

Women's Property Rights and Claims in Customary Justice Systems

A Case Study of Ambo and Hawassa

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Abstract

Drawing on ethnographic research focusing on lived experience of women in two designated areas, this study presents structural and perceptual challenges that impede women's recourse to formal legal procedures in relation to property claims. The research investigates the norms, values, procedures, institutional structures and actors involved in parallelly functioning justice systems that frame rights and address disputes relating to property rights of women. Furthermore it sheds light on the obstacles women encounter in pursuing and enforcing immovable property claims. The study also explores the potential complementary role customary justice institutions play in safeguarding the rights of women over immovable properties. Last but not least, it examines if certain aspects of institutional competition exist, ostensibly flowing from the fact that their competences coextend over similar causes of actions.

Key Words; Property Rights, Women, Customary Courts, Cultural Norms, Ethiopia.

I. Introduction And Methodological Approaches

The empirical investigation undertaken in this research draws on a cursory review of cases submitted to legal aid offices of the Center for Human Rights of Addis Ababa University in Ambo³ and Hawassa⁴ which indicated that number of claims related to immovable property rights submitted by women to the legal aid clinics were disproportionately lower than similar cases brought by men. Preliminary consultations held with the local community and legal aid staffs at both sites pointed out that in resolving property disputes, the largest majority of women in the study areas resort to customary justice institutions.

³West Shewa Administrative Zone, Oromia National Regional State, Ethiopia.

⁴Sidama Administrative Zone, Southern Nations, Nationalities and Peoples Region, Ethiopia.

This pattern triggered a research intended to understand and analyze women's experience in relation to property rights, the nature, normative structure and functioning of parallel justice systems, the different factors that inform women's decisions in using/disusing formal legal procedures when seeking redress, and the potential complementary roles of traditional justice institutions.

The spatial range of the study in West Shewa Zone is limited to Wechen village at the outskirts of Ambo town. The ethnographic research focused on the *yaa'aa-yabboo* (Yabbo-assembly). Four factors accounted for the choice of this specific customary dispute resolution institution: the first is the wider reputation of the institution of the *yaa'aa-yabboo* and broader catchment area it covers in the region where it operates. The second factor is the extensive participation of women in the *Yaa'aa-yabboo* proceedings. Third, unlike most other customary justice institutions operating on *ad-hoc* bases, the *Yaa'aa-yabboo* holds regular hearings. The last key factor is the number and type of cases handled by the institution.

The most important center in the study area identified, as focal point of the research undertaking was the *Warra-danfaa*, a *Yaa'aa-yabboo* located at Wechan, a village located fifteen kms South-East of Ambo Town. The *Warra-Danfaa* holds hearings once or twice a week, depending on the number and type of cases.

Spurred by similar considerations, the geographical focus identified for the case study in southern Ethiopia was Hawassa City and its adjacent district (*woreda*), Dore – both located within the Sidama Zone. Hawassa Zuria is one of the nineteen *woredas* administrative structures in the Sidama Zone. As in West Shewa Zone, tiers of customary dispute resolution institutions operate in the Sidama Zone – the main customary dispute resolution institution selected for the case study being the hierarchically established forum operating at the *clan (gosa)* level in *Dore District, Doyo Otilcho Kebele*.

As empirical investigation that endeavored to understand factors influencing women's use or non-use of formal justice institutions and grasp their lived experiences in the hands of traditional dispute resolution forums, the research capitalized on qualitative methods which are effective in identifying intangible elements such as social norms and values. This approach helped in learning perspectives and experiences of the main subjects of the study, the meanings they put to their involvements and status in different contexts, and their interpretations of the lived experiences. Furthermore, the method assisted in getting the observations of other stakeholders and participants of the research.

Ethnographic studies were conducted in both study sites by a team of three lead researchers and three assistants. During the field studies, the research team employed various data collection tools. Preliminary discussions were held with different stakeholders providing researchers the opportunity to further identify the relevant stakeholders.

The study team conducted *in-depth interviews* with a number key informants at both sites including: representatives from district and zonal police offices, women and children affairs offices, zonal and district culture and tourism offices, heads of customary justice institutions, elders, women residents in the study areas, women clients of customary justice institutions, heads of agriculture and rural development offices, judges from zonal and district courts, representatives from the SNNPR (Southern Nations, Nationalities and Peoples' Region) Regional Security Administration Bureau and informants from *Kebele* administrative functionaries. By and large, the choice of interview partners was dictated by their degree of relevance to the theme investigated. Most interviews were conducted in *Oromiffa* and Sidamma languages.

Focus Group Discussions were held at both study sites with the objective of acquiring valid data on issues that need group consensus and to draw diversity of opinion by eliciting internal debates. One FGD was held in each study site consisting a group of participants coming from different socio-economic background a heterogeneity the research team capitalized on to get more nuanced and diverse information. The study also employed unstructured conversations engaging a cross-section of the local communities, allowing for spontaneity of ideas and enriching the data collection undertaking by posing questions developed in the course of the interview.

Furthermore, the research team made use of non-participatory observations by immersing in live conflict resolution sessions of select customary justice institutions; these hearings provided the team the opportunity to closely detect the practices and procedures applied at various phases of the dispute settlement process. The observations offered a more nuanced and dynamic grasp of situations that could not be easily captured through interviews and focus group discussions.

II. Review Of Literature On Conceptual Framework Of Forum-Shopping And Property Rights Of Women

Forum shopping is a conceptual framework adopted in this research as the analytical and theoretical tool for understanding the phenomenon of women's decision-making processes in submitting property-related claims to specific dispute resolution platforms. However women's rights to

immovable property holding may be structured normatively, the notion of forum-shopping helped the researchers in twigging the various factors that inform women's decisions to use or refrain from using the formal legal architecture and in grasping data on alternative systems that women recourse to.

A previous study by Keebet Benda-Beckman introduced the concept of 'forum-shopping and shopping forums' based on the empirical findings of a research conducted in Indonesia. The author identified and examined both non-state and state institutions that deal with disputes in the area – including the *Adat* (the indigenous setting), mayor/village council, and office of religious affairs, formal courts, and Islamic courts.⁵ Similarly, Noyes argued the availability of different institutional settings provide a fertile ground for forum-shopping processes. In line with this, Busch asserted that the presence of alternative dispute settlement bodies gives the opportunity for forum shopping whereby parties are left with making choices as to where to present litigations.⁶

In Ethiopia, the pluralistic legal order provides a fertile ground for forum shopping.⁷ Prior investigations conducted on forum-shopping in Ethiopia found that one part of the pull-factors appealing to the conscience of the ordinary public included such institutions' focus on reconciliation and re-establishment of social harmony, their cultural involvement and procedural flexibility.⁸ Few studies also investigated how women's representation in customary justice systems affects women's property rights. Various scholars have identified gender disparity as one of the major characteristic features of local institutions of dispute settlement.⁹ In most instances, women are denied the right to partake in dispute settlement processes, to initiate cases, defend positions, or be a witness in customary justice institutions.¹⁰

⁵Keebet, Benda-Beckman v. 1984. *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. Dordrecht: ICG Printing press.

⁶Busch, Marc. 2007. "Overlapping Institutions, Forum Shopping and Dispute Settlement in International Trade". *International Organization* 61(4):757.

⁷Fentaw, Alemayehu. 2007. "Legal Pluralism: Its Promises and Pitfalls for Ethiopia". *Jimma University Journal of Law*.1 (1): 35-66.

⁸Zelege, Meron. 2010. "Ye Shakoch Chilot: The Court of the Sheikhs. A Traditional Institution of Conflict Resolution in Oromia Zone of Amhara Regional State, Ethiopia". *African Journal of Conflict Resolution*.10 (1): 63-84.

⁹Pankhurst, Alula and Getachew Assefa. 2008. *Grass-root Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Addis Ababa: Centre Francis d'études ethiopiennes.

Tarekegn Adebo and Hanan Tsadik. (Eds) 2008. *Making Peace in Ethiopia: Five Cases for Traditional Mechanisms of Conflict Resolution*. Addis Ababa: Master Printing press.

¹⁰ Ibid.

