



# Rapid Assessment of Land Conflict Drivers, Land Disputes and Grievance Mechanisms in Three Regions of Ethiopia

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## Acronyms

CSC	DFID-supported Conflict Sensitivity Consortium
DFID	UK Department for International Development
FAO	UN Food and Agriculture Organization
FGD	Focus group discussion
FHH	Female head of household
FLLC	First-level land certification
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GRM	Grievance Redress Mechanisms
KII	Key informant interview
KLAUC	Kebele Land Administration and Use Committee
LAND	USAID-supported Land Administration to Nurture Development
LIFT	Land Investment for Transformation Programme
MHH	Male head of household
REILA	Responsible and Innovative Land Administration Project
RLAUD	Rural Land Administration and Use Directorate
SLLC	Second-level land certification
SNNPR	Southern Nations, Nationalities and People's Region
USAID	United States Agency for International Development
VGGTs	<i>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security.</i>

## Executive Summary

The Land Investment for Transformation (LIFT) Programme aims to increase rural land tenure security through second-level land certification and improved rural land administration systems, maximizing benefits to and economically empowering smallholder farmers in four regions of Ethiopia. This rapid assessment is an input of the LIFT Programme because the management and mitigation of land conflicts are critical aspects of land administration and governance.

This assessment begins with a brief background on land relations in Ethiopia, the LIFT Programme, and this assessment's methodology and limitations. The assessment continues by identifying drivers of land conflict at the local and regional levels in three regions where the LIFT programme is being implemented.<sup>1</sup> "Drivers" of conflict are generally those dynamics or circumstances that exist that may contribute to or exacerbate potential conflict. They are often structural and not possible to quickly address. Land conflict drivers discussed include population growth and increasing competition over land; decreasing availability of grazing lands; first-level land certification; urban and peri-urban expansion; climate change; large-scale land investments; and weak land governance.

Next, the assessment discusses land disputes in the three regions as well as land-related grievance redress mechanisms for resolving those disputes. Land disputes prevalent in the regions are disputes over borders and boundaries, including those between individuals' parcels, between individuals' parcels and communal lands, and between administrative units such as kebeles and woredas. Inheritance disputes are also significant in the regions followed by illegal occupation of parcels in informal rural towns, and disputes related to transaction such as gifts, sales (both legal and illegal), and land rentals.

The three legally recognized pathways for resolving land disputes, including governing law and practice for resolving land disputes via: (1) land administration; (2) administrative grievance mechanisms applicable to all public sectors, including land; and (3) judicial mechanisms, including kebele land courts in Tigray. The assessment also identifies limitations of these mechanisms to include resource and capacity constraints, authority to issue summons, and gender sensitivity.

Other grievance redress mechanisms are briefly discussed including the Federal Office of the Ombudsman, social courts, and *Iddir*. Also discussed is the potential requirement for large-scale land investors to establish a grievance redress mechanism to address local community grievances.

The assessment next explores interactions between LIFT and the drivers, disputes, and mechanisms operating within the regions. Of particular concern is that, in their current form, the law and practice of land dispute resolution in the regions may very well undermine the LIFT Programme's primary objective of improving land tenure security of the rural poor. The assessment concludes with recommendations for reforming the grievance redress mechanisms.

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<sup>1</sup> Unfortunately, events in Amhara in September 2016 prevented field research in that region.

## Introduction

In partnership with the Government of Ethiopia's Ministry of Agriculture Rural Land Administration and Use Directorate and the UK Department for International Development (DFID), the Land Investment for Transformation (LIFT) Programme aims to increase rural land tenure security through second-level land certification (SLLC) and improved rural land administration systems, maximizing benefits to and economically empowering smallholder farmers in the regions of Amhara, Oromia, Southern Nations, Nationalities, and Peoples' (SNNPR) and Tigray.

This rapid assessment report is a follow up study to the desk-based report on Conflict Analysis of Amhara, Oromia, SNNPR and Tigray in preparation for LIFT (phase 1). It has been guided by recommendations of the DFID-supported Conflict Sensitivity Consortium and is a key input of the LIFT programme. The management and mitigation of land disputes and conflicts is a critical element of land administration and governance. In fact, Ethiopia's Federal Proclamation on Rural Land Administration and Use (and the regional equivalents) explicitly defines "rural land administration" to include resolution of land disputes and enforcement of rights. Left unaddressed, land grievances and disputes may escalate into conflicts, requiring greater time and resources to resolve, causing widespread social dislocation, and undermining tenure security and economic development.

This assessment identifies land conflict drivers and land-related disputes at the local and regional levels in three regions where the LIFT programme is being implemented.<sup>2</sup> The report also assesses land-related grievance redress mechanisms at those same levels. Finally, it analyses how the LIFT Programme's activities interact with these drivers, disputes, and mechanisms. The assessment concludes with recommendations for reforming the relevant grievance redress mechanisms.

## Background

### Land Relations in Ethiopia

The highly diverse country of Ethiopia has a government based on ethnic federalism. A federal system allows for variation in regional land laws, among other sectoral laws.

Ethiopia's Constitution vests ownership of land and all-natural resources in the State and people of Ethiopia and explicitly prohibits the sale of land (art. 40(3)). Farmers have a constitutional right to obtain land without payment and be protected against eviction (art 40(4)). Pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands (art. 40(5)). The Constitution also grants the government to "ensure the right of private investors to the use of the land on the basis of payment arrangements, "without prejudice to the right of the Ethiopian people" (art. 40(6)). Furthermore, the Constitution grants the regions authority "to administer land and other natural resources in accordance with Federal laws" (art. 52(2)(d)). Thus, Federal Proclamation No. 465/2005 on Rural Land Administration and Land Use, and its regional equivalents, codifies these constitutional provisions, including the government's assertion as owner of rural land (sec. 5(2)). Those proclamations grant farmers use rights that are transferable through inheritance, gift, divorce and rent.

The Constitution guarantees gender equality and equal protection, while prohibiting discrimination based on sex or other protected status (art. 25; see also article 35). Women also have the explicit constitutional right to acquire, administer, control, use and transfer property: "In particular, they have equal rights with men with respect to use, transfer, administration, and control of land. They shall also enjoy equal treatment in the inheritance of land" (art. 35(7)). Significantly, "[a]ny law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect" (art. 9). In practice, however, a variety of factors prevent women from fully enjoying their constitutional rights, including high illiteracy rates, customary beliefs and practices, socio-economic constraints, and enforcement challenges (Girut and Giovarelli 2013). "Discrimination against women includes the allocation of smaller and less fertile plots to female-headed households" (ibid.).

Smallholder agriculture remains one of the key livelihood strategies among rural Ethiopians, with 12 million smallholder farming households accounting for an estimated 95 percent of agricultural production and 85 percent of all employment (FAO 2014). Women head 25% of these farming households (FAO 2014). Forty percent of these households farm parcels less than 0.5 hectares, 64% on less than one hectare, and 87 percent on less than 2 hectares (FAO 2014).

<sup>2</sup> Unfortunately, events in Amhara in September 2016 prevented field research in that region

Ethiopia's livestock sector contributes to the livelihoods of 60–70 per cent of Ethiopia's population, mostly smallholders, and accounts for 12–16% of total GDP and 30–35% of agricultural GDP (USDA 2016). Moreover, 90% of Ethiopia's crop production is dependent on animal draft power (USDA 2016).

Ethiopia used to have one of the highest poverty rates in the world with 44% of the population living below the national poverty line in 2000 (WB 2015). But by 2011, that figure had dramatically decreased to 31% (WB 2015). Poverty remains widespread, however: “The very poorest have not seen improvements—to the contrary, even a worsening—of consumption since 2005, which poses a challenge to achieving shared prosperity in Ethiopia (WB 2015).

## LIFT Programme

The objective of the LIFT programme is “to improve the incomes of the rural poor and to enhance economic growth, through SLLC, improved rural land administration, cross-cutting policy reviews in line with international good practice and human rights obligations, and development of the rural sector to enhance productivity and investment” (LIFT 2014). LIFT is comprised of four components: (1) market development; (2) policy support; (3) land certification and administration; and (4) programme management and monitoring/evaluation (LIFT 2014). Cross-cutting components include social development, conflict management, climate change, legal, and political economy (LIFT 2014). Component number 3, Land Certification and Administration involves both second-level land certification (SLLC) as well as the introduction of a rural land administration system. This assessment is primarily concerned with conflict sensitivity of the SLLC process.

## Methodology & Limitations

This section briefly describes the methodology used for this assessment as well as its limitations. There are several objectives of this assessment:

- Analyse land conflict drivers at the regional and local levels where the LIFT Programme is being implemented;
- Assess **grievance redress mechanisms** designed to respond to land disputes, premised on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests;
- Analyse **interactions with LIFT** activities; and
- Recommend **support for reform** of grievance redress mechanisms;

Per the TOR, the assessment framework and interview guide were based on recommendations of the DFID-supported Conflict Sensitivity Consortium (CSC), which is a consortium of 35 agencies in four countries, working together on a DFID-supported project to improve conflict sensitivity in development, humanitarian, and peacebuilding programming (CSC 2012).

The CSC recognizes that development actors in conflict-prone regions will have unintended impacts on the context within which they operate. Those impacts may be positive or negative, direct or indirect, intentional or unintentional (CSC 2012). Thus, the CSC defines the term, “conflict sensitivity” to mean:

The ability of an organization to:

- Understand the context it operates in;
- Understand the interaction between its intervention and that context; and
- Act upon this understanding in order to minimise negative impacts and maximise positive impacts (CSC 2012).

