiters stated that when the last land redistribution was

[115] Interview with Habtamu Addis, Officer at Bahir Dar Zuria Woreda Land Administration (Dec. 13, 2022, Bahir Dar).
[116] Interview with anonymous women key informant 1 (Dec. 14, 2022, Mecha Woreda).
[117] Interview with anonymous women key informant 2 (Dec. 14, 2022, Mecha Woreda).

made in 1996/7, married women were registered together when the land was registered in the book of land possession. Men and women who have been married since 1996/7 get land from their families, and this land given to newlyweds by the family becomes legal only when the land administration registers and certifies it. But as has been repeatedly stated, if the family does not believe in the continuation of the marriage, it does not legalize the land. Even if they continue to use the crops of th4 gifted land, when there is a divorce in the middle and women want to share the land, the men say '*that I don't have land; the land is my father's, not mine*'.

√*** Key informants from traditional arbiters stated that sometimes, even if the woman gets land from her husband after the divorce, the divorced husband doesn't allow others to rent the land. As a result, they may lose control over their land, and the ex-husband might not properly provide the products from the land. Through time, women may also lose their land.

X in the practice women are deprived of exercising these rights.

4.2.Women Equality in Access to Land via inheritance, gift, allocation

The informants stated that, at least on paper, women have equal rights with men to get land through distribution and inheritance. Those informants from the implementing government agencies and court of law also indicated that in the ANRS, women have a priority right to acquire land through a government grant (allocation). However, according to the key informants and interviewees, the practice may reflect something other than the law.

Concerning donation, mostly, it is men rather than women who ask their families to give them land. Men want to take all the land. Key informants from women, Children and Social affair and the Woreda Court of Mecha Woreda states that:

> *"According to the culture of the community, it is believed that land should be given to a man instead of a woman because when a girl gets married, she may move to another kebele. According to this, it is believed that a daughter should get land through her husband."*[118]

Similarly, in Bahir Dar Zuria Woreda, males are preferred donees. As Gebeyaw Molla notes:

> *"Parents give donation for the one who support them. In such cases too, as women marry in their early age and leave their natal locality, they may not have such opportunity to get land through donation."*[119]

Women are victimized in two ways when acquiring land as a donation. Her husband's family does not want her to acquire land, even though there is a traditional belief that women acquire land through their husbands.

> *"Although traditionally, when the marriage contract was signed, the man's father promised to give land, the girls and girls' parents do not make follow-ups to convert this traditional document into a legal entity. If the husband and wife want to get a divorce and the wife raises the question of land ownership, she has no legal right to participate. However, according to the decision of the Federal Court, if there is a land traditionally given explicitly as Ma'cha, both women and men have the right to share the land equally."*[120]

[118] Interview with anonymous judge 1, Mecha Woreda Court (Dec. 15, 2022, Merawi).
[119] Gebeyaw (n 113 above).
[120] anonymous judge 1 (n 118 above). Ma'cha is a form of Dowry that the male's parent pledges to provide to those who going to get married. This pledge is registered on a traditional marriage contract by the witnesses.

The key informant from the Woreda Court further stated that the parents of males don't want to legally register the land given as a form of *Ma'cha*, mainly when they are uncertain about the continuity of the marriage. Moreover, key informants from the court office and traditional arbiters stated that women suffer from such conspiracies until they give birth. Key informants from traditional arbiters further noted that when a husband and wife divorce and a family denies the promised land, we exclude him from the community by saying that they will not eat and drink with you. If he fears alienation, he will return their land.

The key informants from the Land Administration office also stated that land allocation to women is not a common practice in the community due to the belief that men are socially eligible to be given land.

Regarding the acquisition of land through inheritance, women are less favoured in the practice of the study areas. Most of the time, men are preferred. As Gebeyaw Molla states:

> *"In testate succession parents give more land for their sons than daughters. In case of intestate succession once again men are advantageous. This is because, most of the time when women married they leave their locality and move to their husbands residence. Hence, they may not have information about what is going on in natal area. Hence, their brothers or relatives apply to the court for inheritance by excluding them and they may know the fact after laps of period of limitation. Even if they now the fact in due time they may not know where to go or may not have financial capacity to recourse against them."*[121]

Local arbitrators (elders) also believe that:

> *"In the case of inheritance, priority is given to the male. Culturally, it is believed that men have more responsibility in generating income for their families."*

In general, the women's acquisition of land through inheritance and donation can be summarized as follows:

> *"In the case of inheritance and donation, men are favoured over women. Society believes a "woman's residence is her husband's Place". This is because, upon marriage, women move to their husband's place. This affected women's chance to get land via inheritance and donation because parents intended to give their land either by gift or will to those who lived around and supported them."*[122]

4.3.The Impact of Culture and Tradition on Women's Access to Land

The key informants and interviewees have revealed that deep-rooted culture and tradition still undermine women's access to land. The analysis of the data shows that the culture and tradition have taken the form of labour division, assumption of women's dependency on men, rendition of the male-favoured decision or refusal to mediate women's claim for land by local elders, and wealth-based discrimination.

The labour-division discriminatory tradition puts women to engage in domestic in-house work. Deciding how to utilize land and participating in public matters like land registration, land dispute resolution, and land rights awareness creation events are generally considered man jobs. Furthermore, the family's breadwinner is still regarded as the man in the communities. Consequently, there is an assumption that land belongs to those responsible for

[121] Gebeyaw (n 113 above).
[122] Ibid. This thought is shared by all the key informants.

generating income for the family, not those who depend on men. W/ro Gebeya Geremew's personal experience is a showcase of this fact. She states that:

> *"The culture favors men. In our culture women's right is ignored. That is why land distribution committee denied my right."*[123]

Thirdly, the key informants and interviewees that one of the areas where tradition and culture undermine women's access to land is the customary dispute resolution mechanisms. Whenever the land dispute is resolved through the local elders' mediation, the decisions are primarily in favour of the men. W/ro Yelibe Yenealem illustrated this fact by stating her case:

> *"... the local elder who gave me the land by allotment deny the fact and decide in the favor of my father-in-law following the death of my husband."*[124]

In some cases, the local elders ask the men disputants to suggest a way to resolve the land dispute. W/ro Yalemwork Neggusie states:

> *"...the elders asked him to give me what he thought I deserved knowing that we jointly got the land by donation and built houses on it."*

Sometimes, elders refuse to mediate if women bring the claim. W/ro Sindu Chalie's case is a typical illustration to prove this fact. She said *'...the elder's refused to arbitrate our case while they know the fact.'*[125]

The local elder and land dispute mediator Mucheye Chanie recognizes that land dispute mediation always favours men. He states:

> *"... Concerning the division of property upon divorce and in case of a succession dispute, elders put more pressure on the female and a more significant portion of land is given to males. This is because in the arbitration process, men insist on getting a more substantial amount, and the culture also supports them."*[126]

A key informant from the Woreda Justice Offices also stated that men are seen as dominant in the local culture. Managing and controlling land is considered a man's task. Therefore, while women are married, the ground can be transferred without their knowledge and consent, and when they divorce, it puts up many obstacles to prevent them from sharing equally.

Finally, wealth-based discrimination against women is another corruption tradition that has developed about access to land. The key informant from the justice office further states that:

> *"Just as a big fish swallows a small fish, women are '*swallowed*' [dominated] by men', which makes the land to be under the control of men."*[127]

Interview with the traditional arbiter also shows that when land information is gathered, rich men give bribe to land experts and the kebele administration to own the land illegally. Women give-up the land dispute cases when they lack money to take them to court.

Another informant further stated that '*the time is not a time of the poor. If you don't have money, men may lose their land let alone women.*'[128]

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[123] Gebeya (n 109 above).

[124] Interview with W/ro Yelibe Yenealem, resident of Sekelet Kebele, Bahir Dar Zuria Woreda (Dec. 18, 2022, Sekelet).

[125] Interview with W/ro Sindu Chalie, resident of Woina Kebele, Bahir Dar Zuria Woreda (Dec. 19, 2022, Sekelet).

[126] Interview with Mucheye Chanie, elder arbitrator, Yinesa Kebele, Bahir Dar Zuria Woreda (Dec. 20, 2022, Yinesa).

[127] Interview with anonymous public prosecutor 1, Mecha Woreda Justice Office (Dec. 15, 2022, Merawi).

[128] Interview with anonymous elder arbitrator 4, Mecha Woreda (Dec. 16, 2022).

The community also has a culture of having concubines. This is most common for wealthy men. As stated by a key informant from the Justice office, North Mecha Woreda has fertile land, which makes the men accumulate wealth.

> *"The area is so fertile, and farmers are wealthy. In the culture of the community, it is common to have concubines when a man becomes economically prosperous. It is common for him to go and give birth outside his marriage. As a result, the wife's right to protect and use her land is highly problematic."*[129] *(justice office, 2022).*

4.4. The Contributions of Land Dispute Settlement Mechanisms to enforce Women's Access to Land

As noted in Chapters 2 and 3, mere affording of legal protections is not enough to secure women's access to land. It must be complemented with independent, affordable, and accessible dispute resolution mechanisms to enforce in case of violations. The Federal and the ANRS rural land laws have recognized the formal and customary dispute resolution mechanisms to resolve land disputes. How far these mechanisms are practically contributing to enforcing women's access to land is discussed below.

The key informants and interviewees indicated that most of the land disputes women are involved with are a partition of land after divorce, inheritance, boundary disputes, and petitory actions. The interviewees with rural women revealed that even though the customary resolution mechanism is accessible and affordable, they preferred a formal one instead to resolve such disputes. They mentioned that the local elders/arbitrators are not independent, and the resolution they forward is more informed by the culture, which favours men.

The arbitrators, on the other hand, claim that.

> *"We adjudicate all cases based on truth. Since we live together we know all material facts contending each individual case. If we do not know necessary facts to adjudicate the case we investigate further through different ways. In adjudicating such disputes we rely on facts and treat women equally. For example, when dispute on division of property following divorce comes to us we check in whose name the land was registered, how it was registered, we check their contract of marriage and the women's contribution on the permanent development of land. The decision we give is also capable of bringing long lasting peace between disputant parties than court litigation. It is also time and cost effective. Arbitrators are always male and women do not take part. If you ask the society about women arbitrators they would laugh at you."*[130]

On the other hand, the informant from Bahir Dar Zuria Woreda Women, Children and Social Affairs Office states that:

> *"There are two types of elderly arbitrators. Elders in the first category determine land cases as per the spirit of the law impartially. Those who took women's land illegally are not willing to be tried by such elders. They, instead, prefer to court litigation as they can produce false evidence. In the other category, some elders are highly influenced by the patrimonial perception of society. Elders in this category favour men in their decisions. Women aggrieved by an elder's decision*

[129] Interview with anonymous public prosecutor 2, Mecha Woreda Justice Office (Dec. 15, 2022, Merawi).
[130] All elder arbitrators share this thought.

can appeal to the court. However, the question is how many women get such an opportunity."[131]

Gebeyaw Molla further noted that local elder arbitrators are not resolving the land dispute involving women for the following three reasons:

"First, the arbitrators lack legal knowledge and do not get legal training. Second, they are not remunerated for their services. Finally, they are easily bribed by the stronger party, losing societal trust."[132]

Women still face challenges to enforcing their access to land rights through formal court litigation. The first challenge is the lack of legal knowledge. Women don't have the legal knowledge of where to take the case and how to do that. Second, they can't afford the cost of administration of justice. Legal procedures are so lengthy and costly that economically poor women are disadvantaged. Legal procedures require direct economic costs of frequent travel to the Woreda Administration Offices and payment of witnesses. Key informants from women and elder arbitrators show that:

"Litigants have to pay 300 to 400 Birr to the three witnesses brought to court. Witnesses request women pay money for lunch beyond what is requested by the court. Corrupt legal procedures complicate the land disputes in that they receive bribes from men to change the decisions. As a result, sometimes, women fall back to go through the long-lasting litigation process and receive their lands."[133]

It is further claimed that men who illegally deprived women's access to land prefer to settle the dispute through court litigation than customary dispute settlement. The reason is attached to the ability to present false evidence and the women's inability to present her case. Local elders also discussed that when women lack power and money to get back their land, they lose hope and leave the matter by saying, '*May God return my land'*. This shows that legal procedures are ineffective in solving land disputes of economically and physically poor people. Women key informants repeatedly replied that ***ሰው ከሌለህ የሚሰማህ የሚያከብርህ የለም***, which translated as '*If you don't have someone, no one will respect you*'!