In humanities, social sciences and law too, discussion on women's property rights, access to property and immovable property disputes constituted one of the most important pillars of the discourses. Ethiopia's national enterprises in relation to women, issues of discrimination, inequality and rights over immovable properties have also been treated on different levels. Various policies and strategy documents have endeavored to structure the national normative set up into more focused actions and legislative undertakings on eliminating inequalities and prejudices and ensuring women's access to property.¹¹The formal justice chains consist of processes and institutions women have to navigate through in seeking redress. These are both complex, economically unaffordable and are characterized by pervasive gender discrimination; often, such factors leave women with a fewer options, urging them to resolve grievances outside the formal justice systems – through alternative dispute resolution systems.¹² The decisions to resort to alternative systems including those based on traditional, customary or religious laws are mostly forced upon them.¹³

On the other hand, several accounts argued that remedies availed to women through the informal justice systems are more accessible to women litigating property-related claims; they have the potential to provide quick, affordable and culturally-relevant remedies. Not a few legal resources too seem to be consistent in holding that informal justice mechanisms suffer from several faults and hence render no meaningful justice to women: they remain prejudicial to the interests of women, are typically characterized by the exclusion of women from their processes. Furthermore, they tend to be susceptible to corruption and abuse of power, require payment from claimants or impose heavy fines, likely privilege those who are well informed and wealthy, reinforce existing power structures, and promote domination and influence of men.¹⁴

¹¹A few examples include The National Policy on Women (1993); The Growth and Transformation Plan II (2015/16); Ethiopian Women's Development and Change Package (2005); The National Plan of Action for Gender Equality 2006-2010 (2006); and Ethiopia's Millennium Development Goals Report (2010)

¹²United Nations General Assembly. 2012. *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*; United Nations Committee on the Elimination of Discrimination against Women (CEDAW). 2011. *Access to Justice Concept Note for General Discussion*.

¹³Ibid.

¹⁴United Nations Committee on the Elimination of Discrimination against Women (CEDAW). 2010/2013. *Access to Justice Concept Note for General Discussion* (CEDAW); United Nations Committee on Elimination of Discrimination against Women. 2013. *General discussion on women's access to justice: economic and practical obstacles to access to justice for women living in poverty*.

On top of issues and challenges related to the structure and functioning of dispute resolution forums, several empirical studies had also reviewed another intertwined dimension of women's property right regime *the right to own, access and control immovable property*. Women's right to property has been conceived as a broad notion that includes the right to acquire and dispose any movable or immovable property – obtained directly through their own labor or indirectly through inheritance.¹⁵

In this regard, the African Gender and Development Index – collecting data from twelve African nations including Ethiopia – concluded that the average ratio of women's access to land is described as being less than half of men.¹⁶ The latest data from 2015 showed that in sub-Saharan Africa, customary land tenure systems widely exclude women from ownership or control of land, leaving women to represent a mere 15% of landholders.¹⁷ In countries such as Ethiopia with a predominately agrarian community, land remains the most valuable property.¹⁸

An array of studies have demonstrated that women in different parts of Ethiopia are denied basic rights of accessing land due to cultural norms and values relating to dominant exogamous marriage systems. Zenebework postulated that women's lack of decision making over immovable resources such as land contributes to their overall subordination in Ethiopia; for rural women, a major indicator of material deprivation could be traced to their lack of access to land.¹⁹ Likewise, Hussein submitted on the marginalization of rural women in possessing basic resources, including land.²⁰ Tamrat's historical anthology presented how women in northern and central parts of Ethiopia were deprived of the right to access and control land during the

¹⁵Benschop, Marjolein. 2002. *Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?* UN Habitat Report 76. : <https://www.un.org/ruleoflaw/files/rightsandreality.pdf>. (Accessed on January 7,2017).

¹⁶African Gender and Development Index. 2015. Accessed from; <https://www.afdb.org/en/documents/document/africa-gender-equality-index-2015-empowering-african-women-an-agenda-for-action-53123/>(. Accessed on March 7,2016).

¹⁷ ibid

¹⁸Rahmato, Dessalegn (eds.) 1994. *Land Tenure and Land Policy in Ethiopia After the Derg*, Working Papers On Ethiopian Development. Center for Environment and Development. University of Trondheim.

¹⁹Tadesse, Zenebework. 2000. "Revisiting Rural Development Through a Gender Lens." in *Issues in Rural Development: Proceeding of the Inaugural workshop of the FSS*. Edited by Zenebework Tadesse. P.29. Addis Ababa

²⁰Ahmed, Hussein. 2014. "Women's Right to and Control over Rural Land in Ethiopia." *Global Journal of Current Research*.2 (4): 81-93.

feudal epochs of the thirteenth to twentieth centuries.²¹ Meheret discussed the discriminatory practices exercised during the land distribution schemes sponsored by the state, leaving most land allotted to women that were marginal, far from homesteads, or not wholly cleared.²² Other works argued that in some places, agricultural extension services tended not to reach women at the same pace as they reached men.²³

Customary norms governing access to property and ownership rights in the Amhara Region dictate share-entitlements of property in cases of divorce, whereby, in many instances, women are granted a right of partition only in relation to movable properties.²⁴ In SNNPR among the Konso, women play crucial role in food production, but are denied the right to participate in the management and decision-making processes affecting the resource; if a husband dies without being survived by a child, the widow would have no right of retaining the husband's land.²⁵

In his study featuring the practice in Wolaita, Hussein argued quite similarly that land ownership is generally considered as the exclusive domain of men; the research established that women have no customary right to inherit land from family, and the control of land during marriage falls under the husband.²⁶ Another research highlighted the same failings of property right regimes in relation to women, and submitted that customary

²¹Haile, Tamrat. 2013. "Women's Right to Resource Access in Northern and Central Ethiopia: A Historical Survey of Land Tenure System from the 13th to 20th Century." *African Journal of History and Culture*, 5(7): 143-150.

²²Ayewew, Meheret. 1994. "The Ketto Resettlement: A Brief Comparative Survey of the Land Tenure System, 1985/86 and 1993". Proceedings of the Second Workshop of the Land Tenure Project, Working Papers on Ethiopian Development, Center for Environment and Development. University of Trondheim, Norway.

²³Aredo, Dejene. 1994. "Female-Headed Households in Two Contrasting Regions in Ethiopia: Access to and Management of Resources". *Ethiopian Journal of Development Research*.16 (1). Addis Ababa, Ethiopia.

Tiruworq, Tizazu&YigremewAdal. 2000. "Beyond Land Redistribution: Access to, Utilization of and Control over Land and other Resources by Rural Female-Headed Households: The Case of Three *Weredas* in the Amhara Region". Submitted to 12th OSSREA Gender Issues Research Competition for Eastern and Southern Africa, Addis Ababa.

²⁴Teklu, Askale. 2005. "Land Registration and Women's Land Rights in Amhara Region, Ethiopia in Securing Land Rights in Africa". *Research Report 4*.Russell Press. Nottingham, UK.

²⁵Sunta, Yilma. 2002. "The Role and Status of Women in the Food System of the Konso of Southwest Ethiopia." Unpublished MA Thesis. Addis Ababa University, Department of Social Anthropology.

²⁶Ahmed, Hussein. 2014. "Women's Right to and Control over Rural Land in Ethiopia." *Global Journal of Current Research*.2 (4):.81-93 .

laws in the Gumuz region regulate land; these laws give no recognition to women's rights to own or inherit such property.²⁷ The literature on the experiences of Oromo women in relation to property rights is not particularly different.²⁸

In contrast, few scholars argued that women are not wholly deprived of property and inheritance rights among the Oromo society. A case study on the Gujji Oromo found out the *dhaala*, a widow inheritance by in-laws, ensures the continuation of property ownership right of women.²⁹ Similarly, the practice of *sororate* marriage practiced within the same community, whereby a girl inherits a sister's husband upon the death of her married sibling, is described as an aspect of ensuring women's access to property.³⁰

These series of studies demonstrate the scale of variations, preconceptions and discriminatory treatment women endure. It is argued here that in the study areas, too, women continue to hold little decision-making powers over immovable resources and enjoy limited rights to own, access or control land –despite explicit constitutional guarantees that situate them on equal footing as men in relation to land-holding rights. Gender-based discrimination continues to manifest in different forms, including in matrimonial property regimes, inheritance and in the handling of claims and disputes. However, the scale of rights women enjoy in particular settings vary from culture to culture. Furthermore, there has been a significant change over time in Ethiopian history pertaining to the degree of women's right to property which evolved from a strong patriarchal set up during the Imperial epoch (1930-1974) and Derg regime (1974-91) to a more liberal setting in post-1991 Ethiopia where due attention has been given to promoting and protecting gender equality.

III. Introducing The 'Parallel Legal Systems' Operating In The Study Areas

Legal pluralism in Ethiopia is a complex phenomenon featuring three distinctive forms. The first archetypal of legal pluralism inevitably arises

²⁷Bekele, Kalkidan. 2012. "Cultural Practices that affected the status of Women in Benishangul Gumuz, Mandura *Wereda*". Unpublished MA Thesis. Addis Ababa University, Institute of Gender studies.16.

²⁸Woldetensaye, Almaz. 2007. "Women's Access to and Control over Land in the current Land Administration System in Two Rural *Kebeles* in Ada'a *Wereda* of Oromia Region." Unpublished MA Thesis. Addis Ababa University, Institute of Gender Studies.7.

²⁹Debsu, Dejene. 2009. "Gender and Culture in Southern Ethiopia: An Ethnographic Analysis of Guji-Oromo Women's Customary Rights." *African Study Monographs*. 30(1),15-36.