CSC recommends beginning with a conflict analysis, followed by consideration of conflict sensitivity in the programme cycle, from design and implementation to monitoring and evaluation, and finally assessment of and investment in institutional capacity for conflict sensitivity (CSC 2012). For purposes of this assessment, CSC recommendations were adapted to also allow time to also assess grievance redress mechanisms.

**Methodology.** This assessment integrates a desk review<sup>3</sup> with qualitative field research.<sup>4</sup> The desk review revealed many pre-2005 studies on land conflicts in the relevant regions but, unfortunately, few recent studies. Studies on land-related grievance redress mechanisms are even more limited.

<sup>3</sup> One member of the desk review team is also a member of this field team

<sup>4</sup> See Annex 2 for the Conflict Assessment Fieldwork Plan



The team conducted qualitative field research in July and September 2016, focused on three of the four LIFT regions: Oromia, SNNP, and Tigray. Although the team had planned to conduct research in the Amhara region, the security situation in September 2016 prevented the team from doing so.

### **Site Descriptions**

The team selected one woreda per region based on information gathered during the desk review as well as LIFT data regarding the number of land disputes registered during second-level land certification (SLLC). The security situation in September 2016 also influenced the selection of woredas in Oromia. The team visited the following woredas in each region:

**Oromia - Sire Woreda:** The woreda has an estimated 15,780 households, of which 4,700 are headed by women. The majority of the population is Muslim but Christian Orthodox and Protestants also live there. In terms of ethnic composition, approximately 60% of the population is Oromo and 40% is Amhara.

Agriculture is the predominant livelihood in Sire although supplemented with small trade. Household parcel sizes range from 0.25 ha to 7 ha with the average size of 3 ha per household.

There is a large number of landless in Sire, although the exact number is unknown. Unlike other sites visited, the woreda does not allocate communal land to the landless because there is no policy to that effect. Most of landless rent in land and some engage in crop sharing practices and thus does not necessarily mean they are poor. The government allocates communal lands to investors. There are two small-scale investments in the woreda of 100 hectares each mainly growing tomatoes and vegetables. The government gave the investor communal land for its use.

**Tigray - Hintalo Wajirat Woreda:** Hintalo Wajirat has a total 23 kebeles, of which 20 are rural. The woreda has roughly 38,000 households, of which 9,800 are headed by women. The woreda population consists of 15% Muslim and 85% Orthodox Christian. Agriculture supports 97% of population, while the remaining 3% are traders engaging in small businesses. Approximately 31,300 individuals are landless. The government is supporting landless individuals by helping them establish small-scale cooperatives focused on bee-keeping and quarry production. FLLC was conducted in 2000 and approximately 80% of the households received certificates. The landholdings of a household range from 0.125 to 1.5ha, with an average parcel size of 0.5ha. There are no large-scale commercial farms in the woreda. There is, however, artisanal mining – producing sand and stones supplied for crushing and the cement factory.

**SNNPR - Silte Woreda:** According to the 2005 census, the population of Silte woreda is 210,000, comprised of approximately 40,000 households. The woreda has 38 rural and 5 urban kebeles. Fifteen percent of the population lives in towns. With regards to ethnicity, 99% of the population in Silte practice Islam. There also are some Meskan Guragi. There are some small-scale commercial investments. For instance, one investor was allocated 70 ha of communal land to grow wheat and is planning to invest in a flour mill.

**SNNPR - Mierab Badawacho Woreda:** The total population of Mierab Badawacho is 106,185 of which 53,655 are women. There are approximately 43,000 households residing in the woreda. The population is 99% Protestant. The ethnic composition is majority Hadiya, with several minority groups including Woliyas, Kembatas, Oromo, Amhara and Alaba.

The major livelihood strategy of the people is agriculture followed by small businesses/petty trading. The average landholding size is 0.5 ha, ranging from 0.125ha to 7 ha. Land was distributed during the Derg regime in 1974-75 and FLLC was provided in 2004-05. There is one small-scale agricultural land investment in the woreda of 25 hectares. Landlessness is a problem in the woreda and the number is significantly increasing.

The team visited two kebeles per woreda, selected based on access as well as prevalence of key issues of interest to the conflict team, including proximity to emerging rural towns and disputed boundaries.

### **Key Informants and Focus Groups**

The team conducted key informant interviews (KII) with representatives of the following federal institutions: The Ministry of Agriculture, Rural Land Administration and Use Directorate; Ethiopian Agricultural Investment Land Administration Agency; and regional branches of the Federal Office of the Ombudsmen. Representatives of donor-supported projects were also interviewed: LIFT, GIZ (Support to Responsible Agricultural Investment), REILA, and USAID/LAND. With few exceptions, the team also conducted KIIs with regional, woreda, and kebele representatives of the following institutions: local administration, land administration (including land use), women and children's affairs, justice bureaus, courts, and administrative grievance redress mechanisms.

Focus group discussions (FGD) in each kebele were with 6 to 10 representatives from the following groups: (1) kebele land administration and use committees (KLAUC); (2) kebele land court; (3) elders; (4) male heads



of household; (5) married women; and (6) female heads of household (FHH). The total number of FGD participants was 105. A summary of the number of participated is in Table 1.

**Table 1. Number of FGD participants**

KLAUC members	11 (all male)
Elders	16 (all male)
Male heads of household	26
Married women	23
Female heads of household	27
Land court members (Tigray only)	2 (1 male, 1 female)

Finally, the team conducted 24 individual interviews with men and women who had registered a land dispute during SLLC<sup>5</sup>.

The assessment team consisted of: (1) an Ethiopian Political Economist, who also served as interpreter (consultant to LIFT); and (2) an international Attorney and Land Conflict Expert (consultant to LIFT).

### **Limitations.**

There are several notable limitations to this assessment. First, the physical scope of the LIFT Programme impact areas is vast. Given the size of the team and amount of time allocated for field visits, it was only possible to conduct research in one woreda per region, with the exception of SNNPR. And yet, each region has its own regional land law as well as historical land-related experiences. The relevant regions are home to several (or many) religious and ethnic groups, as well as varied current land and dispute resolution customs and practices. Second, the security situation in Amhara prevented the team from conducting research there and influenced the selection of the woreda in Oromia.

Third, given the linguistic diversity within the regions, many of the FDGs required a three- way interpretation, rather than two-way (Amharic and English), reducing the amount of time allowed for asking and answering questions.

Finally, the current tensions around land relations in the regions may have influenced the identity of willing participants as well as the information those participants were willing to share with the team about land relations and disputes.

The effect of these limitations is that the findings have to be considered in the context in which they were gathered. They cannot reflect the full breadth and diversity of practice and experience in land disputes and their resolution in each region and in woredas in each region. The findings are also based on limited field work in three regions carried out against the backdrop of an element of civil discontent, voiced through demonstrations and protests in some areas and that may be indicative of more widespread concerns.

## **Findings & Analysis: Land Conflict Drivers**

Conflicts are a natural and common occurrence among people and societies. The CSC definition of “conflict” is “the result of parties disagreeing and acting on the basis of perceived incompatibilities” (CSC 2012). Thus, conflict “is a necessary outcome of different people pursuing their interests and exercising their freedom, and it can be a powerful force for positive change and growth. It can drive innovation and motivate performance, encourage partnerships, and induce efforts to reduce injustice” (USAID 2012). Disputes may escalate when there is no viable forum in which grievances can be aired.

“Drivers” of conflict are generally those dynamics or circumstances that exist that may contribute to or exacerbate potential conflict. They are often structural and not possible to quickly address. All development interventions should be conflict sensitive but not all are designed to mitigate the effects of conflict drivers.

Although it is very difficult to assess with any degree of accuracy to what extent each driver individually contributes to conflict. The analysis below attempts to break this down by region

<sup>5</sup> During each individual interview, the team requested permission to share his or her name, story and image. If the person refused permission, then his or her story is not included here but considered in the broader analysis

## Population Growth, Density and Demand for Land

Despite Ethiopian citizens' constitutional right to use rural land as a basis for their livelihood,<sup>6</sup> the country's increasing population and finite amount of land is causing increased competition over land and possibly is creating a generation of rural landless.

Ethiopia has been experiencing decades of rapid population growth. Most recently (2010 to 2015), the population has been increasing at an average annual rate of 2.5% (UN 2016). For the same period, women were giving birth to an average of 4.6 children (UN 2016). As a result, the country is experiencing land scarcity in parts of the highlands where population densities are now very high and farm sizes quite small (Bezu and Holden 2014).

With an average rural parcel size of 1.22 ha nationwide (with 57% of households holding less than one hectare), growing families are finding it more and more difficult to bequeath sufficient size parcels to all of their children (Bezu and Holden 2013). Female children are even less likely to inherit due to land scarcity (Bezu and Holden 2013).

One study found that rapid population growth has resulted in a shortage of agricultural land, combined with fragmentation, which is negatively affecting smallholder agriculture and sustainability of rural livelihoods. The study recommends further interventions in family planning, intensification of agricultural production and enhancement of off-farm livelihood opportunities (Teshome 2014).

Such population growth and a finite amount of suitable agricultural land are resulting in an increase in the number of rural landless households. For example, the landless comprise 11.1% of farming households in Tigray, as compared to 13.6% in Oromia and 17.6% in SNNPR (Teshome 2014).