Even after the rendition of court decisions in favour of women, the enforcement of the decision is challenging. One of the Women key informants stated the situation as follows:

"Although the court decides that the land has to be given to the women, the follow-up and implementation of the decision is weak. If men do not voluntarily accept the decision, no government organs force the implementation. Women are forced to leave their land when they lack money to go to court and get an execution order. The kebele Administrations also reverse decisions if men give them bribes, which women cannot mostly get."[134]

[131] Interview with Sewalem Teshome, Team Leader, Bahir Dar Zuria Woreda Women, Children and Social Affairs Office (Dec. 12, 2022, Bahir Dar).
[132] Gebeyaw (n 113 above).
[133] Elder arbitrator 4 (n 128 above); Anonymous women key informant 2 (n 117 above).
[134] Anonymous women key informant 2 (n 117 above).

CONCLUSION

In developing agrarian societies like rural Ethiopia, the question of secured and equal access to rural land for women is not only about effective governance, enhancing livelihood, reduction of poverty, and sustainable development. It is about agency and power, politics and representations at national and local levels. It is further a matter of gender equality that concerns how women's rights and interests in land can best be supported and strengthened.

Cognizant of such importance and to address historical injustice and marginalization, the Government of Ethiopia has made women's equal access to land and matrimonial property a constitutional matter. The FDRE Constitution expressly enshrines women's equal right to use, transfer, control and administer the land. It recognizes women's equality in family administration and ownership of matrimonial property. Moreover, it outlaws laws, practices, traditions, and decisions that discriminate against women.

In conformity with the Constitution's stipulations, the family and the rural land laws of the federal government and ANRS have taken legal measures to ensure women's equality administration and sharing of matrimonial property and women's ability to acquire, utilize, transfer and control rural land. Besides women's equality to get land through donation and inheritance, the ANRS rural land law further prioritizes women to get land through government allocation. In land transactions, like rent, donation and mortgaging getting the consent of women, in the case of joint holdings, is a mandatory validity requirement. To enhance their land security, the laws also require registration and issuance of a land certificate in joint names concerning conjointly held land with women. Furthermore, the laws left the concerned parties the choice to select their land disputes to be resolved, either customary dispute resolution mechanisms or court litigations.

However, the legal measures are not fully implemented in the study area. Because of the prevailing culture about labor division, women are still discriminated against the right to access land. Notably, in the case of joint holdings, the man controls and decides how to use the land as it is perceived as a 'man's thing.' In case of transfer, women are simply required to sign the agreement, sometimes forcefully. There is also a tendency to register and get a land certificate in men's names over the joint holdings. Still, men prefer to get land through donation and inheritance.

For women, enforcing their land access rights in customary dispute resolution and court litigations is challenging. Although customary dispute resolution is accessible and affordable, the mediators - local elders are influenced by the culture. They make a decision that favors the men disregarding the interest of women. To enforce in-court litigation, they lack the legal knowledge, cannot afford the cost of administration of justice, and it is time-consuming. Consequently, women end up saying, '*May God return my land.'*

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ማብራሪያ

የመሬት ይዞታ መሬትን የመጠቀም፣ የመቆጣጠር እና የማስተላለፍ ችሎታ ተብሎ የተተረጎመ ሲሆን ፣ በአለም ደቡባዊ ክፍል በሚገኝ የገጠር ማህበረሰብ እንደሚሰጠው ትርጉም ደግሞ ኢኮኖሚያዊ ደህንነትን ለማረጋገጥ፣ ድህነትን ለማጥፋት፣ ዘላቂ ልማት፣ ዲሞክራሲያዊ ስርዓትን እና የፖለቲካ ነፃነትን ለማረጋገጥ መሰረታዊ ነው። ለሴቶችም በይበልጥ ስልጣንን፣ የፖለቲካ ተሳትፎን እና ውክልናን እንዲሁም የፆታ እኩልነት የሚያረጋግጥ ነው። ስለሆነም የሴቶችን የመሬት ተጠቃሚነት ለመደገፍና ለማጠናከር በአለም አቀፍ፣ በአህጉራዊና በአገር አቀፍ ደረጃ የህግ እና የፖሊሲ እርምጃዎች ተወስደዋል።

በኢትዮጵያ በሴቶች ላይ የሚደርሱ ታሪካዊ ኢፍትሃዊነትን እና መገለልን በመገንዘብ እና ለመፍታት በማሰብ የፌደራል ህገ መንግስቱ የሴቶችን የመሬት አጠቃቀም ፣ይዞታ ፣ማስተላለፍ እና አስተዳደር እንዲሁም በቤተሰብ እና የጋራ ንብረት አስተዳደር ውስጥ የሴቶችን እኩልነት በግልፅ ተቀብሏል። በተጨማሪም አድሎአዊ ህጎችን፣ ልማዳዊ ድርጊቶችን እና ፍትሃዊ ያልሆኑ ውሳኔዎችን ከልክሏል።

በነዚህ የሕገ መንግሥቱ ድንጋጌዎች መሠረት የፌዴራል መንግሥትና የአማራ ብሔራዊ ክልላዊ መንግሥት የቤተሰብና የገጠር መሬት ሕጎችን በማውጣት የሴቶችን ንብረትና የመሬት ባለቤትነት መብት ለማረጋገጥ ችሏል። እነዚህ የህግ ማዕቀፎች በቤተሰብ ውስጥ የሴቶችን እኩልነት እና የጋራ ንብረት አስተዳደር፣ የገጠር መሬትን ከመንግስት በስጦታ መቀበል (ቅድሚያ የማግኘት መብትን ጨምሮ)፣ ልገሳ እና ውርስ፣ የጋራ ይዞታዎች በሚተላለፉበት ጊዜ የሁለቱም የትዳር ጓደኞች ስምምነትን የግዴታ መስፈርት በማድረግ ጥበቃን ይደነግጋሉ:: በጋብቻ ወቅት የመሬት አጠቃቀም መብቶች በሚተላለፉበት ጊዜ የሴቶች ህጋዊ ጥቅምን ለማስጠበቅ መሬቱ በሚስት እና በባል ወይም በሌሎች ሰዎች በጋራ ሲያዝ የጋራ የመሬት ይዞታ የምስክር ወረቀት መስጠት እንዲሁም የመሬት ክርክሮችን ወደ ተመራጭ ግጭት አፈታት ዘዴ ማቅረብንም ያካትታል።

ነገር ግን እነዚህ የሴቶችን የመሬት ተጠቃሚነት ለመደገፍ እና ለማጠናከር የተቀመጡ የህግ አውጭ እርምጃዎች በባህር ዳር ዙሪያ እና በሜጫ ወረዳ ውስጥ ተግባራዊ አይደሉም። ባለትዳር ሴቶችን በተመለከተ የጋራ ይዞታ አጠቃቀምን፣ ማስተላለፍ እና ማስተዳደርን የሚወስነው ባል ነው፣ ምክንያቱም እነዚህ ነገሮች አሁንም በህብረተሰቡ ውስጥ እንደ 'ባል ስልጣን' ስለሚወሰዱ ነው። ባሎች በመሬት ዝውውር ወቅት ሚስቶቻቸውን ፈቃዳቸውን እንዲሰጡ ያስገድዷቸዋል። ሴቶች መሬት አግኝተው ከአካባቢው ሊወጡ እንደሚችሉ ስለሚታሰብ በስጦታና በውርስ መሬት የማግኘት ዕድላቸው አነስተኛ ነው። ባሎች ለብቻቸው መብቶችን ለመጠቀም እንዲያመቻቸው የጋራ የሆኑ ይዞታዎችን የምስክር ወረቀት በግል ስማቸው በመመዝገብ ያገኛሉ። ከፍቺ በኋላ ሴቶች መሬት ካላቸው በነፃነት ለመጠቀም እና ለማስተላለፍ ነፃነት ያላቸው ቢሆንም የቀድሞ ባላቸው በመሬት መብታቸው ጣልቃ ይገባባቸዋል::

የፌደራሉ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በውሳኔው ፍ/ቤቱ ከሴቶች መሬት የማግኘት መብት ጋር በተያያዙ ጉዳዮች ላይ ብይን እንደሚሰጥ ቢያሳይም በፍቺ ፣በመሬት ውርስ ፣በወሰን ክርክር እና በአቤቱታ ክስ ወቅት በገጠር መሬት ላይ ክርክር ለሚደርስባቸው አብዛኛዎቹ ሴቶች የባህላዊ አለመግባባቶች አፈታት እና የፍርድ ቤት ሙግቶች መብቶቻቸውን ለማስከበር ተስማሚ አይደሉም:: የልማዳዊ ስልቶች ገለልተኛ ያልሆኑና ለወንዶች የሚያደሉ ናቸው:: አብዛኛዎቹ የገጠር ሴቶች በፍርድ ቤት ክርክር ውስጥ መሬት የማግኘት መብታቸውን ለማስከበር የህግ እውቀት እና የገንዘብ አቅም የላቸውም::

ምክረ ሀሳቦች

የሴቶችን የመሬት ተጠቃሚነት ለማሻሻል እና ለማጠናከር የሚከተሉት ምክረ ሀሳቦች ቀርበዋል።

ለፍርድ ቤቶች

- የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ከሴቶች የመሬት ተጠቃሚነት ጋር በተያያዙ ጉዳዮች ላይ የሰጠውን የይግባኝ እርምጃ መከተል፤ እና
- የገጠር መሬት ጉዳዮችን ለመዳኘት የተለየ ችሎት ማዘጋጀት።

ለሥራ አስፈፃሚ አካላት

- ለገጠር ሴቶች ነፃ የህግ ድጋፍ አገልግሎት የሚሰጥበትን ዘዴ መንደፍ፤
- በመሬት ምዝገባ እና ማረጋገጫ ሂደት ውስጥ በመሬት አስተዳደር ተቋማት ውስጥ የተንሰራፋውን ብልሹ አሰራር ለመቅረፍ የሚያስችል ዘዴ መንደፍ፤
- በመሬት አስተዳደር፣ በመንግስት አቃቤ ህግ እና በሴቶች፣ ህጻናትና ማህበራዊ ጉዳዮች ቢሮ መካከል ቅንጅት እና ትብብር መፍጠር፤
- በገጠር ሴቶች ህጋዊ ግንዛቤ እና አቅም ግንባታ ላይ መሰማራት፤
- ለአካባቢው ሽማግሌዎች የሴቶች የመሬት መብት ተጠቃሚነት ላይ ሕጋዊ ግንዛቤ መፍጠር፤ እና
- ለህብረተሰቡ የስርዓተ-ፆታ እኩልነት ግንዛቤ መፍጠር እና በሴቶች ላይ የሚደርሰውን መድሎ በሁሉም ዘርፍ መታገል።

መንግሥታዊ ላልሆኑ ድርጅቶች እና የሲቪል ድርጅቶች

- የጸታ እኩልነት በተመለከተ የውትወታ ስራዎች ላይ መሳተፍ፤
- ለገጠር ሴቶች፣ ለሽማግሌዎች፣ ለአስተዳዳሪዎች እና ለስር ፍርድ ቤት ዳኞች በሴቶች የገጠር መሬት እና የመሬት ውዝግብ አፈታት ዘዴዎች ላይ ስልጠና መስጠት፤
- የመሬት ተደራሽነትን በተመለከተ የሥርዓተ-ፆታ እኩልነትን ለመፍታት የፖሊሲ አማራጮችን መጠቆም፤
- በገጠር ሴቶችን ማብቃት ላይ መሳተፍና፤
- የገጠር መሬትን በማግኘት ረገድ ለህብረተሰቡ የስርዓተ-ፆታ እኩልነት ግንዛቤ መፍጠር።