³⁰Ibid.

from the country's federal system whereby judicial powers are apportioned along three-tiered structures of the federal and states' governments: the Supreme Courts, High Courts and First-Instance Courts. The second form descends from the multifarious legal traditions simultaneously operating in the country and originating from diverse sources: customary laws, religious laws and the formal legal system. The third form of legal pluralism refers to the diverse customary laws specific to the various ethnic groups in the country—each having its own distinctive system. The study verified the existence of pluralistic legal orders in both study sites. Such plurality manifests itself in different forms of inter-institutional diversity between formal and non-formal institutions and intra-institutional diversity witnessed within customary legal institutions themselves.

The ethnographic study conducted in West Shewa Zone identified the prevalence of the Regional State's formal courts structured under three tiers: the State Supreme Court, State High Court and State First Instance Courts. The ONRS Supreme Court has final judicial authority over matters of State law and jurisdiction. It sits in Addis Ababa with roving benches assuming jurisdiction throughout the various zones of the region. The State High Court operating in the study area is based at the zonal capital, Ambo, while the State First Instance Courts operate at the district levels. The State High Court in Ambo also has delegated jurisdiction over matters falling under the powers of the Federal First Instance Courts. Outside of the courts' structure also operate the *Kebele* Committees established by edict of the regional parliament, where institutions are granted extensive jurisdiction in relation to disputes involving rural land rights.³¹

The study also found the existence of intra-customary institutional plurality in both sites, demonstrating the vibrancy of deep-rooted customary forums of dispute settlement that persist to date. Such plurality unveils a great degree of diversity in terms of the positions, which each customary institution manifested in accommodating the multifaceted rights and interests of women. A few of such institutions are faith-based establishments whose legitimacy is traced to a charismatic transcendental "Being" believed to mediate disputes and set the governing norms, sanctions and procedures for reconciliation. Others draw their governing norms from cultural ethos of the communities whose normative structure is largely informal and characterized by remarkable flexibility and heterogeneity. The customary institutions operating in both sites differ across places. Hence, the terms 'customary law' and 'customary institution'

³¹Proclamation to amend the Proclamation No.56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration Proclamation No.130 /2007.

do not necessarily signify a uniformly structured system conventionally accepted in all settings.

The Sharia court, too, is another platform recognized under the FDRE Constitution with a three-tiered structure, operates in the West Shewa Zone. The Sharia court system functions as a distinct organ with jurisdictional functions falling outside of the regular judiciary, representing the only religious court formally established at the federal and state levels. Another notable institution operating in the West Shewa Zone is the traditional Oromo elders' council, *Jaarsummaa*, which convenes on ad-hoc basis. The *Jaarsabiyyaa's* are individual mediators representing personalities who are conversant in tradition, norms and values of the society. The term *Jaarsa* has dual connotations: a gerontocratic authority of mediation gained with an old age and the reconciliatory skills of a person. The word *Jaarsain* the second construal symbolizes sensibleness and wisdom ascribed to mediators.

The other customary institution that operates in the same Zone is the *Gadaa* court whereby the *Aba Bokus* and *Aba Gadas* (within the *Gadaa system*) assume greater role in reconciling disputes of various types and magnitudes. The authority of the mediating elders of the *Aba Bokus* is derived from their position in the *Gadaa* system. The mediators are individuals who entered the *Gadaa* age grade (40-48 years old) and considered as repositories of customary law. The study area is one of the places where there *still* exists a strong *Gadaa-based* conflict resolution processes as opposed to other parts of the Oromia Region, where the *Gadaa* system is degenerating.

A vibrant religio-customary court of the *Qallu Yaa'aa-Yabboo* also operates in the study area serving a wider geographic scope and people from different socio-economic backgrounds. The *Galmaa-Qaalluu* (*Qaalluu's* ritual hall) is a major place for worshipping *Waaqaa* and settling disputes. In every *Qaalluu* center, a ritual known as *kudharfan* (fourteenth) is performed bi-monthly. On these occasions, many followers gather at the *galmaa* to take part in the rituals and settle disputes. Cases handled at this forum include marital disputes, paternity cases, land inheritance disputes, boundary disputes, land lease issues and a wide range of criminal cases. The most prominent center of the *Qallu* is in *Warra-danfaa*. At the *Warra- Danfaa*, there are five senior *daanyjiis* (mediators) who served as mediators for over three decades. Contrary to the government's political discourse which privileges ethnicity as the major principle of social organization, the vitality of local institutions of dispute settlement such as *yaa'aa-yabboo* has been particularly evident since they cut across ethnic and religious boundaries, with clients hailing from different parts of the country.

Similarly, the study conducted in Hawassa showed the existence of a legal order characterized by inter-institutional and intra-institutional pluralities mentioned above. The formal court system in the SNNP Regional State is similarly structured along three tiers whereby the State Supreme Court sits in Hawassa, the regional capital. Hawassa's position as regional and zonal capital makes it a seat for the State Supreme Court and the Sidama Zone's High Court as well. First Instance Courts operating at the *Woreda* level are the most vibrant formal institutions in the study area, adjudicating on a range of civil proceedings involving women in immovable property claims.

But, most importantly, the National Regional State's Rural Land Administration and Use Proclamation provided for the establishment of *Kebele Land Administration Committees* with first instance adjudicatory powers over 'all disputes' involving 'land possessions'. The role of such institutions is particularly accentuated given that their jurisdiction extends to all aspects of 'land holding rights' as defined under the Proclamation. This includes 'disputes' over use rights between a husband and wife in relation to land holdings, the joint use and management of land possessions, the renting of land possessions and sharing of proceeds, the acquisition of joint land use right certificates, the leasing of land (which by law requires the agreement and signature of both spouses), and equality of rights in sharing land holdings registered in spouses' name.³²

As in West Shewa Zone, layers of customary dispute resolution institutions function in the Sidama Zone. The *Ayde* is the lowest dispute resolution forum operating at family levels of clan organization, having jurisdictional competence to deal with various types of disputes. Where a dispute is not resolved at such forum, an appeal could be lodged to a clan's leader, the most frequent and regularly operating platform for resolving disputes in the study sites. The research team interviewed two of such leaders – one representing the *Murero* clan from *Tula kebele* (Hawassa) and a second from the *Doyo Otilcho kebele* in the *Dore* district. Procedurally, a clan's leader receives an oral complaint and then gathers elders on a fixed date to examine the matter and mediate, or as appropriate, render decisions. When an allegation is disputed, the elders hear witnesses as in formal courts of law, and may further undertake field inquiries when the dispute involves a

³²Proclamation No.110/2007, The Southern Nations, Nationalities and Peoples Regional state Rural Land Administration and Utilization Proclamation, 13th Year No.10, Awassa 19 Feb.2007; The Southern Nations, Nationalities and Peoples Regional State, Rural Land Administration and Use Regulation, 13th Year No.66/2000, Awassa Dec. 24/2007.

boundary or the partition of immovable property. The elders in *Dore* sit once a week, every Tuesday.

While less complex cases may be submitted to elders and receive a final resolution on the same day they are presented, most others are concluded after 4-5 adjournments. Land related disputes are often complex, and therefore take even longer time. No codified law or a semblance of structured normative guide exists directing the elders in their routines. Instead, they employ their own 'sense of justice' held in 'conscience' as gained from 'long life, practice and tradition'. The elders' decisions are mostly delivered in 'mediating' tones - focusing on reconciliation, and the decision-making process is claimed to be 'participatory' - in the sense that it 'involves all elders presiding over a case and also heeds to the heartbeats and opinions of ordinary people gathered on the occasion'.

The clan-level institution of justice in the study area may confirm, vary or reject decisions rendered at a family level. A person not satisfied with a decision passed by clan elders may still petition before the *Baduna Badana Songo*, geographically covering the whole *Abela* area, comprising *Shebedino*, *Tula*, *Kurchi* and parts of *Leku*. Further appeals may be pursued with the *Woma*, although in practice, this rarely happens. The *Woma* is largely concerned with large-scale disputes involving communities.

The main customary institution of dispute resolution, which the study selected for holding interviews, is a hierarchically organized institution at the *clan (gosa)* level operating in *Dore* district, *Doyo Oticho kebele*. A clan leader from the adjacent *Tula kebele*, too, had been interviewed to draw parallels and contrasts between the traditional systems operating in the region.³³

³³ Interviews conducted with leaders of traditional justice institutions: Sermiso Semago, tribal chief and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*; Darimo Darusa: local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*; and Hanaqo Ebiso: local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*. August 2015.

IV. Norms And Values Governing Property Rights Of Women In Customary Justice Institutions

Norms are basic elements of culture; they represent humanly created rules designed for the purpose of regulating social behavior. Often, the construction of norms emanates from the ultimate need for orderly, stable and predictable interaction within communities. Norms are internalized through socialization as folkways, taboos, rituals etc., whereby dominant ideologies, beliefs and values are passed on to generations.

Within customary justice institutions operating in the study areas, there exist various normative orders that shape individual and social behavior and are attended by different sanctioning mechanisms. Local community norms come into operation in property disputes involving women in various cases such as inheritance, donation and divorce. When the object of possession refers to valuable assets such as land, the properties are invariably reserved for men or to their lineage; the norms in both regions are structured to maintain such status. Only in exceptional cases are women allowed to retain ownership, and even then, certain conditions apply.