A study of rural livelihoods available to youth in Oromia and SNNPR found that the opportunity for agricultural land access is "very bleak" for youth in both regions (Bezu and Holden 2014).

The study also found "a glaring lack of local non-agricultural employment opportunities" (Ibid.). In rural communities with highly functioning rental markets or where there are a lot of off-farm agricultural opportunities, youth's lack of long-term access to agricultural land would not be a major concern. Under those circumstances, youth interested in farming can acquire land and/or supplement their inheritance. Others may enjoy non-agricultural livelihoods.

Landlessness was one of the main concerns of the woreda administrator in Tigray with whom the team met, characterizing the issue as "highly worrying." Out of 38,000 households in Hintalo Wajirat Woreda, there are 31,300 landless individuals. The government tries to provide landless youth, in particular, temporary access to communal land and land on slopes. Other government programmes to help the landless include assistance forming production cooperatives on communal lands.

In contrast in Tigray, the Sire woreda administrator indicated that although there are landless households, landlessness is not necessarily a critical problem. (A Sire woreda land administrator estimated that 30% of the woreda population was landless youth.) He cautioned the team to not assume that being landless means being poor, noting that landless families rent in land and sharecrop. The administrator noted (and the team later confirmed) that communal land couldn't be given to the landless because there is no policy to that effect. Communal land can only be allocated to investors.

In SNNPR, landlessness was present but not indicated as a considerable concern of the officials interviewed. The exception was the President of the woreda court in Mierab Badawacho who expressed concern that landless youth are being forced to engage in unlawful activity to support themselves because they have no training to create jobs for themselves.

Every government land official interviewed indicated that land redistribution is not a solution to the landless problem, unless a person passes away without any heirs.

A growing rural population is increasing the demand for – and therefore competition over – land. In particular, large numbers of landless youth appear to be without opportunities to support themselves and their families. Landless youth is a challenge not only in Ethiopia but a major concern globally. A large population of unemployed youth may threaten political stability unless acceptable livelihood opportunities are available if youths become so frustrated that they feel that protest and disturbance are the only way they can give their concerns voice.

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<sup>6</sup> Any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land." Fed. Procl. No. 465/2005, sec. 5(1)(b)

## Decreasing Availability of Grazing Land

With the largest livestock population on the African continent, Ethiopia's livestock sector contributes to the livelihoods of 60–70% of Ethiopia's population, mostly smallholders, and accounts for 12–16% of total GDP and 30–35% of agricultural GDP (USDA 2016). Moreover, 90% of Ethiopia's crop production is dependent on animal draft power (USDA 2016).

Therefore, as demand for agricultural land increases, so does the demand for grazing land. Although population growth may be a factor here as well, another significant consideration is the decrease in the volume of available grazing land. The “combination of more people with more animals competing for the use of ever shrinking pastures and water sources does produce conflict” (USAID 2011).

As discussed above, grazing land in Oromia, SNNPR, and Tigray is typically communal land. Significantly, although the LIFT Programme was designed to exclude pastoral and agro-pastoral woredas but, as is often the case in many woredas, individual landholdings abut communal lands.

Key informants in all three regions (as well as available literature) note with concern the increasing encroachment of farmers onto communal lands and assertion of ownership over that land. In Tigray and SNNPR, key informants indicated that communal land is often temporarily allocated to the landless.

Finally, the federal or regional governments can allow private investment in pastoral areas. The 2005 Federal Rural Land Administration and Use Proclamation – and its regional equivalents – provides that, “communal rural land holdings can be changed to private holdings as may be necessary (sec. 5.3). Thus, the federal or regional governments may allocate such land to agricultural investors (Rahmato 2011), and sometimes characterize communal land as vacant and therefore available for allocation to investors (IIED 2014).

Pressure from agriculturalists, pastoralists, landless, and large-scale investors are all vying for a shrinking amount of grazing land. In the absence of a comprehensive legal framework to allocate and regulate the use of pastoral lands, competition over such land will continue to increase. For more discussion on that competition, see Section on Boundary Disputes.

## First-Level Land Certification

Ethiopia's first-level land certification (FLLC) involved the demarcation and registration of land plots using simple local technologies. Plot boundaries were determined by field markings, based on the memories of neighbours. No parcel map or sketch was provided. The initial cost of this programme was extremely low (approximately 1 US\$ per farm plot or less), impact evaluations indicate significant improvements in tenure security, as evidenced by increased land productivity, investment, and rental market activity (Bezu and Holden 2014b).

Almost every key informant land official shared current issues and concerns emanating from FLLC. For example, they identified the significant number of border disputes due to the lack of maps during FLLC. There are also marked issues associated with FLLC related to maintenance and updating of the registry as many adult children who had inherited land subject to first-level certification lacked evidence of the transfer through inheritance. Finally, there also was an issue with FLLC in that married women's use rights were routinely excluded from the certificates (Girma and Giovarelli 2014). For example, Tigray did not require joint spousal certification so the vast majority of FLLC certificates were in the husbands' name only. And although Oromia required joint spousal certification, it did not require photographs of both the husband and wife, leading to most certificates with only the husbands' photograph.

For the above reasons, key informants and focus group participants constantly pointed to FLLC as a source of current land disputes that could ultimately lead to wider conflict. They also, however, noted the many ways that the LIFT Programme was correcting the three issues mentioned above.

## Urban and Peri-Urban Expansion

In a context where populations are growing rapidly, so too does the need for additional land. In each woreda visited, “informal rural towns” are emerging, as families in these towns grow and rural residents move into town to take advantage of services and/or pursue off-farm employment opportunities. Expansion of towns or cities is often envisioned as part of a land use planning process where the future needs of urban areas are anticipated.

Land use planning is not the typical means of expanding administrative units. Rather, jurisdictions often have procedures to annex land. Or no annexation is necessary and the neighbouring jurisdictions plan land use side by side, without a legal change in the administrative unit.

Ethiopian law provides no legal framework governing the determination or change of administrative boundaries due to the fact that there is no national legal map of administrative boundaries and as yet no national Land

Policy.<sup>7</sup> It also does not provide a procedure for the annexation of land of neighbouring administrative units nor encourages from a policy perspective neighbouring jurisdictions to jointly plan future land uses together without a need to change the designation of the administrative unit. According to key informants, the only available legal tool is expropriation and so that is the legal tool being used.

Generally, the power to expropriate is the legitimate government authority to take or authorize the taking of *private property* for public purpose or use without the owner's consent but conditioned upon the timely payment of just compensation. Thus, where a rural town needs to expand, individual landholdings in the neighbouring *kebele* are expropriated. This is regarded as a necessary practice for the Ethiopian government, taking land from small-scale farmers to provide land for rapidly growing cities and industrial investment projects (Harris 2015; IIG 2015).

Upon expropriation, households must be compensated with equivalent land in another part of the area where they live, or, if there is no land, financial compensation. Officially, Proclamation number 455/2005 Article 8 stated that households should be paid 10 times the average annual income secured during the 5 years preceding the expropriation of the land. In practice, this figure is impossible to calculate for an individual plot, so administrators calculate a common price per square metre for the whole project area instead (Harris 2015). Unfortunately, problems arise in the process of expropriation, including untimely and inadequate notice and/or compensation (Harris 2015).

Moreover, Ethiopia's administrative boundaries are not exhaustively defined in all areas and most rely on maps created for the periodic census which does not always reflect the political boundaries of regions, woredas and kebeles. This has the potential to drive disputes and conflict when demarcation is initiated.

Hale a farmer in Tigray, holds three agricultural parcels, which he received through land distribution. Those parcels add up to one hectare. He grows teff, wheat, and barley. He holds a first-level land certificate.

During SLLC, he received only two certificates. He learned at that time that the neighbouring municipality (pictured behind him at the bottom of the hill) had expanded to

include one of his parcels (0.75 ha out of his one hectare). He had received no notice. He is still cultivating the land but has no idea if he will be able to keep the land. Municipal officials have told him "not to worry."

Approximately 50 to 60 households are in the same situation as Hale's household.<sup>8</sup>

### Large-Scale Land Investments

In addition to excluding pastoral and agro-pastoral woredas, LIFT excludes woredas with commercial investments. The field team encountered no significant issues related to commercial investments and desk research findings on large-scale land-based investments will not be repeated here. That being said, the topic is included here to ensure this report identifies key drivers in the relevant regions.

### Climate Change

Similar to large-scale land investments, climate change is "a huge challenge to Ethiopia and its people" (NCEA 2015). Its vulnerability to climate change is due to increasingly unpredictable or sometimes even failure of seasonal rains (NCEA 2015). Notably, "high and increasing population density increases climate change vulnerability because it decreases the amount of resources (including water and food) available per person and may lead to resource conflicts" (NCEA 2015).

Given the scarcity of studies on the linkages between climate change and conflict, USAID undertook an analysis of a number of case studies on climate change and conflict in pastoral areas in Ethiopia (USAID 2011). Among others, the study concluded:

[P]astoralist communities, government at all levels (federal, regional, zonal, woreda), and the donor community need to address the question of the impact of climate change on pastoralism and the potential for conflict at two levels:

1. Aggravated resource scarcity and resource competition as a result of climate change; and
2. Even more fundamental threats to pastoralism as a viable livelihood and the development of livelihood alternatives for increasing numbers of pastoral dropouts (USAID 2011).