ምዕራፍ አንድ

1. መግቢያ

1.1. ዳራ

እንደ ኢትዮጵያ ባሉ አብዛኛው ህዝብ በመሬት ላይ የተመሰረተ ግብርና ላይ በሚተዳደሩ ሀገራት የሴቶች የገጠር መሬት መብት መረጋገጥ እና የእኩል ተጠቃሚነት ጥያቄ የውጤታማ አስተዳደር፣ የግብርና ዕድገት፣ የካፒታል ክምችትና የኢኮኖሚ ልማት ጉዳይ ብቻ አይደለም። የውክልና፣ የስልጣን እና የፖለቲካም ጥያቄም ጭምር ነው።[135] የመሬት ተደራሽነት አጠቃላይ ጠቀሜታ ዘላቂ ልማትን ማረጋገጥ ፣ከድህነት መላቀቅ ፣ዴሞክራሲያዊ ስርዓት ግንባታ እና መልካም አስተዳደርን ማሻሻል እና ሰብአዊ መብቶችን ማስከበርን ጨምሮ[136] የሴቶች መብትና ጥቅም እንዴት በተሻለ ሁኔታ መደገፍ እና ማጠናከር እንደሚቻል የሚመለከት የፆታ እኩልነት ጉዳይ ነው ።[137]

የገጠር መሬትን በተመለከተ ያለፉት ልማዳዊና ህጋዊ የመሬት ይዞታ ሥርዓቶች ሴቶችን ያገለሉ ናቸው። በአለም አቀፍ ደረጃ የሴቶች የመሬት ባለቤትነትና የመሬት መብት ከወንዶች ያነሰ ነው። ሴቶች በአማካኝ ከ20 በመቶ በታች የአለም መሬት ባለቤቶች ሲሆኑ 43 በመቶ የሚሆነውን በግብርና የሚተዳደሩ ናቸው።[138] በኢትዮጵያም ቢሆን በግብርናው ዘርፍ የሴቶች የስራ እድል 58% ቢሆንም የመሬት ተጠቃሚነታቸው በጣም ውስን ነው።[139]

ከመሬት ጋር በተያያዘ ለሴቶችና ለወንዶች እኩል መብቶችን ለማስፈን በመላው ዓለም፣ በሕግ የተደነገገው የመሬት ይዝታ ሥርዓት በየጊዜው እየተቀየረ መጥቷል። ይሁን እንጂ አሁንም ቢሆን ባህላዊ የመሬት ይዞታ መብቶች (የክርክር አፈታት ዘዴዎችን ጨምሮ) ለማስጠበቅ የተደረገው ጥረት በተግባር የስርዓተ-ፆታ እኩልነት እንዳይኖር አድርጓል::[140]

የሥርዓተ-ፆታ ልዩነት በባህላዊ ደንቦች ላይ እንደተገለጸው መሬትን ማግኘት በተለይም በድሮ ጊዜ የሚንፀባረቅ የጥንታዊ አባቶች ባህል ገጽታ እና ቀጥተኛ ነጸብራቅ ነው። በቅድመ 1974 ፊውዳል ኢትዮጵያ የቤተሰብ አስተዳደር ስልጣን እንደ ባል - ወንድ ሥልጣን ተቆጥሮ በሴቶች የተወረሰ መሬት ለአማቾች ቤተሰብ እንደሚገባ ይታሰብ ነበር። [141]ይህ የሆነው በሁለት ምክንያቶች የተነሳ ነው። በመጀመሪያ፣ የአይሁድ-ክርስቲያን ባህልን በመከተል አንዲት ሴት ከጋብቻ በኋላ ለባሏ እና ለአማቶቿ ፍላጎት ትገዛለች ተብሎ ይታሰብ ስለነበር ሲሆን። ይህም የሆነበት ምክንያት የተመሰለው ከቤተሰቧ ቤት ወጥታ ወደ ባሏ ቤት - ወደ አማቾቿ ቤተሰብ የመዛወር ባህል ላይ ነው። ሁለተኛው፣ የዘር ሐረጉ ከእናቶች ዘር ይልቅ

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[137]R. Kaarhus and S. Dondeyne, 'Formalising land rights based on customary tenure: community delimitation and women's access to land in central Mozambique', Journal of Modern African Studies,53,2 (2015).

[138]. UN WOMEN, Facts & Figures, http://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures.

[139]CIFOR-ICRAF and IFAD, *Women's Land Rights in Ethiopia: Socio-legal review. Securing Women's Resource Rights Through Gender Transformative Approaches*, (2021).

[140]Kaarhus and Dondeyne, (n 3 above).

[141] B. Gebremichael, The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants And Pastoralists (LLD Thesis, University Of Pretoria, 2018), p 64.

የአባቶችን ዘር ይከተላል፣ እንደ መሬት ያሉ የንብረት ባለቤትነት በአባቶች የዘር ሐረግ በኩል መቀጠል አለበት ተብሎ ስለሚታመን ነው።[142] በመሆኑም ሴቶች የመሬት ይገባኛል ጥያቄ እና የመሬት መብታቸውን በክርክር አፈታት ዘዴዎች የማስከበር እድሉ የማይታሰብ ነበር።

በደርግ ጊዜም የሴቶችን የገጠር መሬት የሚቃወሙ የሕግ ድንጋጌዎች ነበሩ። በተለይም 'በችሎታ ላይ የተመሰረተ' የመሬት ድልድል አካሄድ እና መሬቱን ለማልማት የሚቀጠሩ ሰራተኞችን መጠቀም ህገ-ወጥ ማድረግ የሴቶችን የገጠር መሬት የማግኘት የእኩልነት መብትን ከነፈጉ የህግ እርምጃዎች መካከል ጥቂቶቹ ናቸው ።[143]

በድህረ 1991 ዓ.ም የሴቶችን የመሬት ተጠቃሚነት እና የመሬት መብት ማስከበርን በሚመለከት ያለውን ታሪካዊ ኢፍትሃዊነት እና መገለል በመገንዘብ በ1995 የወጣው የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ ህገ መንግስት በሴቶች ላይ የሚደርሰውን ጾታን መሰረት ያደረጉ መድሎዎች ለመፍታት እርምጃዎችን አስቀምጧል። በተለይም የኢፌዲሪ ሕገ መንግሥት አንቀፅ 35(7) "[ሴቶች] ከመሬት አጠቃቀም፣ ማስተላለፍ፣ አስተዳደር እና ቁጥጥር ጋር በተያያዘ ከወንዶች ጋር እኩል መብት አላቸው " ይላል።[144] በሴቶች ላይ የተፈፀመውን ኢፍትሃዊ ድርጊት ለመቅረፍ አወንታዊ መፍትሄዎችን ይዞ መጥቷል ።[145] በተመሳሳይም ሕገ መንግሥቱ እንደ መርህ የዳኝነት ሥልጣን በነጻ የሕግ ፍርድ ቤት እና በባህላዊና ሃይማኖታዊ አለመግባባቶች መፍቻ ዘዴዎች ከቤተሰብና ከግል ሕጎች ጋር የተያያዙ ጉዳዮችን እንዲያስተናግድ ያስገድዳል ።[146]

ከዚህም በላይ የፌደራልም ሆነ የክልል መንግስታት ንዑስ የገጠር መሬት ህጎች የሴቶችና የወንዶች እኩልነት መሬትን በማግኘት፣ በማስተላለፍ፣ ለመጠቀም እና ለማስተዳደር የሚለውን ሃሳብ ይደግፋሉ ።[147] በተጨማሪም የአማራ ክልልን ጨምሮ የክልል የገጠር መሬት ሕጎች የሴቶችን የመሬት መብት ለማስጠበቅ የተለያዩ እርምጃዎችን አካትተዋል። ከእርምጃዎቹ መካከል በጾታ ላይ የተመሰረተ አድሎአዊ አሰራርን መከልከል እና በመንግስት ስጦታ፣ ውርስ ወይም ልገሳ የገጠር መሬት እንዳያገኙ ማድረግ፣ የመሬት ይዞታ በትዳር ጓደኞች በጋራ ሲጠየቅ በአንድ ጉዳይ ላይ የጋራ መሬት የምስክር ወረቀት መስጠት እና የትዳር ጓደኛን ወይም ሌሎች ባለመብቶችን በስጦታ ፣በመከራየት ፣በመሬት የመጠቀም መብቶችን በማስያዝ እና የጋራ የመሬት ይዞታዎችን በሚወርስበት ጊዜ ባለመብቶችን ፈቃድ የመጠየቅ ግዴታን አስቀምጧል ።[148] ነገር ግን እንደዚህ አይነት ጥበቃዎች በተግባር እስከምን ድረስ እንደሚተገበሩ እና በመደበኛም ሆነ በልማዳዊ የግጭት አፈታት ዘዴዎች መረዳት ግምገማ እና ጥናትን ይጠይቃል። በመሆኑም ይህ ግምገማ የምዕራብ ጎጃም ዞንን እንደ ምሳሌ በመውሰድ አፈጻጸሙን እና መደበኛ እና ልማዳዊ የግጭት አፈታት ዘዴዎች በሴቶች የመሬት ተጠቃሚነት ላይ ያለውን ተፅዕኖ ለመገምገም ያለመ ነው።

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[142] Ibid.

[143] A proclamation to provide for the public ownership of rural lands proclamation No. 31/1975. *Neg. Gaz.* Year 34 No. 26. 1975, Art. 4; B. Kebede. Administrative allocation, lease markets and inequality: 1995-97. *ESRC Research Group on Research Group on Wellbeing in Developing Countries, working paper 7*, 2004.

[144] የኢትዮጲያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ህገ መንግስት አዋጅ ቁጥር 1/1987 ፌደራል ነጋሪት ጋዜጣ አንደኛ አመት ቁጥር ፣ 1987 አንቀፅ 35(7)

[145] Id አንቀፅ 35 (3)

[146] Id አንቀፅ 79(1) and 34(5)

[147] የኢትዮጲያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ህገ መንግስት የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ ቁጥር 456/1997 ፌደራል ነጋሪት ጋዜጣ አስራ አንደኛ አመት ቁጥር 44 1997

[148] በአማራ ብሄራዊ ክልላዊ መንግስት የተሻሻለው የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ ቁጥር 252/2009

1.2. የጥናቱ ዓላማዎች

ጥናቱ ዓላማ፡-

- የሴቶችን እኩል የመሬት ተጠቃሚነት ለመደገፍ እና ለማጠናከር የተወሰዱ የህግ እርምጃዎችን መገምገም፤
- የሴቶችን የመሬት ተጠቃሚነት ለማረጋገጥ አለመግባባቶች አፈታት ዘዴዎች ያበረከቱትን አስተዋፅኦ መገምገም፤
- የሴቶችን የገጠር መሬት ተደራሽነት አፈፃፀም እና ተግዳሮቶች መገምገም፤ እና
- በኢትዮጵያ የሴቶችን የገጠር መሬት ተደራሽነት ሁኔታዎችን ለማሻሻል የታሰቡ ምክረ ሀሳቦችን መስጠት።

1.3. የምርምር ዘዴ

በኢትዮጵያ የኢፌዲሪ ሕገ መንግሥት የመሬት ባለቤትነት የኢትዮጵያ 'ሕዝብና መንግሥት' በመሆኑ ለሽያጭም ሆነ ለሌሎች መገበያያ መንገዶች የማይቀርብ ነው።[149] አርሶ አደሮች እና አርብቶ አደሮች መሬት የማግኘት ነፃነት እና ከመፈናቀል የመከላከል መብት አላቸው።[150] በመሆኑም ማንኛውም ሰው በእርሻ መተዳደር የሚፈልግ ከሆነ በጸታ ላይ የተመሰረተ ልዩነት ሳይደረግበት መሬት ከመንግስት በነፃ ማግኘት ይችላል። በተጨማሪም የኢፌዲሪ ሕገ መንግሥት የመሬት ጉዳይ ሥልጣንን ለፌዴራልና ለክልል መንግሥታት ሰጥቷል። የፌደራል መንግስት የመሬት አጠቃቀምና ጥበቃን በሚመለከት ህግ የማውጣት ስልጣን ሲኖረው የማስተዳደር ስልጣን የክልሎች ነው።[151] ከላይ በተገለጹት ሕገ መንግሥታዊ መርሆች መሠረት፣ የፌዴራል መንግሥትና ክልሎች የየራሳቸውን የገጠር መሬት ሕጎች አውጥተዋል።