In addition to the clearly defined normative stipulates of custom, there are some subtle norms related to inheritance rights founded on the primogeniture principle in which the first-born son in a family retains a privileged position in accessing, managing and inheriting property. While this is described as a phenomenon that is undergoing change, informants in both study areas emphasized the prevalence of strong gender bias in the operation of such norms defining male family members as the sole legitimate heirs.³⁴

In patriarchal social settings, local norms dictate a gendered socialization. Men are granted near-absolute powers in the administration of family properties. For example, leaders of traditional justice systems in both sites stressed that in instances where a father or husband dies, the widow may retain a right of use over an immovable property for as long as she lives, and may even lease same to a third party. But she would have to pass-over the property once a male offspring grows up and claims the property. Male children are often considered as legitimate heir, although in some occasions, land may be allotted to a female offspring giving her usufruct right until she gets married. The parental lineage of the man, alone, is associated with ownership of immovable property.

Furthermore, property that a woman acquires before or during a marriage constitutes matrimonial property over which the husband assumes strong

³⁴Mediators/judges of customary justice institutions interviewed in Ambo and Hawassa emphasize that valuable properties are mainly held in the possession of men.

power – including the right to sell the property without a wife’s consent; the legal presumption of co-ownership in matrimonial properties does not seem to have much effect in curbing a husband’s social authority.

In the study areas, local norms also define the enforcement mechanisms of customary justice institutions that would be applied in cases of non-compliance. In Ambo area, parties to dispute who fail to abide by decisions of mediators are labeled as ‘*gadidarbi*’ in Afan Oromo meaning ‘*afengachi*’ (non-compliant) in Amharic. A complicated system of sanctions applies – with varying degrees of effectiveness and follow-ups depending on whether the non-complying person is a man or a woman. Ostracization from local community’s life and participation is one of the most frequented forms of sanction.

Unlike formal courts, most customary institutions in the study areas do not have formalized enforcement mechanisms at their disposal, and hence they at times resort to spiritual sanctions. The implementation mechanism applied by many, if not all, customary institutions operating in West Shewa Zone is the ultimate fear of spiritual malediction.³⁵In this particular context, the intensiveness and nature of spiritual punishment is poorly-defined but the punishment is generally extended in different forms such as destitution, sickness, misfortune in career, loss of property, accident, and death of a family member or self.

Among the Sidama, too, the *sera* system operates widely as an enforcement mechanism used by the customary institutions whereby a non-compliant person is subjected to different forms of punishments – including ostracization from community membership. The contents and structure of norms that apply to women in relation to immovable property disputes are briefly explained below in relation to the lived experience of women in the study areas.³⁶

It suffices to note here that today the norms and procedures operate in a steady flux and are subjected to immense political pressures of change. This story of gradual transformation and selective reform has been confirmed by detailed account of informants from both study areas.³⁷But, it was also noted that often, elders have been reluctant to implement new approaches that undermine the traditional workings of custom in relation to women and immovable property rights. On the other hand, it appears that the

³⁵Interview with Aba Simello Ejigu Guta, (mediator at the customary court), Western Shewa, Ambo, August 12, 2015.

³⁶Refer to discussions in sections 5 and 6.

³⁷Interview with Aba Simello Ejigu Guta, (mediator at the customary court) Western Shewa, Ambo, August 2015; Interview with Darimo Darusa, local elder/judge of Sidama traditional justice forum in *Doyo Otilcho Kebele*, Hawassa, 2015.

state's sustained campaign and political drive on issues of equality and non-discrimination has 'modestly' affected how elders and customary justice forums conceive of women and their status in society in relation to the ownership and management of immovable properties. It urged some to adopt certain 'reforms' to maintain vitality and/or cope up with the new political initiatives for change. There has been a sense of recognition by customary leaders that, institutionally, customary forums could not sustain long by flouting the fundamental values of the constitution and the political order. However, this does not rule out the fact that against aspects of change, there is a great resilience and continuing influence of customary courts at grassroots level as presented in this paper.

This was evident from the data congregated from the study participants. For example, an elderly mediator with 35 years of experience at *yaa'aa-yabbo* of the *Waraa Danfaa Qaluu* and *Abba sampa'llo* at the *GadaBoku Tule* court admitted that the introduction of 'gender equality' principle in the context of inheritance is a recent phenomenon. Today, it is acknowledged that women are accorded equal rights.³⁸ Upon death of a husband, disputes between a widow and her in-laws involving matrimonial property are resolved on a basis of a norm that 'gives priority to the widow, who, in such circumstances, is considered to be a victim losing a beloved one'.³⁹

Remarkably, though, these observations on 'reform of the contents of customary norms' or the principles of 'equality' stand in stark contrast with the workings and perspectives shared by numerous *Abba Gedas* and *Abba Bokus* operating in the same district. From detailed account of three women interviewed in Ambo area, it was observed that the customary institutions operated 'fundamentally against the presumptions of equality and non-discrimination'; but, evidently, women's accounts from this region have been greatly inconsistent. Many women submitted the values and norms applied in each particular dispute ended up providing them 'fair share' in their property rights, while not so few women complained of the 'ill-workings' of customary institutions in their lives.⁴⁰ Many spoke of the institutions so highly, and confirmed that they knew of the existence of alternative forums for seeking redress, but chose to submit disputes before traditional institutions because of factors that included physical proximity,

³⁸Interview with Abetu Ejeta, Head of *Aba Gedas of BokuChitu*, Western Shewa, August 2015

³⁹ *Ibid.*

⁴⁰During the interview with Abeba Siesa, one of the women having experience submitting a case before traditional justice forums in Ambo, it was disclosed that she had serious reservation towards customary institutions since they suffer from nepotism.

simplicity, dependability and 'fairness and non-discrimination'.⁴¹ No doubt, the institutions have introduced new changes along the line with a view to catching up with the normative stipulates of the federal constitution, or perhaps just to remain important- as self-preservation strategy. In the Sidama region, too, the nature of norms and values implemented by customary justice institutions beg the same queries. The basic discriminatory framework of the rules remains fairly intact, mainly in the context of divorce and inheritance proceedings.

Some developments are, however, in the making. In the *Tula* area, for example, the chief of the *Murero* tribal forum acknowledged that when a dispute arises between a widow and brother in-laws involving land, the previous normative dictate that 'the in-laws shall have a right of inheriting the land if the deceased is not survived by male descendant' has now changed; 'we reformulated the norms and have introduced modifications: a brother-in-law could no longer inherit a land where a deceased person is survived by a wife and female offspring, and the widow will retain the right of use over the immovable property for as long as she lives.'⁴²

On the other hand, information obtained from elders presiding over dispute resolution forums in the *Doyo Otilcho Kebele* was not only inconsistent, it was also defensive. Two elders interviewed during the fieldwork held quite presumptuously that 'female off springs never invoke a right of share over immovable property... they know the culture and hardly dispute the fact that they have no right of partition in such cases'; but they admitted that 'until such time when a woman gets married, she retains a right of use and administration over a land'.⁴³

V. Lived Experience And Perceptions Of Women In The Study Areas

Within the broader framework of the research undertaking that endeavored to understand the handling of women's property claims in traditional justice systems, one of the main objectives identified was to document and analyze women's actual experience and attitudes in relation to forum-shopping and the normative structures and procedures that apply in disputes involving their immovable property rights.

The study found several factors that informed women's choice making. The key informants described the pluralistic nature of the justice setting in both study areas as a valuable resource that furnishes disputants with

⁴¹Interview with Gebiyansh Mekuria and Abeba Siesa, Western Shewa, *Ambo*, August 2015.

⁴²Interview with Sermiso Semago, tribal chief and judge of Sidama traditional court in Hawassa, *Doyo Otilcho Kebele*.

⁴³Ibid.

opportunity to choose forums that best attend to their respective interests. Obviously, the very subjective, individualistic and complicated nature of the forum-shopping process compels that extreme caution should be applied in appraising the ‘representativeness’ of the informants’ accounts so as to avoid hasty generalizations and oversimplification that might potentially conceal the nuances of the choice making process.

Women interviewees referred to various factors affecting their choice making. The first is related to ‘geographical proximity’ of customary justice institutions. Litigants contended that, concentration of formal judicial functionaries mainly in urban centers affects their predisposition to recourse to these forums.⁴⁴ Unlike customary institutions, formal judicial structures are located in major urban centers – with no hierarchical presence at the village/*kebele* levels.