<sup>7</sup> A representative of the USAID/LAND project shared that the absence of such law was pointed out to the government but, at that time, there was no interest in addressing it

<sup>8</sup> The taking of rural land for urban expansion and development is well documented, see e.g., Belachew (2013); IIG (2015).

The study also noted the promise of peace committees in: A window of opportunity has opened in which government authorities, frustrated by the persistence of conflict in pastoralist areas, have engaged with and solicited the assistance of elders, community leaders, and customary institutions in dispute resolution and conflict mitigation.”

In the communities visited, the field team found few acute climate-related challenges with the exception of two kebeles (Sire in Oromia and Mierab Badawacho in SNNPR). The farming communities had experienced little to no rainfall over the past months. As a result, agricultural yields and food supplies were low and being supplemented by USAID-supported food distribution programmes. Kebele leaders indicated that the food aid allowed residents to remain in the community rather than migrate in search of other livelihood opportunities.

### Weak Land Governance

The World Bank has created a Land Governance Assessment Framework (LGAF), a diagnostic tool, which defines the term “governance” as “the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services” (World Bank 2011).<sup>9</sup> Applied to the land sector, this definition encompasses all of the government functions related to land management and administration, including “the way in which disputes are resolved and conflict is managed” (World Bank 2011).

Government key informants in all three regions raised concerns about land governance issues. For example, noting “the lack of good governance,” one informant in Tigray referred to the substantial delays in providing land-related services as well as implementation inconsistent with the legal framework. Another in Tigray characterized the lack of capacity of the KLAUCs as “bad governance.” In both SNNPR and Oromia, government informants related the governance challenges associated with expropriation, including lack of capacity to pay timely compensation. In Oromia, a government official brought up the issue of “corruption” in the form of the practice of issuing multiple titles to a single parcel. Another government informant in SNNPR, however, emphasized the importance of resolving land disputes as a good governance issue.

Corruption is perceived to be a serious problem in Ethiopia. In the 2007/08 EC? Annual Report of the country’s Federal Ethics and Anti-Corruption Commission (FEACC), 28 of the 63 cases investigated during the year were in the land administration and development sector (ACRC 2014, citing World Bank 2012). Corruption in the land sector may take a variety of forms, ranging from petty/bureaucratic corruption and corruption in auctioning processes, to state capture, which means “a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation’s policies, legal environment and economy to benefit their own private interests.” In the land sector, this means that those in power may illegally transfer lands to themselves or their allies (ACRC 2014).

To the extent that land governance improves, so too will efforts to mitigate land conflicts.

### Findings & Analysis: Land Disputes

For purposes of this analysis, the research focuses primarily on land disputes as these are most relevant to the programme.

The top three most common types of land disputes reported are: (1) border disputes, especially involving communal lands; (2) inheritance disputes; and (3) transactional disputes, i.e., gifts, sales, and rentals.<sup>10</sup>

### Findings from Field Research

#### ***Border Disputes, especially involving Communal Lands***

There was almost consensus among key informants and focus group participants that the most common type of land dispute in the sites visited are border disputes. To a great extent, boundary disputes are most prevalent between individually held land and communal land. Private landholders are either intentionally or unintentionally encroaching into communal land. There were several instances reported of individuals claiming ownership over extensive swaths of communal land.

<sup>9</sup> The RLAUD and The World Bank have been applying the LGAF to Ethiopia since 2014. Unfortunately, findings from the land conflict and dispute resolution section are not yet available

<sup>10</sup> The findings of the 2012 USAID *Situational Assessment on Land Dispute Resolution* conducted in the same four regions as LIFT differed slightly in that land inheritance disputes were most in magnitude, followed by either border or transactional disputes. The methodology in that study differed from this study, however, in that it appears more data was collected from the *courts* – thus, respondents would be referring to the volume of such disputes taken to court (USAID 2012).



To a lesser extent, border disputes are between neighbours (private individuals) with adjacent parcels, where a landholder is encroaching on his or her neighbour's land. These circumstances often involve encroachment onto the land of holders perceived to be less powerful such as female headed households.

Interviewees attributed the high prevalence of border disputes to the FLLC methodology that only loosely determined and demarcated boundaries. Another reason sometimes given is because flooding can wash away natural boundary indicators.

The team also found quite a few instances of boundary disputes between administrative units, i.e., between two kebeles and between two woredas. In these instances, government officials indicated that the resolution of such disputes is left to the political process.

The one exception to the high prevalence of border disputes was in Hintalo Wajirat, where the woreda administrator indicated that disputes between parties to both legal and illegal land sales was greater than the number of boundary disputes. (During the Helassie regime, sale of land was legal.) The issue of land sales is discussed more fully below.

One significant boundary dispute identified during the field research that had developed into an inter-community conflict, was between the regions of Tigray and Afar. The woreda administrator and elders in the Tigray woreda of Hintalo Wajirat reported a continuous effort on the part of the Afar to cross the regional border and utilize grazing lands within the woreda.

The grazing lands in question are subject to an informal pasture management plan under which the community agrees to not use the land for a six-month period. For the other six months, the community has agreed that only oxen will be allowed to graze.

The Afar periodically graze their camels and goats on these lands because, according to the Tigrinya elders, during the dry season, the Afar have a shortage of suitable grazing land.

According to the Tigrinya elders, this issue has been going on since the imperial era. For the past ten years or so, the Tigrinya elders have held monthly meetings with the elders of Afar and also meet if there is an incident related to the grazing land. The elders have agreed on a system of fines and penalties. As stated by one Tigrinya elder, "For us, it is very serious. The fines and penalties. It is most serious for us."

The elders perceive the issue as the Afar asserting ownership over the grazing land – wanting to annex the land – while the woreda administrator perceives the issue as only a dispute over access to the grazing land.

Unfortunately, an interview with the Afar elders was not possible<sup>11</sup>.

### **Inheritance Disputes**

Inheritance is one of the primary means of acquiring land and as a result is one of the three most common types of land disputes identified in the research sites. Such disputes take many forms and can involve many family members.

There appears to be no one specific type of inheritance dispute. Such disputes are prevalent among siblings (between brothers and between brothers and sisters), between father and son (less common), and between widows (with and without children) and their in-laws. In Tigray, this issue is particularly acute because if a person leaves the area for over two years, he or she loses the right to inherit.

One type of inheritance dispute that was repeatedly identified (that also can be categorized as a transactional dispute) is where a father had gifted land to his adult children during his lifetime but failed to register or otherwise document that gift.

### **Illegal Occupation**

Residents of emerging rural towns, particularly in Tigray, reported a considerable number of illegal occupations of their land. These areas did not go through FLLC. In most instances, a

stranger comes to town and either begins building a house on occupied land or asserts ownership over occupied land so that he or she can build a house. In many instances, the occupant of the land is a FHH. Several key informants and FGD participants speculated that perhaps such individuals are motivated by the belief that they will profit either due to its eventual urban location or by the potential for expropriation and therefore compensation.

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<sup>11</sup> For a lengthy discussion of the history and context of this relationship, see Tesfay, A. (2012). "Dynamics of Intercommunal conflict in north east Ethiopia: the case of Wejerat People and their neighbouring Afar," in *Anthology of Peace Studies*, Vol. 3. Addis Ababa: Institute for Peace and Security Studies

Unfortunately, in Tigray, such disputes are not registered during SLLC but instead appear to be delayed. FGD participants said they are frustrated at the failure to address this issue as well as what appears to be unclear prioritisation on the part of the KLAUC and kebele land court.

As but one example, for over 30 years, Etsaye (pictured below) has been living in a house that her mother purchased when land sales were legal. At that time, the land was purchased from a divorced woman. Etsaye is a widow and mother of three, who lives on her pension of 200 birr per month. When her husband died in the war 17 years ago, the kebele built the widow a new house on the parcel. She has no certificate from FLLC because of the location of the land.

A young couple who lives in Afar is claiming ownership of the land<sup>12</sup>. The parties are litigating the case. Etsaye says she is exhausted and is losing money. She does not know where she will go if she has to leave the land. According to one source, the Tigray government is now in the process of developing guidelines to certify the land in towns.

### Transactional Disputes

Transactional disputes typically take three forms: (1) an undocumented gift; (2) a sale; or (3) in the context of a rental agreement.

**Undocumented gifts:** The most common circumstance of a dispute following an undocumented gift is where a father gives agricultural land to his married son who then cultivates it, often for many years. Upon the father passing away other individuals alleging to be heirs will appear to challenge the current user's rights. Due to absent written documentation, this gift becomes an inheritance dispute, requiring a court determination of the right heir(s).

**Land sales:** The sale of land in Ethiopia has been prohibited since 1975, most recently under the 1995 Constitution (Holden and Bezu 2014). But legal land sales occurred before 1975 and illegal land sales continue, despite the ban on sales. During SLLC, the question presented is in whose name should the land be certified? In the first case, the legal buyer rarely has documentation and in the second case neither the buyer nor seller have documentation.

**Rental agreements.** Finally, disputes arise in the context of an oral agreement to rent out land. The parties rarely know the terms or have forgotten the terms. Such disputes most often arise where the landlord is a FHH, presumably because the tenant perceives her to be weak.

### LIFT Data on Registered Disputes

LIFT is tracking data regarding three types of land disputes registered during SLLC: (1) inheritance; (2) boundary; and (3) ownership. It also has a category of "other."