ጥናቱ ኳሊቴቲቭ የህግ ጥናት አካሄድን የተጠቀመ ሲሆን በዚህም መሰረት በጥያቄ መልክ በተሰበሰበ መረጃ ላይ የተገነቡ የማህበራዊ እይታ ላይ ያተኩራል፡፡ የሴቶች የመሬት ተደራሽነት በህግ የተደነገገው እንዴት እንደሆነ፣ እንዴት እንደሚተገበር እና የመሬት ሙግት አፈታት ዘዴዎች አስተዋፅዖ፣ የሴቶች የገጠር መሬት ተጠቃሚነት መጠናከር ላይ የሚያተኩር ነው፡፡ ለዚህም ፣ መረጃው የሚሰበሰበው በተለያዩ የህግ እና የፖሊሲ መሳሪያዎች እና የፍትህ ውሳኔዎች ይዘት ትንተና ፣ እና ቁልፍ የመረጃ ሰጭ ቃለ-መጠይቆች ነው። የኢፌድሪ ህገ መንግስት፣ የፌደራል የገጠር መሬት አዋጅ ቁጥር 456/2005 እና የአማራ ክልል የገጠር መሬት አዋጅ ቁጥር 252/2017 የሴቶችን የገጠር መሬት የማግኘት የእኩልነት መብት ከማረጋገጥ እና ከክርክር አፈታት ዘዴዎች አንፃር ተንትነዋል። የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎችም ተገምግመው እና ተንትነው ፍርድ ቤቶች የሴቶችን የገጠር መሬት የማግኘት እኩልነት ለማረጋገጥ ምን ያህል ውጤታማ እንደሆኑ ለማወቅ ተችሏል ።

ቃለመጠይቆቹ የተካሄዱት ካገቡ እና ካላገቡ ፣ የቤተሰብ አስተዳዳሪ ከሆኑ እና ካልሆኑ የገጠር ሴቶች ጋር ሲሆን በእያንዳንዱ ምድብ በባህር ዳር ዙሪያ ወረዳ በየወረዳው እና በሜጫ እያንዳንዱ ወረዳ ሶስት ቃለ መጠይቅ አድርገናል። በአጠቃላይ በወረዳው የመሬት አስተዳደር ባለሙያዎችና በምቹ ናሙና የተመረጡ ሃያ አራት ሴቶች ቃለ መጠይቅ ተደርጎላቸዋል ።

[149] የኢፌድሪ ህገ መንግስት፣ አንቀፅ 40(3)
[150] Id አንቀፅ 40(4 እና 5)
[151] Id አንቀፅ 51(5) እና 52(2(መ)

የሴቶችን የገጠር መሬት እና የመሬት ውዝግብ አፈታት ዘዴዎችን በመተግበር ቀጥተኛ ተሳትፎ ካላቸው ተቋማት ተወካዮች ጋር ቁልፍ የመረጃ ሰጭ ቃለ-መጠይቆች ተደርገዋል። እነዚህ ተቋማት የወረዳ ገጠር መሬት አስተዳደር ጽ/ቤቶች፣ የሴቶችና ህጻናት ጉዳይ ጽ/ቤት፣ የፍትህ ቢሮዎች፣ ፍርድ ቤቶች እና የአካባቢ የሀገር ሽማግሌዎች በልማዳዊ የግጭት አፈታት ዘዴዎች የተሳተፉ ናቸው። ከእያንዳንዱ የመንግስት ተቋም አንድ ተወካይ እና በጥናት ላይ ከሚገኙት ከየወረዳው የተውጣጡ ሶስት የአካባቢው የሀገር ሽማግሌዎች እንደ ቁልፍ መረጃ ሰጪዎች ቃለ መጠይቅ ተደርጎላቸዋል። በአጠቃላይ አስራ አራት ዋና የመረጃ ሰጭ ቃለ-መጠይቆች ተካሂደዋል ።

የውሂብ ሙሌት ደረጃ ላይ እስክንደርስ ድረስ መረጃው የተሰበሰበ ሲሆን ከዚያም ኳሊቴቲቭ በሆነና በቲማቲክ ሁኔታ ተተንትኗል።

ምዕራፍ ሁለት

2. የሴቶች የገጠር መሬት ተደራሽነት አሰራር እና የክርክር አፈታት ዘዴዎች አስተዋፅዖ፡ የሚጫ እና የባህር ዳር ዙርያ ወረዳዎች ጉዳይ

ይህ የጥናቱ ክፍል በኢትዮጵያ ውስጥ ለሴቶች የመሬት ተጠቃሚነት የተሰጠው የህግ ከለላ በተግባር መተግበሩን የሚገምገም ነው። ከመብት ባለቤቶች (ሴቶች) የተሰበሰቡትን ተጨባጭ ማስረጃዎች በመውሰድ የመንግስት መ/ቤቶችን (የሴቶች ህፃናትና ማህበራዊ ጉዳይ ጽ/ቤት፣ የገጠር መሬት አስተዳደር ጽ/ቤት፣ ፍትህ ጽ/ቤት) እና የፍትህ አካላትን (የወረዳ ፍርድ ቤት) እና የአካባቢውን የሀገር ሽማግሌዎች በማስፈጸም ላይ ያለውን አካሄድ ተንትኗል። የሴቶች የመሬት ተጠቃሚነት አጠቃላይ ሁኔታ፣ የሴቶች የገጠር መሬት በምደባ፣ በስጦታና በውርስ የማግኘት እኩልነት፣ የሴቶች የመሬት ተጠቃሚነት ተግዳሮቶች፣ ባህልና ወግ በሴቶች የመሬት ተጠቃሚነት ላይ የሚያሳድረው ተጽዕኖ፣ የገጠር መሬት አለመግባባቶችን ለመፍታት ያለው አስተዋፅዖ የሴቶች የመሬት ተጠቃሚነት እኩልነት፣ እና ወደፊት የሴቶች የመሬት ተደራሽነትን ለማሳደግ ያለው ሚና ተዳሷል። መረጃው የተሰበሰበው ከአማራ ክልል ሜጫ ወረዳ እና ከባህር ዳር ዙሪያ ወረዳ ነው ።

2.1. የሴቶች የመሬት ተደራሽነት አጠቃላይ ሁኔታ

ሁሉም ቁልፍ መረጃ ሰጭዎች የሴቶች በእኩልነት መሬት የማግኘት መብት ህጋዊ እውቅና እንዳለው የሚያወቁ ሲሆን ይህንንም ይደግፋሉ። ነገር ግን የሴቶች እኩልነት የመሬት ተጠቃሚነት መሻሻል ቢታይም እስካሁን እንዳልተሳካ ይገነዘባሉ ።

በሌላ በኩል በገጠር ነዋሪ ከሆኑ ሴቶች ጋር የተደረገው ቃለ ምልልስ ሦስት ዓይነት ውጤቶችን ያሳያል። አንዳንዶቹ በገጠር መሬት የሴቶችን እኩልነት የሚያረጋግጥ ህግን አያውቁም። ሌሎች ሕጉ የሴቶችን መሬት የማግኘት እኩልነት ላይ እገዳ እንደማይጥል ያውቃሉ ነገር ግን ተግባራዊነቱን ይጠራጠራሉ። የተቀሩት ሴቶች ግን የገጠር መሬትን የሚያገኙት በህግ ሳይሆን በኮሚቴ እና በሴቶች መብታቸውን ለማስከበር ባላቸው ችሎታ ነው ብለው ያምናሉ። ይሁን እንጂ ሁሉም ማለት በሚቻል መልኩ የህግ ግንዛቤ፣ የገንዘብ አቅም ወይም ድጋፍ ያላት ሴት መብቷን ለማስከበር የተሻለ እድል እንዳላት ይናገራሉ።

ሁሉም ቁልፍ መረጃ ሰጪ በገጠር ነዋሪ ሴቶች መሬት የማግኘት ሁኔታ አንድና ወጥ እንዳልሆነ ይገነዘባሉ፡፡ ከዚህ በተጨማሪም በሴት በሚመሩ ቤተሰቦች እና በወንድ የሚመሩ ቤተሰቦች መካከል ልዩነቶች እንዳሉ ያምናሉ።

2.1.1. በወንድ በሚመሩ ቤተሰቦች ውስጥ ያሉ ሴቶች ሁኔታ

በወንድ በሚመሩ ቤተሰቦች ውስጥ ሴቶች የገጠር መሬትን ለመቆጣጠር እና ለማስተዳደር ይቸገራሉ። ምክንያቱም የሚያስተዳድሩት እና የሚቆጣጠሩት ባሎቻቸው ስለሆኑ ሲሆን በሌላ በኩል ከባሎቻቸው ጋር የጋራ የመሬት ምዝገባ ወረቀት ስላላቸው በአንፃራዊነት የመሬት ባለሀብትነትን አረጋግጠዋል ሊባል ይችላል፡፡ መሬታቸውን ከባሎቻቸው ጋር ያስተላልፋሉ። ይሁን እንጂ መረጃ ሰጪዎች እንደገለፁት ሴቶች እንደዚህ አይነት መብቶችን የሚያገኙት ማህበረሰቡ እና ባሎች የሴቶችን መብት ስለሚገነዘቡ ሳይሆን ህጋዊ አካሄዶች በመሬት አጠቃቀም እና ዝውውር ላይ የሴቶችን ይፋዊ ተሳትፎ ስለሚያስቀምጡ ብቻ ነው። ሁሉም ህጋዊ ሂደቶች ስለተሟሉ መሬቱን ከባሎቻቸው ጋር መጋራት ይችላሉ:: ሆኖም አንዳንድ ጊዜ ባሎች በመሬት ዝውውር ሚስቶቻቸውን ያታልላሉ። ሴቶች መሬትን በተመለከተ መረጃ የላቸውም። በአብዛኛዎቹ ሁኔታዎች ባሎች ስለመሬት ዝውውር እና ኪራይ አሠራሮች ሙሉ እና እውነተኛ መረጃ አይሰጡም።

ምንም እንኳን መሬቱ በስጦታ ወይም በይዞታ የተገኘ ቢሆንም የሴት ስም ብዙውን ጊዜ የገጠር መሬት የጋራ ባለይዞታ ሆኖ አይመዘገብም። ባልየው የመሬት ምዝገባው አካል ጋር በማሴር ወይም ጉቦ በመስጠት የሚስቱን ስም ያስወግዳል። በመሆኑም ከፍቺ በኋላ የይገባኛል ጥያቄዋን የሚደግፍ ምንም አይነት ማስረጃ አይኖራትም::

ምንም እንኳን ስሟ በጋራ ባለሀብትነት የተመዘገበ ቢሆንም ሽማግሌዎች ፍቺን ተከትሎ የጋራ ንብረታቸው በሚከፋፈሉበት ወቅት ለባል ከፍተኛ ድርሻ ይሰጣሉ። እንዲህ ባሉ ጉዳዮች ላይ ችግረኛ ሴቶች በሽማግሌዎች ተጽእኖ ውሳኔውን ይቀበላሉ:: አንዳንድ ጊዜ፣ ድርሻቸውን በፍርድ ቤት ወይም በሽማግሌዎች ውሳኔ ቢያገኙም፣ የቀድሞ ባሎቻቸው መሬታቸውን በኃይል ሊነጥቋቸው ይችላሉ።