The second factor key informants accentuated is ‘procedural familiarity and friendliness’ as a factor affecting their decisions. This involves linguistic clarity, simplicity and approachability of customary institutions making them convenient forums; they submitted that the language used in customary tribunals is the same as the language used by the disputing parties – whereas judicial proceedings often employ language that tends to be technical and complicated. Natta Xurii, a mediator at both the *Yaa’aa-Yabboo* of the *Waraa Danfaa Qaluu* court and an *Abba sampa’llo* at the *GadaBoku Tule* court described this factor as follows:

The procedural advantage in contrast to formal courts lies mainly in the participatory nature of traditional justice forums; the mediators involved in cases and those presiding over cases have equal decision-making power.⁴⁵

The third factor raised by the key informants is the relative ‘relevance of norms and values’ applied by customary institutions, an element labeled in this work as ‘conceptual compatibility’. Customary tribunals are described as entities guided and informed by existing realities than legislative edicts that may not conform to local necessities and ways of lives. The fourth factor relates to the ‘restorative justice element’ of customary institutions, which focuses on re-establishing social harmony and operates in non-adversarial milieu.⁴⁶

⁴⁴Interview with Bontu Shiferaw, Wechan, Western Shewa, August 2015.

⁴⁵Interview with Natta Xurii, mediator at both *Yaa’aa-yabboo* of the *WaraaDanfaa Qaluu* court and *Abba sampa’llo*, Western Shewa, August 2015.

⁴⁶Interview with Berhanu Soboka, (key informant), Western Shewa, *Ambo*, August 2015.

The fifth factor is the 'flexibility of customary forums' which, informants described, features an aspect of change tuned to time and circumstances; the norms are characterized as not being too rigid and are predicated on local ideals of justice and equity. What is more, the greater possibility of holding negotiations in customary institutional platforms and the informal nature of the hearings that provides litigants time to present and defend accusations – are elements that appeal to litigants. The forums' flexibility in allowing disputants 'participate' in the dispute settlement processes has also been highlighted by a few informants. The sixth factor is related to the issue raised in SNNPR, Sidama zone, which pointed out societal bias and cultural influence affecting the choice making processes in dealing with disputes at local levels.⁴⁷A few informants also highlighted that they are familiar with the customary institutions, the mediators and the governing norms in communities, and consider that this features as a 'pull factor' affecting decisions to present cases before customary justice forums.⁴⁸

On the other hand, the study participants also identified several 'push factors' in relation to formal courts of law, which, they alleged, have swayed their decisions not to pursue claims before such forums. A few informants alleged that financial expenses 'required' for pursuing cases at *woreda* and high courts had forced them to resort to other options in comparison to the 'inexpensive feature' of proceedings in customary tribunals. Kuli Legese, a female key informant in Ambo, noted:

The formal courts are meant for *abbahumnass* (those who are more powerful). They serve the interests of the well educated and the wealthy men; illiterate women like me can only lose a case at formal courts, and hence, for me, the *Bokku* represents *kalachaa* (a window of hope) for the poor.⁴⁹

In the Sidama Zone, informants also complained of the prohibitive costs related to seeking professional services in court proceedings. The other push factor narrated by the informants is related to the relative expediency of pursuing cases before customary justice institutions. Such forums do not generally suffer from backlogs, an element that allows the efficient handling of cases– often in a matter of weeks, or even days.

⁴⁷Interviews with five women from different *kebeles* in Dore *Wereda*, Hawassa: Meseret Dasalo (*Bafano Kebele, Dore*); Lemlem Alemu (*Bafano Kebele, Dore*); Hansawe Kinisa (*BafanoKebele, Dore*); Wonkitu Hariso (*Doyo Otilcho Kebele*); Lam'itu Nae (*Jara Karara Kebele*), August 2015.

⁴⁸ Focus group discussion with three judges from *kebele social courts* in Western Shewa; Degefu Duresso Elamu (*Goromot iKebele*)Tsegaye G/Medhin (*Elamu Muja kebele*) and Dhinsa Rakansaa Gosu (*Kora Kebele*).

⁴⁹ Interview with Kuli Legese, Western Shewa, *Abebe Deyo Kebele, Ambo*, August 2015.

A perceived fear of favoritism was identified as the third push factor where the informants expressed reservations in relation to corruption and nepotism. Kuli Legese, a 49 years old woman from *Abebe Deyo Kebele*, accused her husband of polygamy at the *yaa'aa-yabbo* (religio-customary court) in Wechan.

I refrained from taking my case to the formal court despite the push by friends and family members to do so because this would have given my husband a better chance of winning the case since he is conversant with the legal norms. He can easily manipulate the judges whom he knows very well – as he was himself a judge at *kebele* social courts.⁵⁰

Formalism and over-emphasis of courts on evidentiary rules has also been accounted as discouraging element. The non-existence/loose registration system of marital properties aggravates the problems in relation to women, especially married women, when they claim a share in property in the event of divorce.

In contrast, many interviewees from Sidama Zone expressed resentment towards the customary justice institutions – hinting at direct and indirect coercions applied by the community – which affected decisions with regard to forums.⁵¹The findings of the study in relation to the Sidama Zone showed that decisions rendered by the *Chimeso* often favor men, another element affecting forum choosing. The discriminatory treatment of women in the hands of the *Chimes* reportedly prevailed both in relation to immovable and movable property disputes; female informants also identified the ineffective enforcement mechanism of customary justice systems which is yet another factor for choosing regular courts of law.⁵²

VI. The Interface And Interplay Between Customary And Formal Institutions Of Justice

In the foregoing sections, the analyses focused on factors that affect women's decisions in forum-shopping, their lived experience before formal and customary justice institutions and their perceptions of the norms that apply in the resolution of disputes. From the discussions above, while it is evident that parallel systems coexist in the designated areas of the study and assume jurisdiction over immovable property disputes involving women, the narrative on the value structures and jurisdiction of the normative orders does not wholly explain what 'complementary role' customary justice institutions play in safeguarding the fundamental rights

⁵⁰Ibid.

⁵¹Interview with Meseret Dasalo, *Bafano Kebele, Dore*, August 2015.

⁵²Interviews, Note 45.

of women over immovable properties, and if certain aspects of 'institutional competition' also exist, ostensibly flowing from the fact that their competences coextend over similar causes of actions.

In one of the seminal works on the subject, it was submitted that legal pluralism not only posits the existence of multiple legal spheres, but also develops hypothesis concerning the relationship between them; the existence of legal pluralism itself is of *less interest* than the *dynamics of change and transformation*.⁵³ It is this dynamics of change and influence between the two coexisting systems that needs to be understood, as the insight gained would inform the direction that should be adopted in designing appropriate interventions.

a. Overview Of The Complementary Role Of Customary Justice Institutions

No systemic study has been conducted in the past mapping out the precise physical reach of the parallel justice systems operating in Ethiopia – comparing their operational space to formal judicial structures of the state or aggregating case-flows adjudicated each year in both normative orders. In a limited context of the empirical investigation pursued in this study, it would probably be possible to conjecture on the volume of disputes involving women's claims in immovable properties that had been litigated before the *Ambo* and *Dore woreda* courts and compare the same with the workings of local customary institutions: the elders' council *Jaarsummaa*, the *Qallu Yaa'aa-Yabboo*, the *Bokkuu-Cittuu* and *Bokkuu-Xulee* (Western Shewa), the *Murero* tribal forum in *Tula* or the elder's forum operating in the *Doyo Otilcho Kebele* (Hawassa).

However, such contrast will depict only a segment of the claims presented by women; a plethora of other competing institutions religious, customary, indigenous and community based dispute resolution mechanisms operate concurrently in the same areas with overlapping mandates. They 'assume' jurisdiction formally or without the state's acknowledgement and endeavor to 'deliver' women homegrown justice in personal and public matters. Complementarity – in the sense of dispensing redress to claims in property rights by offering parties vertically and horizontally spread institutional platforms – is but certain, inevitably flowing from the multiplicity of actors involved in the parallel legal system.

Modern state institutions of justice are not only of recent creation in Ethiopia's pluralistic legal order, the structures have not also had the

⁵³Merry, Sally Engle. 1988. 'Legal pluralism.' *Law & Society Review* 22(5): 879.

opportunity to exert authority beyond 'narrow' geographical confines even when, constitutionally, they retain 'near-exclusive' mandates in relation to matters adjudicated by customary justice institutions. As Assefa submitted, the informal justice structure in Ethiopia *transcends* the formation of the nation state and the introduction of formal justice mechanisms.⁵⁴

Ethiopia's Constitution provides that *no* customary laws or practices that contravene its order could create legal effects and that the basic law only 'projected' that the state may establish or extend official recognition to religious and customary courts to adjudicate disputes relating to personal and family laws. Nevertheless, customary institutions have continued to operate without receiving the state's formal recognition.⁵⁵ Again, the Civil Code of Ethiopia (1960) has proclaimed that all customary rules (or norms) previously in force in relation to matters covered in the Code should be 'repealed'; and yet, today, traditional institutions and their normative order continue to offer remedies in many parts of Ethiopia – creating 'legal situations' on nearly all the subject matters covered by the Code.

Similarly, the Criminal Code of Ethiopia (2004) was crafted in a legal centralist language to apply 'exclusively' to all persons who committed any of the crimes specified in the Code in the territory of Ethiopia, and still the parallel justice system assumes jurisdiction on petty as well as grave offences covered by the penal legislation.⁵⁶ The Revised Family Code of Ethiopia (2000) gave limited room for the workings of religious and customary norms –should they comply with certain essential conditions; more importantly, the Code decreed any laws, decisions or practices inconsistent with its contents shall 'not be applicable' on matters provided for in its dictates, which basically extends to most claims of personal nature adjudicated by traditional justice institutions.