Overall, communities participating in the SLLC process registered surprisingly few disputes, i.e., less than half of one per cent overall. That may be explained by the fact that boundary disputes are the most common, many of which are left over from FLLC. For example, in Oromia as of 15 September 2016, there were 1,900 registered disputes out of 589,110 parcels demarcated, or 0.322%. By the same date in SNNPR, there were 652 registered disputes out of 272,028 demarcated parcels, or 0.240%. And for Tigray, there were 619 registered disputes out of 695,891, or 0.089%.

The LIFT data for the kebeles visited indicates a limited number of registered disputes. For example, for the two kebeles visited in Sire Woreda, Oromia, only 17 disputes were registered: 2 inheritances, 5 ownerships, and 10 other types of disputes. Out of those 17 disputes, men registered 3 of them, women registered 11, and for three of them, the gender of the person is not registered<sup>13</sup>. Dispute data for the two kebeles visited in Tigray show that there was a total of 21 registered disputes, of which 3 were ownership disputes and 8 were boundary disputes, and 10 were "other." Men registered 10 of the disputes and women registered 11 of the disputes. For SNNPR, none of the kebeles had registered disputes.

### Findings & Analysis: Three Legal Pathways for Resolving Land Disputes

Per the TOR, the land-related grievance mechanisms are to be analysed for consistency with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of

<sup>12</sup> The team also interviewed the young couple, which said that they could have bought land and have another house by now for the very same amount

<sup>13</sup> Dispute data from the LIFT project was provided to team on October 20, 2016.



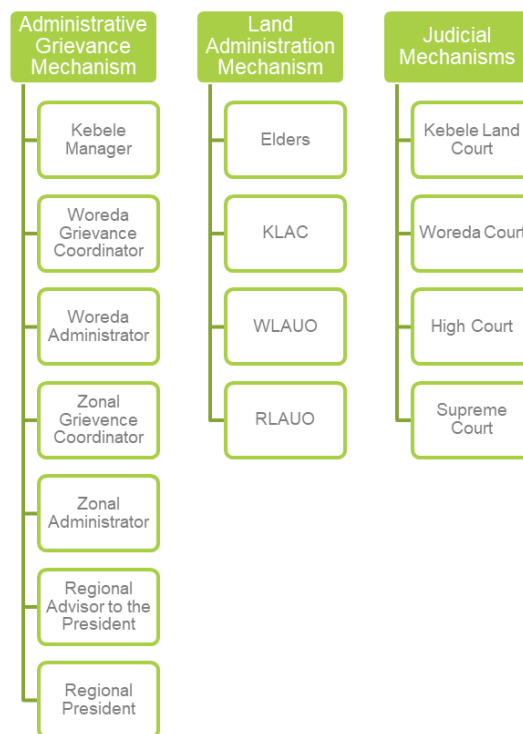
National Food Security (VGGT)<sup>14</sup>. Paragraph 4.9 of the VGGTs specifies government's obligations regarding resource-related disputes:

States should provide access through **impartial** and **competent** judicial and administrative bodies to **timely, affordable and effective** means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide **effective** remedies, which may include a **right of appeal**, as appropriate. Such remedies should be promptly **enforced** and may include restitution, indemnity, compensation and reparation. States should strive to ensure that **vulnerable and marginalized persons** have access to such means, in line with paragraphs 6.6 and 21.6. States should ensure that any person whose human rights are violated in the context of tenure has access to such means of dispute resolution and remedies (emphasis added).

Further, paragraph 21 identifies the dispute resolution guidelines for governments, the most relevant of which are below:

- Ensure accessibility to all, women and men, in terms of location, language and procedures (para. 21.1);
- Strengthen and develop alternative dispute resolution tribunals and ensure that customary institutions provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes (para. 21.3);
- Prevent corruption in dispute resolution processes (para. 21.5)

At the kebele level, there are three legal pathways for seeking redress for a land grievance or dispute: (1) grievance redress mechanisms within land administration; (2) administrative grievance redress mechanisms applicable to all sectors; and (3) judicial mechanisms.



### Land Administration Grievance Redress Mechanisms

The resolution of land disputes is a core component of land administration. Federal Proclamation No. 465/2005 on Rural Land Administration and Land Use specifically includes dispute resolution within its definition of “land administration”:

A process whereby rural land holding security is provided, land use planning is implemented, **disputes between rural land holders are resolved** and the rights

<sup>14</sup> The Committee on World Food Security officially endorsed the VGGTs on 11 May 2012. The VGGTs “promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment.” Since the G20, Rio+ 20, the United Nations General Assembly and Francophone Assembly of Parliamentarians have all encouraged their implementation (FAO 2016).

and obligations of any rural landholder are enforced, and information on farm plots and grazing Land[sic] holders are gathered analysed and supplied to users” (sec. 2) (*emphasis added*)

The regional rural land proclamations define “land administration” similarly. Specific provisions of both federal and regional proclamations govern the conduct of land-related dispute resolution mechanisms such as the kebele land administration and use committees (KLAUC), elders, kebele land courts (Tigray only), and the formal courts. Despite the presence local land dispute resolution mechanisms below the formal courts, “access to justice is difficult” (World Bank 2012).

Significantly, the law and practice of these resolution mechanisms vary between regions and in some instances, practices vary from the law. From a land governance perspective, it is important to ensure that potential sources of land dispute are “handled in a consistent fashion rather than an ad hoc basis” (World Bank 2012).

### **Governing Law and Practice**

Article 37 the Ethiopian Constitution guarantees Ethiopians the right to access justice. Ethiopia’s obligations under international law similarly recognize a right to access justice. According to Ethiopian human rights experts, “the real application of the right [to access justice] for Ethiopians is fraught with multitude of legal and practical challenges. Casual observation reveals that the formal and criminal justice system is neither accessible nor responsive to the needs of the poor, vulnerable, and disadvantaged” (Toggia 2014).

DFID defines access to justice as: “when a legitimate grievance can be resolved quickly and effectively. The grievance may be against the government, a business, a private individual, or a member of the family. It may ... be available through a community leader or traditional council rather than through the state legal system. ... Whether formal or non-formal institutions are used, they are accessible only when they are non-discriminatory, and fair to the poor” (DFID 2002). Access to justice matters because its absence fosters corruption (DFID 2002).

Both federal and regional proclamations govern the resolution of rural land disputes. Federal Proclamation No. 465/2005 mandates that parties shall resolve disputes regarding rural landholdings “through discussion and agreement” (sec. 12). Where agreement is not possible, the land dispute must be resolved by “an arbitral body to elected by the parties” or resolved consistent with regional rural land administration laws” (id.).

**Federal Proclamation No. 465 / 2005, Section 12 on Dispute Resolutions:** “Where disputes arise over rural landholding right, effort shall be made to resolve the dispute through discussion and agreement of the concerned parties. Where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties *or be decided in accordance with the rural land administration laws of the region*” (*emphasis added*)

The regions of Oromia, SNNP, and Tigray have issued their own rural land proclamations with varying provisions. For example;

**In SNNPR**, Regional Proclamation No. 110 / 2007 on Rural Land Administration and Use provides for a party with a land dispute to take his or her case to the KLAUC, who will advise the disputing parties to choose two elders each, and the elders will resolve the dispute by “negotiation and arbitration” (sec. 12(1)). If both parties are satisfied, they receive a written copy of the agreement; if not, both parties are given letter indicating the reasons for the lack of agreement (sec. 12). A party dissatisfied with the decision of the elders has a right to appeal to the Woreda Court (sec. 12(2)). A party dissatisfied with the decision of the woreda court may appeal to the High Court. Such an appeal is final, unless there is an alleged “fundamental error of law in which case the unsatisfied party may appeal to the regional Supreme Court of Cassation (sec. 12(3)-(4)).

**In Oromia**, the legally prescribed process varies slightly.<sup>15</sup> The parties to a dispute are to first go to the “kebele administration” rather than the KLAUC, and then they select two “arbitrary elders (sec. 16). The kebele administration ensures that the elders resolve the case in 15 days (sec. 16). It also ensures that the decision is in writing and registered at the kebele administration with the official seal, with a copy to both parties (sec. 16(1)(e)). A party dissatisfied with the decision of the elders may appeal to the woreda court within 30 days of registration of the decision (sec. 16(1)(f)). There is a right of appeal to the High Court (sec. 16). If the High Court “alters” the decision the woreda court, then the High Court decision may be appealed to the Supreme

<sup>15</sup> Oromia Regional Proclamation No. 130/2007 on Rural Land Administration and Land Use

Court, whose decision is final (sec. 16(1)(i)-(j)). Notably, the Proclamation also allows parties to “resolve their case in any form they agreed upon” (sec. 16(2)).

The process in Tigray also differs from SNNPR and Oromia. Parties with a land dispute in Tigray may take their case to either the KLAUC or the kebele land court<sup>16</sup> (Discussion of the kebele land court is under section entitled, “Judicial Mechanisms.”)

Most rural residents tend to prefer the land administration pathway. He or she will first initiate a land dispute with the KLAUC at the sub-kebele level. At that level, the KLAUC has authority to only mediate the dispute. If dissatisfied, a party can take the dispute to the KLAUC at the kebele level, which has authority to arbitrate, rather than just mediate.

A table summary of the land administration mechanisms legally authorised to resolve rural land disputes in each region is in Annex 1.