ከባህር ዳር ዙሪያ ወረዳ አቃቤ ህግ አቶ መርጌታ አዲጌ እሸቴ እንደገለጹት፡-

> *‘‘እንደኔ አስተሳሰብ በ1989 ዓ.ም የመሬት ክፍፍል ጊዜ የጋራ መሬት በስጦታ የተቀበሉ 1/4ኛ ባለትዳር ሴቶች መብታቸውን አጥተዋል። በዚያን ጊዜ እንደ የጋራ ባለቤት የተቆጠሩት እነዚህ ሴቶች በስማቸው የምስክር ወረቀት አልተሰጣቸውም። ብዙ ጊዜ ይህ የሚደረገው ሆን ተብሎ ባለቤቶታቸው በፈጸሙት ድርጊት ነው። በባህል ሴቶች በእንደዚህ አይነት ጉዳዮች ላይ እንዲሳተፉ አይበረታቱም:: መሬቱ ሲለካም አልቀረቡም። የምስክር ወረቀት ሲሰጥ ባለቤቶቻቸውም ፎቶ አንስተው ለሰርተፍኬት ሰጪው አካል አልሰጡም። ባሎች ከመሬት ምዝጋባ ባለምያው ጋር ያሴሩ ወይም ጉቦ ይሰጡ እና ሴቶችን ከምዝገባ ያገላሉ። በፍቺ ወቅት ችግረኛ ሴቶች ድርሻቸውን እንድንጠይቅ ይጠይቁናል። ነገር ግን ከወረዳው መሬት አስተዳደር ኮሚቴ የሰነድ ማስረጃዎችን ስንጠይቅ መሬቱ የተመዘገበው በባለቤታቸው ስም ብቻ መሆኑን እንደርሰበታለን። በዚህ መንገድ ብዙ ሴቶች መሬታቸውን አጥተዋል። ሌላው ችግር አንዳንድ ጊዜ የ1989 የመሬት አከፋፋይ ኮሚቴዎች በወቅቱ በተካሄደው የክፍፍል ወቅት መሬቱን ማን እንደወሰደው ለማረጋገጥ ሲፈልጉ በጠንካራው አካል ጉቦ ተሰጥተው የውሸት ምስክርነት ይሰጣሉ።’’`

ቃለ መጠይቅ ያደረግናቸው የመብት ባለቤት ወ/ሮ ገበያ ገረመው ከባህር ዳር ዙሪያ ወረዳ የግል ልምዳቸውንን መጥቀስ ተገቢ ነው።

> *‘‘በ1989 የመሬት ክፍፍል ጊዜ እኔ ትዳር መስርቼ ነበር ነገር ግን መሬቱ በስማችን የጋራ ንብረት ተደርጎ ከተወሰደ በኋላ ባለቤቴ ከመሬት አስተዳደር ሰራተኞች ጋር በማሴር በስሙ ብቻ የምስክር ወረቀቱን ወሰደ። ይህንን እውነታ ያወኩት ከሞተ ከብዙ አመታት በኋላ ነበር። የይዞታ ማረጋገጫው የተሰጠው በስሙ ብቻ ስለሆነ ምንም አላገኘሁም። ባለቤቴ ከሞተ በኋላ ሌላ ወንድ አግብቼ ሁለት ልጆች ወለድኩ። ሆኖም በ2011 ዓ.ም ባለቤቴ ሞተ በዚህ ጊዜ ከሌላ የወለደው ልጁ (የእንጀራ ልጄ) መሬቴን ቀማኝ:: ሴት ባልሆን ኖሮ በ1989 መሬት አገኝ ነበር እንዲሁም የእንጀራ ልጄ የልጆቼን የአባታቸውን መሬት የመውረስ መብታቸውን አይነፍጋቸውም ነበር።’’`

ወ/ሮ ያለምወርቅ ንጉሴም ተመሳሳይ ታሪኳን እንዲህ ገልጻለች።

> *‘‘እኔ ሳገባ የባለቤቴ እናት መኖሪያ ቤት እንድንሠራና ኑሯችንን እንድንረዳ መሬት ሰጡን። በመሬቱ ላይ ሦስት ቤቶችን ገንብተን መሬቱን የዓመትና ቋሚ ሰብሎች አለማን። ከተፋታ በኋላ እውነታውን ሁሉ ካደ መሬቱ የእናቴ ነው አለ።’’`

ወ/ሮ ፋሲካ ኃይሉም ልምዳቸውን እንደሚከተለው ይገልፃሉ፡-

> *‘‘በ2007 ትዳር መስርቻለሁ፣ በ2008 ደግሞ መሬት ለሌላቸው ሰዎች መሬት ሲከፋፈል ትዳር ውስጥ ነበርኩ። በዛን ጊዜ ባለቤቴ መሬቱ በስሙ ብቻ መመዝገብ አለበት ሲል ተከራከረ። ምክንያቱም "እኔ*

ካገባኋት አንድ አመት ብቻ ነው እና ትዳራችን እንደሚቀጥል እርግጠኛ አይደለሁም። ካልሆነ ግማሹን ትወስዳለች' የሚል ነበር። የመሬት አከፋፋይ ኮሚቴው ክርክሩን ተቀብሎ እኔን አገለለኝ።

እኔና ባለቤቴ ከሰባት ዓመት በታች የሆኑ ሁለት ሴት ልጆች አሉን። ከቀድሞው ጋብቻ የተወለዱት የእንጀራ ልጆቼ የእህቶቻቸውን የመውረስ መብት በመናቅ ባሌ ሲሞት መሬቱን በሙሉ ወሰዱ። ሴት ልጆቼን ወክዬ ምግዚት ሆኜ ነው አሁን እዚህ የመጣሁት።''

መሬት ማከራየትን በተመለከተ ሴቶች መፈረም ብቻ ነው የሚጠበቅባቸው። ባሎቻቸው ሙሉ መረጃ አይሰጧቸውም ወይም አያማክሩዋቸውም። የሚስት በመሬት ኪራይ ውስጥ ተሳትፎዋ ሕጉ ስለሚጠይቅ ብቻ ነው። ስማቸው ያልተገለጸ የግልግል ዳኛ ከሜጫ ወረዳ እና ዓይኖኝ ቻኒ ከባህር ዳር ዙርያ ይህንን እውነታ እንደሚከተለው አፅንዖት ሰጥተዋል፡-

''የመሬት ኪራይን በተመለከተ ባልና ሚስት እኩል መብት አላቸው። ምክንያቱም ሴቷ ፈቃዷን ካልሰጠች በስተቀር ማንኛውም መሬት ማስተላለፍ በህግ ፊት እውቅና አይኖረውም፡፡ ነገር ግን አንዳንድ ጊዜ ሴቶች መሬቱን ለማዘወር ፈቃደኛ ባይሆኑም ባሎቻቸው እንዲፈርሙ ሊያስገድዷቸው ይችላሉ።''

በተጨማሪም ባል ለሚስቱ ወሳኝ በሆነ መንገድ የመሬት ስጦታ ሊሰጥ ይችላል። ይህንን ከስተት ከባህር ዳር ዙሪያ የመጡት አቃቤ ህግ አቶ ገበየው ሞላ እንደሚከተለው ያስረዳሉ፡-

''ልገሳ ዋነኛው መብታቸውን የሚነካ ጉዳይ ነው፡፡ ሕጉ ልገሳን በሚመለከት ማንኛውም ፍላጎት ያለው አካል ልገሳው ላይ ጥያቄ ለማንሳት እንዲችል ከ15 ቀናት ላላነሰ ጊዜ ልገሳውን በተመለከተ ለህዝብ በሚታይ ቦታ መለጠፍ እንዳለበት የሚያስቀምጥ ቢሆንም አንዳንዴ በድብቅ ይተገበራል። ስለዚህ መሬታቸው ሳያውቁ በስጦታ ለሦስተኛ ወገን ሊተላለፍ ይችላል።''

የባለትዳር ሴቶች መሬትን የማስተዳደር ተሳትፎ በጣም ያነሰ ነው። በመሬት አጠቃቀም ተግባራት ላይም እኩል እየተሳተፉ አይደለም። በአጠቃላይ የባህር ዳር ዙሪያ ወረዳ ፍትህ ጽ/ቤት አቃቤ ህግ አቶ ገበየው ሞላ እንደገለፁት ''እነዚህ ጉዳዮች እንደ የወንድ ጉዳይ የሚወሰዱ እና የሚታሰቡ ናቸው'' ብለዋል።

2.1.2. በሴቶች የሚመሩ ቤተሰቦች ሁኔታ

በሴቶች የሚመሩ ቤተሰቦች ውስጥ ሴቶች መሬትን የመጠቀም፣ የማስተላለፍ እና የመቆጣጠር የተሻለ መብት አላቸው። ሴቷ መሬቱን ከተጠቀሙች ከላይ በተጠቀሱት ጉዳዮች ላይ ትወስናለች:: ነገር ግን ለሌላ ሰው አከራይታ ብትሰጥ ወይም ምርት ብታጋራ፣ በመሬቷ ላይ እንደዚህ ያለ መብት የላትም። መሬቱን የሚያርስው ሰው መሬትዋን ሊነጥቃት ይችላል። ተከራዮች ለረጅም ጊዜ ጥቅም ላይ ካዋሉ በኋላ አከራዮቻቸውን ለማባረር ይሞክራሉ፡፡ በዚህም ምክንያት ሴእማወራዎች መሬት ለመከራየት ፈቃደኛ አይደሉም። በተጨማሪም መረጃ ሰጪዎቹ መሬቱ እንዳስረዱት መሬቱ የሴት ከሆነ ድንበሩን በትክክል ስለማያውቁ ድንበርተኛ የእርሻ መሬት ባለቤት መሬታቸውን ሊወስድ እንደሚችል ግምት እንዳለ ጠቁመዋል። አንዳንድ የመሬት ተከራዮችም በጊዜ ሂደት መሬቱን በስማቸው በማስመዝገብ ሴቶቹን በመካድ ወደ አላስፈላጊ አለመግባባቶች እና አላስፈላጊ ወጪ ውስጥ እንዲገቡ ያደርጋሉ፡፡

መሬትን ከማስተላለፍ አንፃር በሴት የሚመሩ ቤተሰቦች በወንድ ከሚመሩ ቤተሰቦች የተሻለ እድል አላቸው። ነገር ግን የተወሰነውን መሬት ለልጆቻቸው ሲያስተላልፉ እና ለወንድ ልጆቻቸው መሬቱን እንዲያርሱ እድል ሲሰጡ ልጆቹ መሬቱ ሁሉ ተሰጥቶናል በማለት እናታቸውን በመካድ ይከራከራሉ።

ይሁን እንጂ ከፍቺ በኋላ በሴት የሚመሩ ቤተሰቦች ሁኔታ የተለየ ነው በተለይ በጋራ ንብረት ክፍፍል ውስጥ መሬት ሲያገኙ ይዞታቸውን በነጻነት ለመጠቀም ፣ለመቆጣጠር እንዲሁም ለማስተዳደር ይቸገራሉ፡፡ ከባህር ዳር ዙሪያ ወረዳ የመሬት አስተዳደር ጽ/ቤት ሀብታሙ የነሱን ሁኔታ እንደሚከተለው ይገልፃል፡-

“በፍቺ ወቅት ባል የቀድሞ ሚስቱ የተሰጣትን መሬት እንዳታከራይ ወይም እንዳትጠቀም ይከለክላል። አንዳንድ ጊዜ ወንድ የሴቶችን መሬት በጉልበት ይወሰዳል። እንደዚህ ባሉ ኢጋጣሚዎች በመደበኛ የፍትህ ስርዓት መብታቸውን ለማስከበር ወዴት መሄድ እንዳለባቸው የማያውቁ ሴቶች መሬቱን ለነጣቂው ጥለው ይሄዳሉ አልያም ጉዳዩን ወደ አካባቢው የሀገር ሽማግሌዎች ያቀርባሉ። ጉዳዩ በአካባቢው ሽማግሌዎች በሚታይበት ጊዜ በተለይም ከፍቺና ከውርስ ጋር በተያያዙ አለመግባባቶች አብዛኛውን ጊዜ ውሳኔያቸው በባህል ተጽእኖ ስር ስለሚሆን ጉዳዩን የሚወሰኑት ለወንዶቹ ነው።”