In the contemporary context of the social and legal reality in Ethiopia, customary institutions continued to operate as fairly autonomous mechanisms with own identities and loosely organized machineries of justice. Mainly, this ensued from the evident incongruity between the state's perceived status of 'monopoly' in enforcing legal orders and its

⁵⁴Fisseha, Assefa. 2013. 'Customary Dispute Resolution Mechanisms and the Rule of Law: Areas of Convergence, Divergence and Implications.' In *Law and Development, and Legal Pluralism in Ethiopia*. Edited by Elias N. Stebek and Muradu Abdo.118. Justice and Legal System Research Institute. Addis Ababa.

⁵⁵Art.9, 34 and 78 the Constitution of the Federal Democratic Republic of Ethiopia (1995).

⁵⁶This does not ignore new developments under the *FDRE Criminal Justice Policy*, which opened some space for the operation of alternative dispute resolution forums at the discretion of the state's law enforcement agencies.

'limited capacity' - opening a space to a plethora of competing institutions and preexisting normative structures regulating social conduct.

The study found that the overall organization of the normative orders in the Ambo or Hawassa areas is not any different. Within the larger frame of the legal system functioning in both localities, customary justice institutions continue to play significant roles, 'complementing' gaps in terms of availability, accessibility and effectiveness of the formal justice sector. In fact, in some areas, they by default constitute the most 'important' avenues of justice.

In this regard, it was observed that while the statistics availed during the field studies is clearly rudimentary to warrant broader generalization, it is self-revealing in terms of the continued harmonizing role of traditional forums: *each year* the *Dore woreda* court receives *only* about 30 cases submitted by women on disputes relating to immovable properties - mostly arising in the context of inheritance or divorce proceedings.⁵⁷ The *Dore woreda* Land Administration Office confirmed that on the basis of instructions issued by the *woreda* court, it annually processes and transfers land possession certificates to about 15-20 women.⁵⁸ These figures hardly compare with the average of 5-12 case transactions handled *each week* by the tribal forum operating in just one constituent of the *Dore woreda*- the *Doyo Otilcho kebele*,⁵⁹ or to the 'too many' similar disputes submitted *every week* to the *Marrero gosa's* tribal forum in *Tula*,⁶⁰ or *every two weeks* to the *Yaa'aa-yabboof* of the *WaraaDanfaa Qaluu*.⁶¹

Key informants from the judiciary agree: while no systemic research had been undertaken to identify the number of cases submitted each year to both justice forums in the area and why women prefer one medium over the other, the number of charges on immovable properties presented by women before formal courts has been extremely limited. In the Sidama and Western Shewa zones, the reason for such trajectory is partly explained by

⁵⁷Interview with DankuraDelemo, Judge and Vice President, Hearing-Decisions Work Processes, *Dore Wereda Court*, August 2015.

⁵⁸ Interview with YosephChira, Land Administration Expert, *Dore Wereda*, August 2015

⁵⁹Interviews with Darimo Darusa, local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*; and Hanaqo Ebiso: local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*, August 2015.

⁶⁰Interview with Sermiso Semago, tribal chief and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*, August 2015.

⁶¹Interview with NataaXurii, mediator at two customary courts - the *Yaa'aa-yabboof* of *WaraaDanfaa Qaluu* court and *Abba sampa'llo* at the *GadaBoku Tulecourt*, August 2015.

the strong prevalence of parallel justice systems that adjudicate on the same issues as courts of law.⁶²

Such 'standing' of traditional justice institutions, as vital mechanisms that complement dispute resolution services rendered by formal courts of law, is not necessarily attributed to failure, on the part of the state, to provide 'accessible' structures for vindicating rights at the *kebeles*. In fact, contrary to the observation by some of the informants in terms of failure to 'reach out' the lower tiers, the state's actions have been influenced by ideas tweaked along 'legal monism' and social regulation under 'one sovereign authority'; and despite the Constitution's narrow opening to a pluralistic legal order, the state has undertaken to stretch (and permeate) its dispute settlement mechanisms to the local levels of community lives. This is evident in many national legislative enterprises, and in the particular context of the issue at hand, one notes that the rural land administration and use proclamations of both regional states - Oromia and SNNPR - have clearly provided that 'all disputes' over 'land possessions' shall in the first instance be brought to the *Kebele Land Administration Committee* (SNNPR) and the *Kebele Administration* (Oromia).

From these readings, it follows that it would be wrong to assume, as convention often does, that women's recourse to traditional justice forums in both *woredas* is 'forced on them' by the absence of meaningful choice of forums. With some room for variations, data assembled from both study sites, and particularly from the lived experiences of women in the hands of the *Jaarsummaa*, the *QalluYaa'aa-Yabboo*, the *Bokkuu-Cittuu* and *Bokkuu-Xulee* (Western Shewa) confirm that an approach that generically brands customary justice systems and their redress in women's immovable property claims as inherently prejudicial is ill-founded. Such perspective undermines the strong harmonization role of the informal justice systems in providing quick and culturally relevant solutions.

While it is evident that 'many' institutions suffer from certain fault-lines such as discriminating against women, in many parts, customary institutions function as default establishments, and assume more than a 'complementary role' in resolving multifaceted problems encountered by women against the background of the state's limited resources and structural reaches. In many regions such as in Western Shewa and Sidama, they operate side by side with the state's justice infrastructure, significantly filling jurisdictional voids in relation to a significant number of women who prefer and consciously decide to pursue their claims before them.

⁶²Interviews with Dingama Digde, Vice President, *Sidama Zonal High Court*; Agegnehush Ajema, Office Head, *Western Shewa Women and Children's Affairs*, August 2015.

Inevitably, the *Jaarsummaa*, *QalluYaa'aa-Yabboo*, *Bokkuu-Cittuu*, *Bokkuu-Xulee*, *Murero* (in *Tula*) or the same tribal forum operating in *Doyo Otilcho kebeles* will continue to function as key local institutions of dispute resolution in immovable property claims – whether or not the state ventures to recognize them. Within the broader context of the pluralistic legal order, their presence and normative influence is discernibly great, and in land-related disputes, the state's institutional penetration is not even remotely close to supplanting their roles.

b. The State's Views And Actions In Relation To 'Weak' Legal Pluralism

In light of the arguments above, the next rational question one raises, informing the intervention strategy of the study in meeting with one of the research objectives, would then be how the state apparatus in the designated areas 'views' and 'values' their 'complementary' roles, and what aspect of their functions informs future actions by pertinent stakeholders in the area, including the Center for Human Rights. This is particularly relevant considering the varied degrees of discriminatory norms that customary institutions uphold in relation to disputes submitted by women in immovable property rights.

In connection with women's rights of equality and protection from discrimination, this analysis departs from the extensive account provided above on 'norms and values governing property rights of women in the study areas' which identified certain problems of the informal justice systems. Many, if not all, women in the study areas had experienced treatment that falls below the Constitution's protective regimes in relation to immovable property rights; in some cases, the institutions' mechanisms have exacted considerable harm on women's economic interests and social standing, and reinforced power structures that typically feature the influence of men. This is really a cause for concern and institutional actions.

The empirical data congregated during the fieldworks involved cross-interviewing a range of state and non-state actors comprising women who reported land-related grievances and discriminatory treatment in the hands of informal justice forums, other women who claimed to have benefited from proceedings of customary justice institutions, judges of *high* and *woreda* courts, elders (mediators) and clan leaders presiding over customary justice forums, land administration officers, heads of women and children's affairs offices, and members of *kebele* social courts. Not all share the same values, profess comparable perspectives or retain identical vested interests in relation to the status of women in society or with regard to the key question of how women's basic rights should be safeguarded or promoted. Accordingly, each stakeholder's reaction to a similarly framed set of

questions had been different and mostly inconsistent in both study areas. This generated a methodological challenge in ascertaining the typical value preference that should be adopted for purposes of the study.

As the state 'alone' wields sovereignty and the supreme power of its positive laws transcends beyond the realms of any competing normative structures (of custom, tradition or religion for example), however, it logically follows that the standard for evaluating the 'legitimacy' or 'admissibility' of value preferences adopted by any institution would be the constitutional set up which the state itself establishes. How informal justice structures conceive their legitimacy, authority or roles in relation to the rights and welfare of women would hardly matter; they have to function within the framework of a value system ordained by the constitution, and hence subscribe to the minimum substantive safeguards of rights provided to women under the basic law. The politics behind the government's disinclination in encouraging the full force of legal pluralism notwithstanding, the state apparatus assumes a constitutional duty not only to establish women's legal capacity, but also to work on all conceivable measures, including reforms, to guarantee that no 'individual' or 'institution' in the public, social or private sphere limits women's rights in its actions. No derogations could be permitted against the constitution's equality or non-discrimination principles to make way for the operation of family, tribal, religious or customary norms or institutions. This perspective is very critical; institutional complementarity should be conceived only in a context that fosters women's recognized property rights.