### **Resources and Capacity**

The KLAUC, elders, and the kebele land courts are fundamental, legally recognized mechanisms for rural landholders to access justice related to land (although in Tigray elders are only a mandatory step before the kebele land court, but not the KLAUC). These institutions bear significant responsibilities that can affect the constitutional and statutory rights of landholders. The elders committee are responsible for arbitrating disputes whereas the KLAUCs are responsible to provide information and undertake land administration, however in some places, KLAUC arbitrate/mediate disputes.

Limitations impeding their work, however, are evident, which may be undermining their efforts to resolve land disputes consistent with the law and in a timely, fair, and effective manner. First, they receive minimal if any training on constitutional principles such as non- discrimination, land law and administration, and procedure, although the woreda courts try to provide such training, subject to budget constraints. Amhara region used to give regular annual orientation to woreda judges while organising a biannual forum for LACs to give them briefings to ensure participants understood the legal framework.

This has an impact as in some Regions the KLAUC, elders and kebele land courts engage in facilitating negotiations and without appropriate knowledge on the legal framework such as the regional land laws, understanding between these and civil law affects the decision-making process and quality of their service. Speaking about the KLAUC, a land administration official shared that the capacity of the KLAUC “is not up to expectations. They wrongly give decisions.” He also described the KLAUC’s awareness about land administration and law as low because of high staff turnover. From his perspective, within the KLAUC, there is “corruption and bad governance.”

KLAUC members, elders, and land court judges serve as volunteers, receiving no compensation for their time and service. They also do not receive any reimbursement for incurred costs related to their service such as transport or time. And there appear to be no material incentives for such volunteers. Under these circumstances, they may also be susceptible to undue influence from one of the parties (typically the more powerful) and bias in favour of certain social groups; especially due to the social attitude towards gender disparity and attitude on people with physical disability.

### **Authority to Summon**

Another issue is that the institutions (both the elders committee and KLAUC) do not have authority to summon or require a party to appear before it. Thus, impeding their effectiveness. An administrative summons directs the person summoned to appear before the elders committee and testify and/or otherwise produce information. As a consequence, a recalcitrant defendant may very well choose to not appear, thereby denying the plaintiff his or her opportunity to seek assistance in resolving the dispute.

As an example, Masebo (pictured), a day labourer from SNNPR, registered an inheritance dispute against the brothers of his deceased father’s second wife. They all claim the right to inherit their father’s land. The elders want to split the land into three, but one brother refuses to appear as he is currently renting out the disputed parcel and has no incentive to appear as it risks him losing rental income, and the elders have no authority to compel him to appear.

Although Masebo has the right to go to the woreda court. During the field work the process had not been completed and the elders’ committee hadn’t made a decision and had advised him to go the court. Masebo will remain a landless day labourer for the foreseeable future.

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<sup>16</sup> This analysis is based solely on key informant interviews because the Tigray Regional Land Proclamation No. 239/2006 (Ethiopian Calendar) is available only in Amharic and Tigrinya

### Gender Sensitivity

Among KIIs and FGD participants there were mixed responses to inquiries about gender sensitivity and gender bias among land dispute resolution institutions and actors. The more grassroots the respondent(s) were, the more favourable were the responses in terms of gender sensitivity, even among female respondents. The study team suspects that to some extent grassroots interviewees provided the responses that they assumed were “correct” from the study team’s development perspective.

Thus, whether women are given equal consideration and treatment overall by such mechanisms is unclear. What was clear is that women, and FHHs in particular, reported more delays in having their disputes resolved. This finding is consistent with the regional KIIs within the Bureaus of Women and Children’s Affairs.

See Annex 2 for a brief outline of other gender issues identified.

### Administrative Grievance Redress Mechanisms

#### Governing Law

Each region has issued its own regulation establishing an administrative grievance redress mechanism (GRM) to hear and address the public’s complaints about maladministration by executive organs to ensure good governance and enable “justified, quality, expeditious, and accessible

#### Oromia Regulation No. 154/2013, Section 6 on Objectives.

The objectives of this regulation shall be the following:

1. To ensure good governance through identifying causes of public administration and grievances matters through research and study, to find solutions and provide systems in which the public submit their grievance and complaint in order to get remedy;
2. To protect the public from up and downs and unnecessary expense in getting government service, and to enable justified, quality, expeditious and accessible services through applying all reforms. [government] services”<sup>17</sup> The administrative GRM applies to all offices and services under the executive branch, regardless of the sector. In all LIFT regions, the mechanism is accountable to the Office of the Regional President.

Amhara was the first region to establish a GRM for public maladministration, which has been found to “approximate” international best practices (Randolph and Edjeta). Tigray, Oromia, and SNNPR’s GRM is largely based on the Amhara model (Randolph and Edjeta).

In Oromia,<sup>18</sup> the GRM was first established by Regulation No. 163/2003 (ETH) and is now governed by Regulation No. 154/2013. In that region, much of the grievances are related to expropriation and, more particularly, compensation – its timeliness and/or adequacy. In other cases, the landholder does not want to move.

In Sire Woreda, Oromia, the Head of the Administrative Office oversees three grievance experts. According to her, the grievance office is there to hear grievances from all sectors and give directives to responsible sector offices. Upon receipt of a complaint, her office registers the complaint and then gives it to a grievance officer. That officer writes a letter to the responsible office to bring it to their attention.

If the issue is about demarcation, for example, the office will advise the person to the woreda land administration and advise them to come back with a decision. If the responsible sector office does not make a timely decision, the grievance office will make the decision on its behalf. The issue of “timeliness” depends on the nature of the dispute but is usually a maximum of one month.

The office will not hear disputes where the government is not a party; instead, they advise the parties to go to court.

The main qualification to be a grievance officer is that he or she must hold a bachelor’s degree in a variety of disciplines or a diploma with adequate experience. The three grievance experts in Sire woreda had “not yet” received training on land law or administration, despite that land-related complaints are the most frequently received.

<sup>17</sup> This section is based on the Oromia Regulation No. 154/2013, “A Regulation to Provide a System to Handle Public Administration, Complaint and Grievance Matters of the Oromia National Regional State.” The team only has a copy of the Oromia regulation. According to key informants, each region adopted an almost identical regulation

<sup>18</sup> The study team was not able to meet with grievance officers in SNNPR. The team also does not have a copy of the SNNPR regulation

The relationship between the grievance office and the land administration office is one of collaboration, according to the woreda head. Noting the “capacity gap” in land administration, i.e., number of staff, skills and knowledge gap, the woreda head said that there is sometimes a delay, so her office reminds them of a pending complaint. And sometimes they address a grievance together.

Tigray’s GRM is located at the sub-bureau level in the Office of Security and Administration because that office has more power to ensure that grievance-related decisions are enforced (Randolph and Edjeta 2011). One study noted, however, “This organization structure may enhance enforcement capability, but it also raises questions about concerning the ability of the GRM to investigate grievance filed against the security and police services (Randolph and Edjeta 2011). The other difference in the GRM structure is that Tigray eliminated the zonal level of the administrative structure, thus inadvertently streamlining the process of addressing grievances (Randolph and Edjeta 2011).

The Tigray Advisor of the President in the Office of Security and Administration characterized the process for reviewing and addressing a grievance as going back and forth between the grievance office(r) and land administration at each level, in effect, reviewing and/or approving land administration decisions. For example, a dispute will go first to the KLAUC for mediation and then to the kebele manager for a decision. Next to the woreda land administration for a decision, which goes to the grievance coordinator. From there, a complaint goes to the woreda administrator and then the zonal administrator, then to the regional land administration and then to the Advisor of the President. At each stage, the administrative GRM may overturn or affirm the decision of the land administration office. This arrangement “keeps land administration accountable.”

According to the Advisor, the administrative GRM hears individual complaints against another individual and against the government. Sixty percent of the complaints that they receive are land disputes.

It is apparent from a 2011 study that the grievance offices are considering numerous land- related grievance, many of which with positive results for the claimant (Randolph and Edjeta 2011).

### **Limitations**

While well intentioned, the administrative GRM has several limitations. A 2011 study of the administrative GRM identifies seven challenges (Randolph and Edjeta), many of which the study team noticed as well.

First, grievance experts appear to receive little to no training on land law and administration (or other sector’s governing laws) and yet, in many instances they are in a position to evaluate and perhaps change land administrators’ decisions and without adequate training, the validity and technical accuracy of these decisions could be questionable. With the introduction of the RLAS, land law and administration is going to become even more technical, necessitating a high degree of technical knowledge in land matters to resolve disputes.

Second, a lack of awareness on the part of the public and government officials of the existence of the administrative GRM undermines its mandate. None of the FGD participants had availed themselves of the GRM services or even mentioned them as an option for seeking redress. And few of the government KIs knew of the administrative GRM outside of their own offices, although this was less so among Tigray officials.

In addition to the limitations noted in the 2011 study, the administrative GRM in some study sites is exceeding its scope of authority. In some of the sites, the GRM was considering not just complaints about inadequate or untimely provision of *government services* but also land disputes between *individuals*. Parties to a land dispute already have the options of going to court or to the KLAUC for resolution of their dispute. A third option creates even more confusion and wastes government resources. Moreover, a third option creates an opportunity for “forum shopping,” which needs to be discouraged. Forum shopping happens when there are multiple venues with concurrent jurisdiction to hear a specific type of dispute and the plaintiff will choose the forum where he or she is mostly likely to prevail. From the perspective of the plaintiff, forum shopping makes perfect sense. From a rule of law perspective, there ought to be a uniformity of legal outcomes, regardless of the forum.