የሜጫ ወረዳ የመሬት አስተዳደር ጽ/ቤት መረጃ ሰጭዎች እንደገለጹት በቀበሌ አስተዳደር ደረጃ በሴቶች የሚመሩ አማወራዎችን መሬት ለመውሰድ ብዙ ሴራዎች እየተደረጉ ይገኛሉ። ከሜጫ ወረዳ ተገኝተው ከተጠየቁት መካከል የሚከተለውን ገልፀዋከል፡-

“ጊዜዬን የማሳልፈው ቤት ውሥጥ ነው። በሕዝብ ቦታዎች ወጥቼ አላውቅም። እናቴ በልጅነቴ ሞተች። አባቴ በደርግ ጊዜ ወደ ጦር ሜዳ ሄዶ አልተመለሰም። የአባቴን መሬት ያስተዳድር የነበረው አጎቴ ነው። ከዓመታት በኋላ፣ አጎቴ መሬቱን በባለቤትነት እንዳልይዝ የአባቴን መሬት በስሙ እንደመዘገበ ከአንድ ሰው ሰማሁ። አጎቴን ስጠይቀው መሬቱን ሊሰጠኝ አልቻለም። ”

ሴት መረጃ ሰጭዎች እንደገለፁት ወንዶች ሴቶች ብቃት እንደሌላቸው በመሰብ በማስፈራራት፣ በትንሽ ገንዘብ በመደለል እና በረጅም ጊዜ ሊዝ መሬታቸውን ይነጥቋቸዋል፡፡ ከሜጫ ወረዳ አንድ መረጃ ሰጪያችን እንዲህ ትላለች፡-

“ሴቶች በቀላሉ ስለሚያምኑ ወንዶች በቀላሉ ያታልሏቸዋል። መብታችንን ለመጠየቅ ጉዳያችንን ፍርድ ቤት ስናቀርብም ያስፈራሩናል። አሁን ለፍርድ ቤት አቀረብኩ አሁንም አጎቴ እንደሚገድለኝ አስፈራራኝ ነው፡፡ ከጥቂት ዓመታት በፊት አንድ ሰው መሬቴን ነጥቆ በስሙ አስመዝግቦ ነበር። ስከሰው በቢላ ወግቶኝ በሆስፒታል በህክምና ዳንኩ።”

ሠንጠረዥ 1፡ የሴቶች የመሬት ተደራሽነት ሁኔታ

ማህበራዊ ሁኔታ	የመሬት አቅርቦት ሁኔታ				
	ማግኘት	በመጠቀም	መቆጣጠር	ማስተላለፍ	ማስተዳደር
በወንድ የሚመራ ቤተሰብ	√	√	X	√**	X
በሴት የሚመራ ቤተሰብ	√*	X	√***	√	√

√**: በህጉ መሰረት ባልም ሆነ ሚስት መሬት ለማስተላለፍ ተስማምተው መፈረም አለባቸው። ሆኖም ባልየው የበለጠ ተደማጭነት ስላለው ስለ ዝውውሩ ሚስቱን አያማክርም። ባሎች ሚስቶችን ለመፈረም እና ዝውውሩን ህጋዊ ለማድረግ ይጠቀማሉ ።

√* √* በህጉ መሰረት ሴቶች መሬት የማግኘት መብት አላቸው። ነገር ግን በባህል ምክንያት ቅድሚያ ለወንዶች ተሰጥቷል. ስለዚህ በ1996/7 የመሬት ክፍፍል ወቅት ለሴቶች ቤተሰቦች የተሰጠው ቦታ ላይ ውስንነቶች ነበሩ። ከዚህም በላይ ሴቶች ሲፋቱ መሬት የማግኘት ፈተና ይገጥማቸዋል።

በ1996 ዓ.ም ለመጨረሻ ጊዜ የመሬት ክፍፍል ሲደረግ መሬቱ በመሬት ይዞታ ደብተር ሲመዘገብ የተጋቡ ሴቶች በጋራ መመዝገባቸውን ከባህላዊ ሽማግሌዎች የመጡ መረጃ ሰጪዎች ተናግረዋል። ከ1996 ዓ.ም ጀምሮ የተጋቡ ሴቶችና ወንዶች ከቤተሰቦቻቸው መሬት የሚያገኙ ሲሆን ይህ በቤተሰቡ አዲስ ተጋቢዎች የሚሰጣቸው መሬት ህጋዊ የሚሆነው የመሬት አስተዳደር ሲመዘግብና ሲያረጋግጥ ብቻ ነው። ነገር ግን በተደጋጋሚ እንደተገለጸው ቤተሰቦቻቸው በጋብቻው

ቀጣይነት ላይ ካላመኑ መሬቱን ሕጋዊ አያደርጉ፣ም:: ምንም እንኳን መሬት ተሰቷቸው አዝመራ መጠቀማቸውን ቢቀጥሉም በመሃል ላይ ፍቺ ሲኖር እና ሴቶች መሬት ለመካፈል ሲፈልጉ ወንዶቹ *"መሬት የለኝም መሬቱ የአባቴ እንጂ የእኔ ሊይደለም"* በማለት ይከራከራሉ::

√ *** አንዳንድ ጊዜ ሴቷ ከተፋታች በኋላ ከባሏ መሬት ብታገኝም የተፋታው ባል ሌሎች መሬት እንዲከራዩ እንደማይፈቅድ የባህላዊ ዳኞች መረጃ ሰጪዎች ገልጸዋል። በውጤቱም በመሬታቸው ላይ ያለውን ቁጥጥር ሊያጡ ይችላሉ:: የቀድሞ ባል ከመሬቱ ውስጥ ያሉትን ምርቶች በአግባቡ ላይሰጥ(ላያካፍል) ይችላል:: ከጊዜ በኋላ ሴቶች መሬታቸውን ሊያጡ የሚችሉት እድል ሰፊ ነው::

X በተግባር ሴቶች እነዚህን መብቶች እንዳይጠቀሙ ተደርገዋል።

2.2. የሴቶች እኩልነት በመሬት እደላ፣ ውርስና ስጦታ ጊዜ

መረጃ ሰጭዎቹ አንደገለጹት ቢያንስ በመርህ ደረጃ ሴቶች በእደላ እና በውርስ መሬት የማግኘት ከወንዶች ጋር እኩል መብት አላቸው። ከአስፈጻሚ አካለትና ከፍርድ ቤት የተውጣጡ መረጃ ሰጪዎች በአማራ ክልል ውስጥ ሴቶች በመንግስት እርዳታ (በምደባ) መሬት የማግኘት ቀዳሚ መብት እንዳላቸው ገልጸዋል። ይሁን እንጂ እንደ መረጃ ሰጪዎችና ቃለ መጠይቅ ሰጭዎች ከሆነ ድርጊቱ ከህግ ውጭ የሆነ ነገርን ሊያንፀባርቅ ይችላል .

ልገሳን በተመለከተ በአብዛኛው ቤተሰቦቻቸውን መሬት እንዲሰጧቸው የሚጠይቁት ከሴቶች ይልቅ ወንዶች ናቸው። ወንዶች መሬቱን በሙሉ መውሰድ ይፈልጋሉ ከሴቶች፣ ህጻናትና ማህበራዊ ጉዳዮች እና ከሜጫ ወረዳ ፍርድ ቤት የተውጣጡ ቁልፍ መረጃ ሰጪዎች የሚከተለውን ይላሉ:-

> *"በህብረተሰቡ ባህል መሰረት ሴት ልጅ ስታገባ ወደ ሌላ ቀበሌ ልትሄድ ትችላለች ተብሎ ስለሚታሰብ መሬት ለሴት ሳይሆን ለወንድ መሰጠት አለበት ተብሎ ይታመናል። በዚህ መሠረት ሴት ልጅ በባሏ በኩል መሬት ማግኘት ትችላለች ተብሎ ይታመናል::"*

በተመሳሳይ በባህር ዳር ዙሪያ ወረዳ ወንዶች መሬትን በልገሳ የማግኘት እድላቸው ሰፊ ነው:: ገበያው ሞላ እንደገለጸው:-

> *"ወላጆች ለሚደግፏቸው ልገሳን ያደርጋሉ። እንዲህ ባሉ ጉዳዮች ላይ ሴቶች ገና በለጋ ዕድሜያቸው ሲጋቡ የተወለዱበትን አካባቢ ስለሚለቁ በልገሳ መሬት የማግኘት ዕድል ላይኖራቸው ይችላል።"*

ሴቶች መሬትን በስጦታ መልክ ሲወስዱ በሁለት መንገድ ተጎጂ ይሆናሉ። ምንም እንኳን ሴቶች በባሎቻቸው በኩል መሬት ያገኛሉ የሚል ባህላዊ እምነት ቢኖርም በአብዛኛው የባለቤቷ ቤተሰቦች መሬት እንድትይዝ አይፈልጉም::

> *"በባህላዊ መልኩ የጋብቻ ውል ሲፈረም የባል አባት መሬት ለመስጠት ቃል ይገባል የሴቶች እና የሴቶች ወላጆች ይህን ባህላዊ ሰነድ ወደ ህጋዊ ማስረጃ ለመቀየር ክትትል አያደርጉም። ባልና ሚስት ለመፋታት ከፈለጉ እና ሚስት የመሬት ባለቤትነት ጥያቄን ካነሳች ለመሳተፍ ህጋዊ መብት የላትም ነገር ግን በፌዴራል ፍርድ ቤት ውሳኔ መሰረት በተለምዶ ማጫ ተብሎ በግልፅ የተሰጠ መሬት ካለ ሴቶችም ሆኑ ወንዶች መሬቱን በእኩል የመካፈል መብት አላቸው።"*

የወረዳው ፍርድ ቤት መረጃ ሰጭ አክለውም የወንድ ወላጆች ስለ ጋብቻው ቀጣይነት እርግጠኛ ባልሆኑበት ወቅት በማጫ *መልክ የተሰጠውን ቦታ በህጋዊ መንገድ ማስመዝገብ እንደማይፈልጉ ገልፀዋል።* ከዚህም በላይ ከፍርድ ቤት ጽሕፈት ቤት የተውጣጡ ቁልፍ መረጃ ሰጪዎች እና የባህላዊ ዳኞች ሴቶች እስኪወልዱ ድረስ በእንደዚህ ዓይነት ሴራ እንደሚሰቃዩ ተናግረዋል። ከዚህ ጋር በተያያዘ ባልና ሚስት ሲፋቱና እና ቤተሰብ የሰጣቸውን መሬት ሲክዱ ከእናንተ ጋር አንበላም አንጠጣም በማለት ከህብረተሰቡ እናገላቸዋለን። መለገልን ከፈሩ መሬታቸውን ይመልሳሉ።

ከመሬት አስተዳደር ጽህፈት ቤት የተገኙ መረጃ ሰጪዎችም እንደገለጹት በህብረተሰቡ ዘንድ ወንዶች በማህበራዊ ደረጃ መሬት የማስተዳደር መብት አላቸው ተብሎ ስለሚታሰብ ለሴቶች የሚሰጠው የመሬት ድልድል ዝቅተኛ ነው።

መሬትን በውርስ ማገኘትን በተመለከተ በጥናቱ ኣካባቢ ሴቶች ዝቅተኛ ተጠቃሚ ሲሆኑ ወንዶች ተመራጭ ናቸው፡፡ ገበያው ሞላ በጉዳዩ ላይ የሚከተለውን ብሏል፡-