This argument does not necessarily refute Kyed's concept of a 'hybrid political order', which considers that justice institutions are not only pluralistic and overlapping, but also that they *influence* and *transform* each other. It is simply to assert that the Ethiopian context concurs more plausibly with the 'weak' legal pluralism, granting the state a privileged position as a political framework that provides security, welfare and representation and hence showing itself as capable of sharing authority, legitimacy and capacity with other structures (although only at *own* will and within defined parameters).⁶³

Such a view on normative supremacy highlights how customary institutions should be 'viewed' - facts of operational supremacy notwithstanding, and most importantly, what approach the state infrastructure in the study areas represented through *kebeles*, *woreda* courts and offices on women's affairs, and other stakeholders working on the causes of women, 'adopt' in relation to the complementary role of

⁶³Kyed, Helene Maria. 2011. 'Legal Pluralism and International Development Interventions.' *Journal of Legal Pluralism*.No.63.p.12

customary justice institutions. Questions of interest that require further scrutiny include: should the state (and other stakeholders) focus on educational campaigns, informing women on alternative avenues of justice availed? Should the state implicitly work on a degree of formal recognition, while engaging in their 'reforms' that perfect institutional weaknesses such as prejudices against women's recognized rights? Or, in contrast, should the state simply exert on the absorption or eventual replacement of traditional institutions through its own structures? .

Drawing on broader conceptual discourses on legal pluralism, Tamanaha contended that in some cases, coexisting sources of normative ordering may be poised to clash; while some systems try to account for this with specific legal provisions, others are simply silent about interaction with other normative systems.⁶⁴ The Ethiopian experience vaguely falls under the former, but it is noted that the state did not actively endeavor to tame diversity, nor had it worked to nurture complementarity.

With regard to how customary justice institutions handle immovable property disputes, a careful synthesizing of the data availed in Hawassa concludes that the state generally labels women's experience under such systems as 'harmful practice'; this is a view shared by all the *five* women interviewees in *Dore*. On the other hand, while many state agencies in West Shewa lamented women's experience on the subject as 'deeply discriminatory', their views had not been shared consistently by *half a dozen* of women talked to during the field studies; paradoxically, no fewer than *nine* women interviewees from the same region also confessed that if they were to institute new land related suits, they would prefer doing so before formal courts of law. Such varying accounts of women could not be explained easily and may well affect our understanding of trends and the nature of future intervention strategies proposed by the study.

During the field studies, it was observed that the state's enterprise in combating the discriminatory workings of traditions or in managing clashes between two normative orders has *merely* focused on ameliorating women's conditions through a chain of awareness-raising trainings, and even these were pursued in limited areas. There is, of course, a clear understanding that the state's obligation in ensuring compliance with human rights standards extends to the practice of 'every justice institution'. Yet, the 'awareness raising exercises' in both regions had so far concentrated on

⁶⁴Tamanaha, Brian Z. 2008. 'Understanding Legal Pluralism: Past to Present, Local to Global.' *Sydney Law Review*.30.:400.

select institutions and practices- including issues of 'gender equality' typically, if not exclusively, focusing on reaching out 'women audiences'.⁶⁵

In relation to the practice in Hawassa area, the study concluded that while the influence of customs and the ill effect of cultural stereotypes were admitted, the attention of the *Dore Woreda Women and Children's Affairs Office* - the key stakeholder in the protection of women's rights in the district had merely been directed to certain activities. These included engaging the Women's Development Army in each *kebele*, holding weekly meetings and discussions on gender sensitive themes - including property rights, and offering assistances to women who chose to institute legal action in relation to immovable property. Structures functioning at the *kebele* levels, including the *Committee on the Elimination of Harmful Practices*, have been deployed *only* in such limited contexts.⁶⁶ Similarly, in West Shewa, the Women and Children's Affairs Office, in conjunction with the Zonal Communication Affairs Office, has been engaged in the use of media and grassroots and school-level awareness-raising initiatives; this was attended by educational campaigns on the region's family laws which was undertaken in cooperation with the local police and prosecution offices.⁶⁷

However, these schemes that endeavored to instill conceptions of equality in the exercise of immovable property rights have been far from adequate or organized, and would appear to have produced little impact so far. Women's reactions to such initiatives also varied in both study areas depending on individual perceptions, experience and education.

With regard to the state's functionaries in the two districts, no clear indications had been proffered highlighting the views of the state in relation to the necessity or feasibility of pursuing system-wide overhaul of customary institutions or their normative orders. A blend of factors may work, no doubt, which are complex and beyond the study's scope.

Obviously, the prevalence of organized structures at the *kebele* levels does not guarantee the state's capacity to permeate every aspect of community life, at least in the short term. Its resources are neither adequate nor effective in contesting the parallel legal orders in both regions; what is more, complementarity is simply unavoidable. This is particularly evident in West Shewa where the customary norms and institutions are more articulated, structured and deeply entrenched in communal lives. Against such background, state-engineered transformation efforts must toil not on

⁶⁵Interviews with Melesech Bekele, Office Head, *Dore Wereda Women and Children Affairs*; Agegnehush Ajema, Office Head, *Western Shewa Women and Children's Affairs*, August 2015.

⁶⁶Interview with Melesech Bekele, *Ibid*.

⁶⁷Interview with Agegnehush Ajema, Note 63.

deconstructing the systems as such, but on the gaps such structures exhibit; this should be pursued in a manner highlighting their complementary roles.

Admittedly, this spurs political ambivalence on the part of the state. It may be contended that formal (and informal) arrangements based on 'division of labor' can particularly run into problems in political settings where sovereignty is *de facto* shared.⁶⁸ However, the Ethiopian state could not be threatened by the prevalence of semi-autonomous domains of such institutions as the state still holds an overriding constitutional power. Instead, the application of such approach would correspond to reality if the state comes out of the veil of political vacillation and extends measured recognition to well-established customary institutions whose orders it can continue to influence through progressive changes. In enhancing women's rights and welfare in the study areas, the Center for Human Rights involvement and future direction must not only take into account such political trajectories, it also needs to remain proactive even when state's actions remain to be limited or deferred.

In this connection, it was found during the field studies that *sporadic trainings* have been provided to *elderly judges, mediators, Aba Geda* and *Aba semaloston* constitutional principles of gender equality, non-discrimination and property rights of women.⁶⁹ Of course, in the extreme cases of harmful practices involving rape, circumcision or abduction, the state had persistently endeavored to exert authority over all traditional institutions so that they 'relinquish' jurisdiction and 'refer' the matters to the attention of formal law enforcement agencies. However, such enterprises are *less systemic* and *very limited* in terms of their effect on the immovable property rights of women.

In short, the agenda of 'reforming' the systems so that they operate complementarily and in compliance with the constitution's principles of equality and non-discrimination is pursued less vigorously and only indirectly – through educational campaigns that target *women* themselves, and in limited geographic scales. This entailed that within social grounds in both districts, contravening customs continue to be applied and normative

⁶⁸Kyed, Helene Maria, Note 61.

⁶⁹Interviews with Darimo Darusa and Hanaqo Ebiso, local elders/judges, note 58. When asked why they don't seem to always reflect the rules of equality in decisions involving the rights of women in immovable property, they replied: 'when we have clear understanding of the laws of the state, we don't really wish to decide contrary to their contents or spirit; we try to be careful and decide on such basis'; however, several cases were adduced during the research which clearly evince that this has not been the case.

Interview with Abetu Ejeta, Head of *Aba Geda* of *BokuChitu* in *Toke Kutaye Wereda*, Western Shewa, August 2015.

conflicts remain unsolved. The key stakeholders in the study areas should therefore adopt comprehensive approaches on the subject of intervention including working with traditional institutions and their normative gaps.

Such approach would be imperative given the 'less-promising' methods through which the state's functionaries in the study areas had intended to address women's predicaments related to property rights in the hands of traditional justice institutions. A key informant at the SNNP Regional Security and Administration Bureau explains: "while the state had in the past worked hand and glove with community institutions on several themes of harmful practices such as abduction and circumcision, the regional government did not reach out customary institutions with a view to requiring them address challenges related to the implementation of women's property rights and cultural stereotypes; the core perspective which directs the state's actions is that problems encountered by women could be addressed through its own structures established at the *woreda* and *kebele* levels."⁷⁰Hence, in carrying out the state's political commitment that no cultural workings operate to erode the rights expressed in constitutional and legal frameworks, the approach adopted by local authorities has barely anticipated engagement with such institutions.