### **Local Judicial Mechanisms<sup>19</sup>**

#### **Governing Law**

While the KLAUC is an administrative mechanism, kebele land courts in Tigray are established under the judiciary, Code of Conduct No. 240/2006 ETH. (None of the other regions have created such courts.) The local community elects six judges to the land court: three active and three reserves. The main criterion for judges is that they read and write. Overall, the composition of land court judges in Hintalo Wajirat is 60% male and 40% female.

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<sup>19</sup> This assessment was focused on local-level land dispute resolution at the kebele and woreda levels. Therefore, judicial courts above the woreda are outside the scope



Before initiating a case in the kebele land court, it is mandatory for parties to first seek a decision from the elders. When a party initiates a case in the kebele land court, he or she must pay 15 birr. This sum covers the cost of pens and stationery for the judges, who are not otherwise compensated.

Three judges hear and decide each case. An appeal to the woreda court costs 7.5 birr. According to the President of the Woreda Court in Hintalo Wajirat, 50% of cases are appealed.

Several key informants indicated that the kebele land courts hear few cases. From a Woreda Court President's perspective, the advantage of using the kebele land court is that (1) the administrative process is long, and decisions are easily subject to reversal by superiors; and

(2) because this is a judicial process, enforcement is not in question.

The woreda courts are the courts of first instance. Although they are located at the woreda, they are still considered physically inaccessible given the long distances to travel and limited transportation options that are costly for the rural poor; some must walk for hours or days to reach the woreda court (Toggia 2014)..Under this situation it becomes an issue for a widow who has a shortage of money to travel back and forth several times to finish her case

For example, a widow in Hintalo Wajirat had agreed with another landholder to exchange their parcels because in doing so, the location of both parcels would be more convenient for each, particularly now that she is a widow. After receiving all the approvals from the land administration, she was told she must next go to the woreda court. She explained that she travelled there several times but now needed to pay for the transport of witnesses to the agreed upon exchange and that was just beyond her means. Therefore, she was no longer confident that the exchange could take place.

Although there are kebele and cluster level courts In Tigray with the cluster courts having the same power as the woreda court the issue of accessibility is still problematic.

Other challenges are low literacy rates of the rural population and their lack of access to legal information (Toggia 2014). Members of the courts and the legal profession have challenges accessing laws, let alone the general population (Toggia 2014).

### **Limitations**

Unfortunately, the kebele land court suffers from the same limitations as the land administration mechanisms such as resources and capacity, authority to summons, and gender sensitivity. Kebele land court judges received limited training and are volunteers. According to the Head of the Women and Children's Affairs in Hintalo Wajirat, the kebele land courts are inadequate for women to access justice, despite that there is typically one woman on the court.

According to the presidents of the woreda courts in the woredas visited, they face severe budget constraints. For example, in SNNPR's Mierab Badawacho, the court has one computer, one table, and one motorcycle for site visits. Salaries are low and there is an inadequate provision of per diems. Training for woreda judge positions is also limited due to budget constraints, although they have a training manual, which is supplemented with occasional NGO training. The court has a plan to train landless male and female youth who turn to unlawful behaviour, so they can create their own jobs, but budget constraints again do not allow for it. The woreda court in SNNPR's Silte woreda is similarly constrained. They are supposed to employ five judges but can only afford three. In addition, there is a high turnover of court judges due to low salaries. In short, there are not enough judges and insufficient resources.

## **Findings & Analysis: Other Grievance Redress Mechanisms**

A few other grievance redress mechanisms came up during the field visits. Those are discussed briefly below.

### **Federal Office of the Ombudsmen**

Article 55 of Ethiopia's Constitution created the Federal Office of the Ombudsmen, codified in Proclamation No. 211/2000 to Provide for the Establishment of the Institution of The Ombudsman. The Ombudsman is an autonomous federal organ, accountable to the House of People's Representatives (sec. 3). The mandate of the Ombudsman is to "to bring about good governance that is of high quality, efficient and transparent, and are based on the rule of law, by way of ensuring that citizens' rights and benefits provided for by law are respected by organs of the executive" (sec. 5). The powers and duties of the office include receiving and investigating complaints regarding maladministration of government; seeking remedies where the Office believes maladministration has occurred; and undertaking research and studies on ways of curing maladministration, among others (sec. 6(2), (4), and (5)). The Office also may recommend revisions of existing policies, laws, practices and directives with the goal of improving governance (sec 6(6)).

The Ombudsman also has regional branch offices. The Tigray branch office indicated that over the last 12 months the office had considered 348 complaints by 963 people, 80% of which were related to land. Of those 963 people, men filed the majority of complaints at 445, women filed 250 complaints, and 268 complaints were filed jointly.

The office investigates the complaints and typically resolves the problem by speaking with executives. If that is not effective, then the office puts its recommendations in writing to the relevant government office with copies to the woreda council. Any claim can come to the office regarding of whom the complaint is against. For individual complaints against another individual, the Office recommends the parties go to court.

The office also conducts assessments of issues that come up often. In the next twelve months, the Tigray branch office will be conducting an assessment of the land sector in 14 woredas and then depending on the findings, they will select kebeles. The most common types of land complaints are regarding inheritance, compensation, and delays in making any decisions.

Similarly, the Oromia branch office of the Ombudsman is similarly structured and also receives the most complaints about land (the other two sectors with a high volume of complaints are public employment and tax), however there was a limitation in data on the details of these disputes. The Regional Ombudsman shared that given the high volume of complaints about maladministration, it was the Office of the Ombudsman that recommended to Parliament that administrative grievance redress mechanisms be established to filter grievances going to the Office of the Regional Presidents.<sup>20</sup>

### Social Courts

Social courts are created and recognized under state law as part of the judicial system and operate at the kebele level (Randolph and Edjeta).<sup>21</sup> They hold hearings, do site visits, and call individual witnesses. Social courts, however, no longer have jurisdiction to hear land disputes, although in SNNPR, several focus group participants indicated that they still go to the social court for land disputes. For example, a few KLAUC members indicated that if there is discontent with the KLAUC, or if the KLAUC cannot resolve the dispute, parties will go to the social court. Other KLAUC members, however, indicated that the social courts do not hear land disputes.

### Grievance Mechanisms for Large-Scale Land Investments

As mentioned above, the study team did not find issues or disputes related to large-scale land investments in the sites visited in part because the LIFT Programme is not operating in woredas with such investments. Nonetheless, there is a key issue that is relevant from a conflict sensitivity perspective.

A brief review of the 31 land lease agreements between the GoE and various foreign and domestic investors dated 2009 to 2012 indicates that the only contract provision regarding disputes is between the GoE and the investor itself.<sup>22</sup> No provisions address the mechanism for grievances between the investor and communities affected by the investment. Thus, as it currently stands, communities and individuals negatively affected by a large-scale land investment must resort to one of the three pathways above, which do not seem an appropriate first step.

The VGGTs call for business enterprises to respect human rights and legitimate tenure rights (FAO 2012) as well as to establish non-judicial mechanisms to provide a remedy where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights (par. 3.2). An effective means for implementing this guideline is for governments to require large-scale investors in land to implement such a mechanism locally (FAO 2015).

### Interactions with the LIFT Programme

This section considers the interactions between: (1) land conflict drivers, land disputes, and grievance mechanisms; and (2) the LIFT Programme.

<sup>20</sup> The study team was not able to meet with the SNNPR branch of the Office of the Ombudsman

<sup>21</sup> The Federal States that have established Social Courts are Tigray, Amhara, Oromia, SNNPR and Harari. The statutory authority for social courts could not be found

<sup>22</sup> The boilerplate provision, typically article 17, reads: "In the event of a dispute arising out of or in connection with this contract, both parties will do their utmost to resolve the dispute amicably and to their mutual satisfaction [or benefit] and if they are unable to resolve the dispute, it shall be referred to the Ethiopian Federal Court."



## Current Law and Practice Governing Land Dispute Resolution may Undermine the Land Tenure Security Objective of SLLC

The legally recognized land dispute resolution institutions discussed above are located at woreda level in most of the regions and appear to have an iterative appearance. Moreover, the general lack of capacity and exposure to the laws and regulations exacerbates the situation. This lack is particularly disturbing for two reasons: (1) the GoE and its partners are investing in an effective rural land administration system so as to ensure the security of tenure; and (2) the GoE is presumably legally guaranteeing the certified rights, absent allegations of fraud.

The study team learned of many instances where, at dispute resolution proceeding before KLAUCs and elders, a first-level land certificates was simply one piece of evidence among many about a right to land. Even oral testimony could be weighted greater than documentation of a right certified during FLLC.

The fact that such institutions are based on the efforts of volunteers to determine rightful owners or other rights is similarly concerning, as it would be expected that such matters would be given a higher profile and the attention of trained and paid staff.

The study team is aware of no reason that similar outcomes of dispute resolution proceedings will not occur where an individual holds a certificate generated during SLLC. Thus, if land dispute resolution in Ethiopia is not strengthened and streamlined, certified rights there will always be a risk of arbitrary, illegal and/or ineffective processes and decisions regarding those certified rights.

### Perceived Benefits of Certificates and LIFT's Other Activities

At the same time that LIFT is implementing SLLC, the Programme also is piloting an access to credit activity for SLLC beneficiaries. Assuming that the access to credit activity is expanded, and there is a significant perceived benefit accruing from such credit, households in neighbouring kebeles where SLLC has not be implemented may become frustrated by their neighbours' good fortune.