“በኑዛዜ ውሰጥ ወላጆች ከሴቶች ልጆች ይልቅ ለወንዶች ልጆቻቸው ብዙ መሬት ይሰጣሉ። ከኑዛዜ ውጪ በሆነም ሁኔታ ወንዶች ጠቃሚ ናቸው። ምክንያቱም ብዙ ጊዜ ሴቶች ሲያገቡ ኣካባቢያቸውን ትተው ወደ ባሎቻቸው መኖሪያ ስለሚሄዱ ነው። ስለዚህ በትውልድ ኣካባቢያቸው ስለሚሆነው ነገር መረጃ ላይኖራቸው ይችላል። ስለዚህ ወንድሞቻቸው ወይም ዘመዶቻቸው ውርስ እንዲሰጣቸው ለፍርድ ቤት ኣመልክተው እነርሱን በማግለል ይወስዳሉ ኣነሱም ውሳኔ ከተወሰነ በኋላ እውነታውን ሊያውቁ ይችላሉ፡፡ ምንም እንኳን የጊዜ ገደቡ ሳያልፍ እውነታውን ቢያውቁም ወዴት እንደሚሄዱ ላያውቁ ይችላሉ ወይም ህጋዊ እርምጃ ለመውሰድ የገንዘብ ኣቅም ላይኖራቸው ይችላል።”

የኣገር ሽማግሌዎች የሚከተለውን ያምናሉ፡-

‘‘በውርስ ወቅት ለወንዶች ቅድሚያ ይሰጣል፡፡ በባህል መሰረት ወንዶች ለቤተሰባቸው ገቢ ማመንጨት እንዳለባቸው ነው፡፡’’

በኣጠቃላይ ሴቶች በውርስ እና በስጦታ መሬት የማግኘት ሁኔታ በሚከተለው መልኩ ሊጠቃለል ይችላል፡-

‘‘በውርስ እና በልገሳ ረገድ ወንዶች ከሴቶች ይልቅ የተመረጡ ናቸው። ማህበረሰቡ "የሴት መኖሪያ የባሏ ኣካባቢ ነው" ብሎ ያምናል ይህ የሆነበት ምክንያት በጋብቻ ወቅት ሴቶች ወደ ባሎቻቸው መኖሪያ ስለሚሄዱ ነው፡፡ ይህም ሴቶች በውርስ እና በልገሳ መሬት የማግኘት እድልን ይነካል ምክንያቱም ወላጆች መሬታቸውን በስጦታ ወይም በኑዛዜ በዙሪያቸው ለሚኖሩ እና ለሚደግፏቸው ስለሚሰጡ ነው ።’’

2.3. ባህልና ወግ በሴቶች መሬት ላይ ያለው ተጽእኖ

ሥር የሰደደ ባህልና ወግ አሁንም የሴቶችን የመሬት ተጠቃሚነት እንደሚጎዳ ዋና መረጃ ሰጪዎቹና ቃለመጠይቆቹ አረጋግጠዋል። የመረጃው ትንተና እንደሚያሳየው ባህሉ እና ወጉ የሰራ ክፍፍልን፣ ሴቶችን የወንዶች ጥገኛ አድርጎ ማሰብ፣ ለወንድ ያደላ ውሳኔ ወይም የሴቶችን የመሬት ጥያቄ በኣካባቢው ሽማግሌዎች ለመፍታት ፈቃደኛ አለመሆን እና በሀብት ላይ የተመሰረተ አድሎ ዋናዎቹ ተግዳሮቶች ናቸው፡፡

የሰራ ክፍፍል አድሎአዊ ወግ ሴቶች በቤት ውስጥ የቤት ውስጥ ስራ ላይ እንዲሳተፉ ያደርጋቸዋል። መሬትን እንዴት መጠቀም እንደሚቻል መወሰን እና ማህበራዊ ጉዳዮች ላይ እንደ መሬት ምዝገባ፣ የመሬት አለመግባባቶች አፈታት በኣጠቃላይ እንደ ወንድ ሥራ ተደርገው ይወሰዳሉ። በተጨማሪም የቤተሰቡ ጠባቂ አሁንም በማህበረሰቡ ውስጥ ወንዱ እንደሆነ ይቆጠራል። ስለሆነም መሬት በወንዶች ላይ ጥገኛ የሆኑ ሰዎች ሳይሆን ለቤተሰብ ገቢ የማመንጨት ኃላፊነት ያለባቸው ሰዎች ነው የሚል ግምት አለ። የወ/ሮ ገበያ ገረመው የግል ተሞክሮ ለዚህ እውነታ ማሳያ ነው።

‘‘ባሀሉ ለወንዶች ይደላል። በባህላችን የሴቶች መብት ችላ ይባላል። ለዚህም ነው የመሬት ኣከፋፋይ ኮሚቴው መብቴን የነፈገኝ።’’

የመሬት አለመግባባቱ በኣካባቢው የህገር ሽማግሌዎች ሽምግልና ሲፈታ ውሳኔዎቹ በዋናነት ለወንዶቹ የሚጠቅሙ ናቸው። ወ/ሮ የልቤ የኔአለም ይህንን እውነታ በምሳሌ አስረድተው ጉዳያቸውን ገልፀው ነበር ።

‘‘... መሬቱን በኢደላ የሰጡኝ የኣገር ሽማግሌ እውነታውን ከደው የባሌ መሞትን ተከትሎ መሬቴን ለባሌ ቤተሰቦች ወሰኑላቸው።’’

በኣንዳንድ ሁኔታዎች የኣካባቢው ሽማግሌዎች የመሬት ውዝግብን ለመፍታት ዘዴ እንድንጠቁም ተከራካሪዎችን ይጠይቃሉ። ወ/ሮ ያለምወርቅ ንጉሴ እንዲህ ይላሉ፡-

“... ሽማግሌዎቹ በሰጦታ ያገኘነው መሬት ላይ በጋራ እንደሰራን እያወቁ ባለቤቱ ይገባታል ብሎ ያሰበውን እንዲሰጠኝ ፈቀዱለት።”

አንዳንድ ጊዜ ሽማግሌዎች ሴቶች ጥያቄውን ካመጡ ሽምግልና እምቢ ይላሉ። ይህንን እውነታ ለማረጋገጥ የወ/ሮ ስንዱ ቻሊ ጉዳይ የተለመደ ማሳያ ነው። *“... እውነታውን እያወቁ ሽማግሌው ጉዳያቸንን ለመዳኘት ፈቃደኛ አልሆኑም።”*
የአካባቢው የሀገር ሽማግሌ እና የመሬት ሙግት አስታራቂ ሙጨዬ ቻኒ የመሬት ክርክር ሽምግልና ሁሌም ለወንዶች እንደሚጠቅም ይገነዘባል። እንዲህ ይላል፡-

“በፍቺ ላይ እና በውርስ ክርክር ጊዜ የንብረት ክፍፍልን በተመለከተ ሽማግሌዎች በሴቷ ላይ የበለጠ ጫና ያሳድራሉ በተጨማሪም ጉልህ የሆነ የመሬት ክፍል ለወንዶች ይሰጣል። ይህም የሚሆነው በግልግል ዳኝነት ጊዜ ወንዶች አብላጫውን መሬት ለመውሰድ የሚጠይቁ ሲሆን ባህሉም ይደግፋቸዋል።”

በወረዳው የፍትህ ጽ/ቤት ቁልፍ መረጃ ሰው እንደገለፀት ወንዶች በአካባቢው ባህል የበላይ ሆነው ይታያሉ። መሬትን ማስተዳደር እና መቆጣጠር የወንዶች ተግባር ተደርጎ ይወሰዳል። ስለዚህ ሴቶች ባለትዳር ሆነው ሳለ መሬቱን ያለእነሱ እውቀት እና ፍቃድ ማስተላለፍ ይቻላል ሲፋቱም እኩል እንዳይካፈሉ ብዙ እንቅፋት ይፈጥራል .
በመጨረሻም በሴቶች ላይ በሀብት ላይ የተመሰረተ መድልዎ ሌላው በመሬት ማግኘት ላይ የዳበረ የሙስና ባህል ነው። የፍትህ ፅህፈት ቤቱ ቁልፍ መረጃ ሰው በመቀጠል እንዲህ ይላል፡-

“ትልቅ ዓሣ ትንንሽ አሳን እንደሚውጥ ሁሉ ሴቶችም በወንዶች ይዋጣሉ ይህም መሬቱ በወንዶች ቁጥጥር ስር እንዲሆን ያደርገዋል።”

ከባህላዊ ዳኛ ጋር በተደረገ ቃለ ምልልስም እንደተባለው የመሬት መረጃ ሲሰበሰብ ሀብታሞች መሬት በህገ ወጥ መንገድ ለመያዝ ለመሬት ባለሙያዎች እና ለቀበሌ አስተዳደር ጉቦ ይሰጣሉ። ሴቶች ጉዳዩን ወደ ፍርድ ቤት ለመውሰድ ገንዘብ ሲያጡ የመሬት ክርክር ጉዳዮችን ይተዋሉ።
ሌላ መረጃ ሰጭ ደግሞ *“ጊዜው የድሆች ጊዜ ሊይደለም ብሏል። ገንዘብ ከሌለህ ሴቶች ይቅርና ወንዶች መሬታቸውን ሊያጡ ይችላሉ።”*

ከዚህ በተጨማሪም ማህበረሰቡ ውስጥ ለሀብታም ወንዶች ቁባት መኖር የተለመደ መሆኑ ተገልፃል። የፍትህ ጽ/ቤት ቁልፍ መረጃ ሰው እንደገለፀው የሰሜን ሜጫ ወረዳ ለም መሬት ስላላት ወንዶቹ ሀብት እንዲያከማቹ አድርጓል።

“አካባቢው በጣም ለም ነው ለዛም ገበሬዎች ሀብታም ናቸው። በማህበረሰቡ ባህል አንድ ሰው በኢኮኖሚ ሲበለጽግ ቁባቶች መኖራቸው የተለመደ ነው። ከትዳሩ ውጪ ሄዶ መውለድ የተለመደ ነው። በዚህም ምክንያት ሚስት መሬቷን ለመጠበቅ እና ለመጠቀም መብቷ ከፍተኛ ችግር ይገጥማታል።”

2.4. የሴቶችን የመሬት ተደራሽነት ለማስከበር የመሬት ግጭት መፍቻ ዘዴዎች አስተዋፅኦ

የሴቶችን የመሬት ተጠቃሚነት ለማረጋገጥ የህግ ከለላ መስጠት ብቻ በቂ አይደለም። ጥሰቶች ሲፈጸሙ ለማስፈጸም ገለልተኛ፣ ተመጣጣኝ እና ተደራሽ የሆነ የግጭት አፈታት ዘዴዎች መኖር አለባቸው። የፌዴራል እና የአማራ ክልል የገጠር መሬት ህጎች የመሬት አለመግባባቶችን ለመፍታት ለመደበኛ እና ባህላዊ የግጭት አፈታት ዘዴዎች እውቅና ሰጥተዋል። እነዚህ ዘዴዎች የሴቶችን የመሬት ተጠቃሚነት ለማስከበር ምን ያህል አስተዋፅኦ እያበረከቱ እንደሆነ ከዚህ በታች የሚታይ ይሆናል ።
ቁልፍ መረጃ ሰዎችና ቃለመጠይቆቹ እንዳመለከቱት አብዛኛው በሴቶች የሚነሱት የመሬት ሙግቶች ከፍቺ በኋላ የመሬት ክፍፍል፣ ውርስ፣ የወሰን አለመግባባቶች እና የይግባኝ እርምጃዎች ናቸው። ከገጠር ነዋሪ ሴቶች ጋር ቃለ መጠይቅ

የተደረገላቸው ሰዎች ምንም እንኳን ልማዳዊ አፈታት ዘዴው ተደራሽ እና ተመጣጣኝ ቢሆንም መሰል አለመግባባቶችን ለመፍታት መደበኛውን የህግ ስርዓት መርጠዋል። የአካባቢው የሀገር ሽማግሌዎች/ግልግል ዳኞች ራሳቸውን የቻሉ እንዳልሆኑ እና የሚያስተላልፈው የውሳኔ ሃሳብ በባህሉ የበለጠ የሚጠቃ እና ለወንዶች የሚጠቅም መሆኑን ጠቅሰዋል። የግልግል ዳኞች ግን ያህንን ይላሉ፡-