### Concern that much left over for RLAS

Given that some of the woreda land administration officials appeared less confident now that the SLLC teams have left their woredas, there is a concern about the activities that now require to be addressed. For example, certification of informal rural towns remains to be completed as does investigating and updating any certificates that have been flagged as having incomplete information. Also, where parcels were illegally sold, SLLC teams registered the parcels in the name of the sellers as instructed, although many are now deceased. This is the case primarily in Tigray, where it is recommended that further field research is carried out with a view to supporting government in establishing formal procedures for handling similar cases. The roll out of the RLAS programme will also need to take account of these issues and there is also an opportunity for REILA 2 to help to address any additional capacity building requirements in LIFT woredas.

The team also understands that the GoE is implementing the SLLC in other, non-LIFT woredas. It is not clear, however, how quality will be ensured such that the SLLC effort does not have the same challenges as the GoE's implementation of the FLLC.

### Other Issues Related to SLLC Procedures

Finally, the objective of this assessment was in no way to evaluate implement the SLLC process. Given the timing of this assessment, however, the study team learned of certain issues that are relevant here.

First, key informants and FGD participants often shared that although married women are attending the public display portion of SLLC, they are often absent from the demarcation and adjudication process. (Notably, FHHs have high turnout for demarcation and adjudication as well as public display.) When asked the reasons that it is important for married women to participate in demarcation and adjudication, the reason was because their lack of attendance and knowledge of the specific boundary to their land will be a source of a dispute in the future. Neighbours or other community members may later take advantage of her lack of knowledge, upon the passing of her husband. Or in the event of divorce, she will also be at a disadvantage in terms of distribution of the land.

Second, a few government officials expressed concern that, in some cases, the period for the SLLC public awareness raising activity was shortened.

### ***Recommendations and Next Steps***

A summary of the main recommendations from this report is noted below along with proposals for the next steps to support reform in grievance redress mechanisms, generally.<sup>23</sup> **SR** refers to the summary recommendation(s) while **NS** refers to the proposed next steps.

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<sup>23</sup> Recommendations on improving conflict sensitivity in the SLLC manual will be generated during and after the conflict sensitivity training of LIFT staff, so as to consider and incorporate staff's insights and recommendations

No	Summary Recommendation	Next Step
1	Assess the land-related functions, experiences and capacities of the administrative GRM officers and leadership; and gather information about specific complaints and their resolution on the current land administration system.	Based on the results of the assessment, explore opportunities for the administrative GRM and land administration personnel to jointly develop a single, streamlined procedure (to develop standardized operation procedures) for the handling of grievances related to the land sector's provision of services.
2	Build an understanding of the land dispute resolution actors, such as the KLAUC, elders, kebele managers, kebele land courts, on considering the differences between issues of fact and issues of law while they are resolving disputes. Building this understanding of constitutional rights of the land dispute resolution actors based upon the land proclamations and regulations should ensure that legal reforms are adopted correctly, and that women's' empowerment rights are protected.	<ul style="list-style-type: none"> <li>• Channel resources (finance and material) and provide technical support to Woreda court judges to conduct the training as well as follow-up mentoring sessions to all actors mentioned above. Consider whether such training could also target administrative GRM personnel. Provide a legal framework pack such as copies of all relevant proclamations, regulations, directives, and codes of conduct as well as simplified summaries of those legal documents to these actors.</li> <li>• LIFT to promote inclusion of provisions governing land dispute resolution to narrow the jurisdiction of the KLAUC (and elders) to prevent decisions regarding certified rights during the current proclamation redraft process.</li> <li>• LIFT to promote that legal reforms are adopted that dictate narrow circumstances for making any changes to the identity, rights and parcel information contained in the second-level land certificates, preferably only by court order or a quasi-judicial hearing of a land registrar.</li> <li>• LIFT should encourage greater participation (consistent and regular) of women on the KLAUCs working with LIFT, which should encourage more female landholders to step forward and participate.</li> </ul>
3	Invest in land-related legal literacy campaigns in LIFT operational areas.	The campaign should target poor rural households, particularly FHHs. The campaigns need to not only be about land rights and remedies but also more detailed information about pathways for resolving land disputes and appeal rights.
4	Ensure two-way communications and coordination about LIFT programming with those offices engaged in on-going practices related to land dispute resolution	Invite representatives of the regional administrative GRMs as well as representatives of the branch offices of the Federal Office of the Ombudsmen to the LIFT Steering Committee. In addition to this LIFT should promote a platform where these actors can exchange information

No	Summary Recommendation	Next Step
5	Conduct a mini-survey to establish the views of farmers in terms of what improvements can be made and what information is lacking on land disputes in the process of SLLC.	Based on the survey results - review and re-evaluate training and communications given to Woreda land administration staff once the SLLC process is ended, to identify how to empower the Woreda teams. Accordingly, consider also to address any gaps identified in the survey through related LIFT programmes.
6	SR 6. Review and revisit the SLLC manual and incorporate additional sections that would address newly emerged issues as Next Steps indicated below.	<ul style="list-style-type: none"> <li>• Draft a section of the SLLC manual for Woreda land administration on how to remove a registered dispute and register the parcel in the landholder(s) name(s)</li> <li>• Add a field for “gender” on the Dispute Receipt in the SLLC Manual (page 10).</li> <li>• Conduct conflict sensitivity training to LIFT staff and other key stakeholders engaged in SLLC to improve conflict sensitivity issues in the SLLC manual.</li> </ul>
7	SR 7. LIFT should review and revisit the existing data management, monitoring and reporting procedures and address gaps including the timely communication of data, resource person, land ownership status, data disaggregation,	<ul style="list-style-type: none"> <li>• Data on the number and types of registered land disputes should be shared to Woreda land administrators as soon as available.</li> <li>• Designate a LIFT staff member to monitor the number and type of registered disputes and report anomalies to the LIFT Land Coordinator.</li> <li>• Disaggregate the “ownership” field (ownership status) for disputes to capture transactional disputes such as those related sales, rentals, gifts, or sharecropping.</li> <li>• Disaggregate all data by gender and make available to LIFT staff and government counterparts, including the Bureaux of Women and Children’s Affairs.</li> </ul>
8	LIFT should strategically monitor the dynamics of SLLC provision and associated conflict that could be raised as a result of credit access through SLLC	Monitor for any indications of increased tensions between communities with potential access to credit based upon having SLLC and those which could be potentially denied accessing credit because of lack of SLLC.

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## Annex 1 – Institutions Authorized by Regional Law to Resolve Rural Land Disputes

Table 1. Institutions authorized by regional law to resolve rural land disputes					
	Step One	Appeal to:	Appeal to:	Appeal to:	Comment
<p>OROMIA</p> <p>Proclamation No. 130 / 2007</p> <p>Regulation: n/a</p>	<p>Procl: Kebele administration, parties each elect two elders who arbitrate the dispute within 15 days, copy to both parties;</p>	<p>Woreda Court within 30 days of decision</p>	<p>“High Court”</p>	<p>Supreme Court if High Court “altered” decision of Woreda Court. Decision is final.</p>	<p>“Notwithstanding all of the above, parties have right to resolve in any form they agree upon.”</p>
<p>SNNPR</p> <p>Proclamation No. 110 / 2007;</p> <p>Regulation No. 24 / 2007</p>	<p>Procl: Kebele land admin and use committee, parties choose two elders each; resolved by “negotiation and arbitration.”</p> <p>Reg: if “local elder reconciliation,” both parties get written copy of agreement; if not settled by local elder arbitration, both parties get letter indicating the reasons.</p>	<p>Woreda Court</p>	<p>“Higher Court” – final unless alleged “fundamental error of law</p>	<p>n/a</p>	<p>Regulation</p>
<p>TIGRAY</p> <p>Proclamation No. 136 / 2007, art. 28.</p> <p>Regulation 48 / 2008, arts. 48 to 52</p>	<p>Resolved the usual way of the surroundings through elders or through reconciliation</p> <p>KLAUC created and appears to have authority over KLAUC to resolve dispute. Incl. procedural provisions</p>	<p>Kebele land administration and use committee makes decision; must be executed within 30 days</p>	<p>Appeal to Woreda Court who must decide within 30 days</p>	<p>High Court</p>	<p><i>This is outdated – woreda judge said <b>No.239/2006 ETH</b> is rural proclamation on land</i></p> <p><i>(Relying on description of proclamation and regulation in USAID 2012.)</i></p>



## Annex 2 – Gender Issues

### Land Disputes

Men and women have similar types of land disputes

Female heads of household (FHH) appear more vulnerable to encroachment and illegal occupation

Divorcing women might lose use of land

### Land Dispute Resolution Mechanisms

Men and women generally use same mechanisms

Sometimes women use party structure or women and children’s affairs Equal consideration and treatment by mechanisms unclear, reported delays Women less informed about appeal rights, next steps, etc.

FHH less likely to continue appeals process

### Participation and Leadership

Limited meaningful participation of women in public gatherings, generally

Varied reports of married women’s participation in SLLC demarcation and adjudication

Major difference in participation and leadership between married women and FHHs No role of women as service providers in local land dispute resolution

No women elders resolving land disputes Limited

involvement of women on KLAUCs

Perception of limited involvement of women on SLLC teams