> *"አብረን ስለምንኖር እያንዳንዱን ጉዳይ የሚቃወሙ ሁሉንም እውነታዎች እናውቃለን። ጉዳዩን ለመዳኘት አስፈላጊ የሆኑትን እውነታዎች ካላወቅን በተለያዩ መንገዶች የበለጠ እንመረምራለን. እንዲህ ያሉ አለመግባባቶችን ስንፈታ በእውነታዎች ላይ እንመካለን እና ሴቶችን በእኩልነት እናያቸዋለን። ለምሳሌ ፍቺን ተከትሎ በንብረት ክፍፍል ላይ ክርክር ወደ እኛ ሲመጣ መሬቱ በማን ስም እንደተመዘገበ ፣እንዴት እንደተመዘገበ እናረጋግጣለን፣ የጋብቻ ውላቸውና ሴቶቹ በመሬቱ ላይ ያበረከቱትን እናረጋግጣለን። የሰጠነው ውሳኔ ከፍርድ ቤት ክርክር ይልቅ በተከራካሪ ወገኖች መካከል ዘላቂ ሰላም ለማምጣት የሚያስችል ነው። በተጨማሪም ጊዜ እና ወጪ ቆጣቢ ነው፡፡ ሁል ጊዜ የግልግል ዳኞች ወንዶች ናቸው ሴቶች ኣይሳተፉም ማህበረሰቡን ስለሴት ዳኞች ብትጠይቀው ይስቃል።"*

በሌላ በኩል ከባህር ዳር ዙሪያ ወረዳ ሴቶች፣ ህፃናትና ማህበራዊ ጉዳይ ጽ/ቤት መረጃ አቅራቢው እንዲህ ይላሉ፡-

> *"ሁለት ኣይነት የግልግል ዳኞች አሉ። በአንደኛው ምድብ ያሉ ሽማግሌዎች በሕጉ መንፈስ መሠረት የመሬት ጉዳዮችን በገለልተኝነት ይወሰናሉ። የሴቶችን መሬት በህገወጥ መንገድ የወሰዱ በእነዚህ ሽማግሌዎች ለመዳኘት ፈቃደኛ ኣይደሉም የውሸት ማስረጃዎችን አዘጋጅተው በፍርድ ቤት መሞገትን ይመርጣሉ። በሌላኛው ምድብ፣ አንዳንድ ሽማግሌዎች በማኅበረሰቡ ውስጥ ባለው የአባቶች አመለካከት ከፍተኛ ተጽዕኖ ይደረግባቸዋል። በዚህ ምድብ ውስጥ ያሉ ሽማግሌዎች በውሳኔያቸው ወንዶችን ይጠቅማሉ። በሽማግሌ ውሳኔ የተበሳጩ ሴቶች ለፍርድ ቤት ይግባኝ ማለት ይችላሉ። ይሁን እንጂ ጥያቄው ምን ያህል ሴቶች እንዲህ ዓይነት ዕድል ያገኛሉ የሚለው ነው።"*

አቶ ገበያው ሞላ የሀገር ሽማግሌዎች ከሴቶች ጋር በተያያዘ የመሬት ውዝግብን በሚከተሉት ሶስት ምክንያቶች እልባት ለመስጠት ተቸግረዋል፡፡

> *"አንደኛ፣ የግልግል ዳኞች የሕግ እውቀት ስለሌላቸው የሕግ ሥልጠና ኣያገኙም። ሁለተኛ፣ ለኣገልግሎታቸው ክፍያ ኣይከፈላቸውም። በመጨረሻም በጠንካራው አካል በቀላሉ ጉቦ በማግኘት የህብረተሰቡን አመኔታ አጥተዋል።"*

ሴቶች አሁንም በመደበኛ የፍርድ ቤት ሙግት መሬት የማግኘት መብታቸውን ለማስከበር ፈተናዎች ይገጥሟቸዋል። የመጀመሪያው ፈተና የህግ እውቀት ማነስ ነው። ሴቶች ጉዳዩን የት እንደሚወስዱ እና እንዴት እንደሚያደርጉት የህግ እውቀት የላቸውም። ሁለተኛ፣ የፍትህ አስተዳደር ወጪ መሸፈን ኣይችሉም። የህግ ሂደቶች በጣም ረጅም እና ብዙ ወጪ የሚጠይቁ በመሆናቸው በኢኮኖሚ ዝቅተኛ የሆኑ ሴቶች ለችግር ይዳረጋሉ። ወደ ወረዳው አስተዳደር ጽ/ቤቶች አዘውትሮ ለመጓዝ እና የምስክሮችን መጓጓጥ ወጪ መሸፈል ቀጥተኛ ኢኮኖሚያዊ ወጪን ይጠይቃል። ከሴቶች እና ከሽማግሌዎች የተውጣጡ ቁልፍ መረጃ ሰዎች እንደሚያሳዩት ፡-

> *"ለቀረቡት ሦስት ምስክሮች ተከራካሪዎች ከ 300 እስከ 400 ብር ወጪ መሸፈን ሊጠበቅባቸው ይችላል፡፡ ምስክሮች ከሴቶች የምሳ ገንዘብ ይጠይቃሉ የተበላሹ የህግ አካሄዶች የመሬት ውዝግቦችን ያወሳሰበዋል ምክንያቱም ውሳኔዎችን ለመለወጥ ከወንዶች ገንዘብ ይቀበላሉ በውጤቱም፣ አንዳንድ ጊዜ፣ ሴቶች ለረጅም ጊዜ የሚቆይ የፍርድ ሂደት ውስጥ በማለፍ መሬታቸውን ለመቀበል ተስፋ ይቆርጣሉ።"*

በህገ ወጥ መንገድ የሴቶችን መሬት የነፈጉ ወንዶች ከልማዳዊ አለመግባባትመፍቻ ዘዴዎቸው ይልቅ በፍርድ ቤት ክርክር መፍታትን ይመርጣሉ:: ምክንያቱ የውሸት ማስረጃ ማቅረብ ከመቻል እና ሴቶቹ ጉዳያቸውን ማቅረብ ካለመቻላቸው ጋር የተያያዘ ነው። የአካባቢው የሀገር ሽማግሌዎች እንደገለጹትም ሴቶች መሬታቸውን ለማስመለስ ስልጣንና ገንዘብ ሲያጡ ተስፋ ቆርጠው ጉዳዩን ትተው *'እግዚአብሔር መሬቴን ይመልሰልኝ'* ሲሉ ተወያይተዋል በማለት ገልጸዋል። ከዚህ የምንረዳው የህግ ሂደቱ በኢኮኖሚና በአቅም ደካማ ለሆኑ ሰዎች የህግ ስርአቱ ውጤታማ አለመሆኑን ነው:: ከሴት ቁልፍ መረጃ ሰጪዎች ደጋግመው እንደገለጹት *ሰው ከሌለህ የሚሰማህ የሚያከበርህ የለም*::

የፍርድ ቤት ውሳኔ ለሴቶች ከተላለፈ በኋላም የውሳኔው ተፈጻሚነት ፈታኝ ነው። ከሴት ቁልፍ መረጃ ሰጪዎች መካከል አንዷ ሁኔታውን እንደሚከተለው ገልጻለች ።

> *"ፍርድ ቤቱ መሬቱ ለሴቶች መሰጠት እንዳለበት ቢወስንም የውሳኔው ክትትልና ተግባራዊነት ደካማ ነው። ወንዶች ውሳኔውን በፈቃደኝነት ካልተቀበሉ የትኛውም የመንግስት አካል ተግባራዊነቱን ሊያስገድድም ሴቶች ወደ ፍርድ ቤት ሄደው የአፈጻጸም ፍርድ ለመስጠት ገንዘብ በማጣት መሬታቸውን ለቀው እንዲወጡ ይገደዳሉ። የቀበሌ አስተዳደሮችም ወንዶች ጉቦ ሲሰጧቸው ውሳኔ ይሸራሉ ።"*

ማጠቃለያ

እንደ ገጠር ኢትዮጵያ ሀገሮች ውስጥ የሴቶች የገጠር መሬት የተረጋገጠ እና የእኩል ተጠቃሚነት ጥያቄ የውጤታማ አስተዳደር፣ ኑሮን የማሳደግ፣ ድህነትን የመቀነስ እና የዘላቂ ልማት ጉዳይ ብቻ አይደለም። ስለ ስልጣን፣ ፖለቲካ እና ውክልና የሚመለከትም ነው። በተጨማሪም የሴቶች መብትና ጥቅም በመሬት ላይ እንዴት በተሻለ ሁኔታ መደገፍ እና መጠናከር እንደሚቻል የሚያሳይ የዖታ እኩልነት ጉዳይ ነው።

የኢትዮጵያ መንግስት ይህን በመገንዘብ ታሪካዊ ኢፍትሃዊነትን እና መገለልን ለመቅረፍ የሴቶችን የመሬትና የጋብቻ ንብረት እኩል ተጠቃሚነት ህገ መንግስታዊ ጉዳይ አድርጎታል። የኢፌዴሪ ህገ መንግስት ሴቶች መሬትን የመጠቀም፣ የማስተላለፍ፣ የመቆጣጠር እና የማስተዳደር እኩል መብትን በግልፅ ደንግጓል። በቤተሰብ አስተዳደር ውስጥ የሴቶችን እኩልነት እና የጋብቻ ንብረት ባለቤትነት እውቅና ይሰጣል:: ከዚህም በላይ ሴቶችን የሚበድሉ ሕጎችን፣ ልማዶችን፣ ወጎችን እና ውሳኔዎችን ሕገወጥነት አረጋግጧል ።

በህገ መንግስቱ በተደነገገው መሰረት ሴቶች በእኩልነት የገጠር መሬት የማግኘት፣ የመጠቀም፣ የማስተላለፍ እና የመቆጣጠር ህጋዊ እርምጃዎችን መፈጸም ይችላሉ። አማራ ክልል የገጠር መሬት ህግ ሴቶች በመንግስት ድልድል መሬት እንዲያገኙ ቅድሚያ ይሰጣል።

ነገር ግን የህግ እርምጃዎች በባህርዳር ዙሪያ እና ሰሜን ሜጫ አካባቢዎች ሙሉ በሙሉ አልተተገበሩም:: የሙያ ክፍፍልን በተመለከተ ባለው ባህል ምክንያት፣ ሴቶች አሁንም መሬት የማግኘት መድልዎ ይደርስባቸዋል። በተለይ የጋራ ይዞታን በተመለከተ ወንድ መሬቱን እንዴት ተቆጣጥሮ መጠቀም እንዳለበት ያውቃል ተብሎ ስለሚታሰብ በቀላሉ ይወሰንለታል። በዝውውር ጊዜ በኃይልም ቢሆን ሴቶች ስምምነት መፈረም ይጠበቅባቸዋል እንዲሁም በጋራ ይዞታዎች ላይ የመሬት የምስክር ወረቀት በወንዶች ስም የመመዝገብ እና የማግኘት አዝማሚያ አለ::

ለሴቶች የመሬት የማግኘት መብታቸውን በልማዳዊ የግጭት አፈታት እና በፍርድ ቤት ሙግት ማስከበር ፈታኝ ነው። ምንም እንኳን ልማዳዊ አለመግባባቶችን መፍታት ተደራሽ እና ተመጣጣኝ ቢሆኑም የአካባቢው ሽማግሌዎች በባህሉ ተጽዕኖ ይደረግባቸዋል። የሴቶችን ጥቅም ችላ ብለው ለወንዶች የሚጠቅም ውሳኔ ይሰጣሉ:: ሴቶች የፍርድ ቤት ክርክርን ለማስፈጸም የህግ እውቀት ስለሌላቸውና የፍትህ አስተዳደር ወጪን መፈጸም ስለማይችሉ ንብረታቸውን ይነጠቃሉ:: በዚህም ምክንያት ሴቶች ‘ *እግዚአብሔር መሬቴን ይመልሰልኝ’ ብለው ይተዋሉ።*

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