Departing from a similar set of assumptions, data availed by informants representing the *Dore* woreda court concludes similarly.⁷¹ While the complementary role of customary systems is acknowledged, the necessity of working on factors that detract women from resorting to courts of law had been highlighted.⁷²Otherwise, as there is no 'vertical' or 'lateral' relationship between the woreda court and the informal justice forums operating in the district, the court's enterprise working on women's 'emancipation' has never included 'formally requesting' customary institutions to construe their normative order in conformity with the constitution's specific prescriptions. Instead, in the past, the court's limited measures had focused on raising consciousness through collaborative works including, for example, the Access to Justice Project of the Center for Human Rights; this has been conceived as a key strategy in divesting cases on immovable property claims from being adjudicated by customary justice forums in the district.⁷³This strategy as stipulated in this paper has not paid-off well.

⁷⁰Interview with Kebede Fokoro, Officer, SNNP Regional Security and Administration Bureau, *Hawassa*, August 2015.

⁷¹Interview with Dankura Delemo, Note 55.

⁷²This mainly relates to factors such as knowledge, physical accessibility, wrong perception, cultural influence and financial/material obstacles

⁷³Interview with Dankura Delemo, Note 55.

On the other hand, while the state's practice in Western Shewa seemed to be informed by similar considerations, there is also a stronger sympathy for the workings of certain aspects of local culture in the region. This may warrant the adoption of a different approach in the region. The Women and Children's Affairs Office clearly favors that women resort to courts of law to resolve disputes; but the office also shows greater respect to the harmonizing role of customary institutions operating in the districts, a few exceptions notwithstanding.⁷⁴ Recurring problems relating to favoritism and discrimination are largely regarded as less systemic issues and are mainly accounted as problems of individual elders.⁷⁵

In this context, though, it is interesting to note the *woreda* courts' fairly established unconstitutional practice of 'referring' matters involving the partition of land and related properties to traditional systems in inheritance and divorce proceedings.⁷⁶ From institutional perspective, such exercise has been predicated on the need for creating family cohesion and social harmony through greater involvement of localized justice orders; however, the approach takes no account of the fact that very often, women are left with no meaningful options in realizing equal property rights. However, this study also accents the gender 'parity' at the contemporary customary courts which is mostly described as a recent development both by the elders of customary courts and the clients. It is said to have been influenced mainly by various affirmative actions to redress gender inequality at the national level. This is yet another instance of the mutual influence and the competitive undercurrent in the relationship between customary courts and state courts.

The discriminatory treatment was evident in the testimonials received from women living in the district, but most importantly, from the openly professed stand of the *aba gedas* and *aba bokus* interviewed during the fieldworks. They held that if a property division involves a rural land or a residential building on rural plot, male successors/husbands would invariably takeover such property for obvious cultural reasons ensuring the continuity of paternal lineage.⁷⁷ In such procedures, the complementary role of local justice systems does not on its own pose a challenge subject to considerations of reform suggested above. However, courts could not evade their responsibility of ensuring that any scheme for the partition of immovable property proposed by traditional elders or institutions is not

⁷⁴Interviews with Agegnehush Ajema, Office Head, *Western Shewa Women and Children's Affairs*; Ejigu Guta, *Aba Geda of BokuChitu and Abasemalo at Toke Kutaye Wereda*, Make-Dera Farmers' Association; Bekele Bayata, Local Elder in *Ambo City*, August 2015.

⁷⁵Interview with Daba Chufa, Private Legal Practice, West Shewa, *Ambo*, August 2015.

⁷⁶Interview with Agegnehush Ajema, note 72.

⁷⁷Interview with Ejigu Guta, note 72.

counter to the principles of equality and non-discrimination. Future intervention approaches must address such inadequacies of the formal system as well- which is largely prevalent in the Ambo area- through tailored training of judicial personnel at lower tiers.

c. Competition Between Formal And Informal Justice Systems

Institutional competition between formal and customary justice forums operating in Hawassa and Ambo woredas - as referring to the express or implied exertions of such systems to shop for disputes or to shine as vital mechanisms of social control - could be considered from different, often intertwined, perspectives.

Conceptually, institutional competition symbolizes different connotations in different settings. For the purpose of this study, its use twirls on the following frames: Does each institution view the other as a competitor - within which power is contested and influence is exerted in rivalry with other actors? Do forums campaign for disputes - whether actively or indirectly, for example through the application of pressures against women? And, could institutional enterprises, including reform, with a view to enhancing efficiency, accessibility and equitability to women be viewed as acts of competition? The explanations offered to each of these questions would be relevant in understanding the degree of interplay between and the approaches adopted by customary and formal justice institutions operating in the study areas.

The analyses in this section departs from Benda-Beckman's thought-provoking argument that institutions do not only shop, they may also use disputes for own local political ends - with interests different from those of the parties involved - and using the processing of disputes to pursue those interests.⁷⁸ Most similar interests have to do with issues of recognition, allocation of authority and socio-political competence. In this context, it becomes important to 'recognize that justice and security provision are fields where power is contested, authority is reconfigured and constituted, and where different actor interests are at stake over power, resources and clients'.⁷⁹ Equally, it is also important to accentuate that most analyses on legal pluralism had held that power relations between plural legal orders are 'unequal', directing attention on the 'penetration and dominance of state law and its subversion at the margins'.⁸⁰

⁷⁸Keebet, Benda-Beckman v. 1981. "Forum shopping and shopping of forums Dispute processing in a Minangkabau village in West Sumatra." *Journal of Legal Pluralism*.117.

⁷⁹Kyed, Helene Maria. 2011. Note 61.

⁸⁰Merry, Sally Engle. 1988. Note 51.

Both the formal court structures and customary justice institutions in Ambo and Hawassa operate on the basis of fairly overlapping grounds of jurisdiction. No law delineates their respective spheres or regulates issues related to jurisdictional interface by way of 'acknowledging' the existence of customary institutions. Each is aware of the power it exerts in its class of social arena. The empirical study found that none of the institutions solicited proactively to provide forum or usurp jurisdiction in relation to disputes involving women in property claims; nor did one vilify the other on any account.

Ordinarily, such a setting should have provided 'reasons for social actors to actively exploit situations of legal pluralism in the furtherance of group and individual aims'; the assumption being 'people (i.e. institutional leaders) who are truly committed to one set of norms or institutions...may undertake to defend or expand their system against others'.⁸¹ Clearly, also both mediums need to continually appraise their vitality to the community they serve, and in this context, it would be natural to expect that they would devote on organizational methods and values that appeal to their clientele.

Nevertheless, the study established that the institutions did not posture themselves in competitive stance. The choice of specific forum is generally left to women who, through the exercise of 'free will', determine where and how to litigate cases; 'shopping for disputes' has not been conceived as a plausible means of sustaining status and power at the local levels. Instead, it was observed that as the state apparatus entrenches its normative order through new structures and subsumes areas it had not penetrated before, customary institutions in the study sites, too, have gradually reshaped their orders and social field – hence ensuring their continued vitality.

Admittedly, this deduction does not necessarily apply to each traditional justice forum operating in the study areas, and certain variations are only natural. Yet, data obtained from the informants – two elderly adjudicators in *Waraa Danfa Qaluu* (Ambo) and *Tula* (Hawassa), strongly confirmed that customary institutions do not operate in competition with the *woreda* or higher courts of the state or other religious or local institutions. Nor do they harbor attitudes of neglect or relegation simply because some women choose to pick on a different forum.⁸²

The fact that neither institution openly professes of competition does not inevitably entail that they do not resort to certain mechanisms, some direct

⁸¹Tamanaha, Brian Z. 2008. Note 62.

⁸²Interview with Nataa Xurii. *Wechna*. Note 60.

and others systemic, which have the effect of influencing decisions women make with regard to forums in litigating claims related to immovable properties.

The first way for looking upon this issue would be if, in the interest of preserving institutional verve, customary institutions have engaged in any act that potentially sways women's free will. The elders and tribal leaders interviewed in both *woredas* concurred that women have 'absolute discretion' in bringing cases to whichever institutional platform they prefer. Neither the customary bodies nor local communities engage in coercing or enticing women to present cases solely to the traditional elders, nor do the institutions oblige women to present cases to courts of law *only after* they have had their day before traditional justice forums.⁸³ In fact, they argued, the institutions' working model hardly allows that they reach out to clients, whether men or women, with a view to convincing them submit disputes to their jurisdiction either exclusively or as a matter of first instance.

This extrapolation about the state of facts is generally, but not conclusively, consistent with the personal accounts of the *nine women* conversed with in both *woredas*. In their responses to the possibility of whether indirect pressures have been applied against them to submit to the jurisdiction of customary justice institutions or if they know of anything happening against women who contemplated direct action before courts of law, all the *four* interviewees in *Ambo* district made their points decidedly clear that they made an 'informed choice' in yielding to the authority of the informal justice institutions - with no role imputed to the acts of elders or the community. Another interviewee from *Dore* concurred, holding in her particular case that in fact the local elders, whose edict was not conformed to by the disputing party, had encouraged her to seek justice in a court of law.⁸⁴

However, all the *five* interviewees from *Dore* were counter-consistent with the foretasted narrative, generally stressing that they not only lacked the self-esteem needed to initiate legal proceedings and claim rights, but they also believed that seeking justice in formal avenues may result in their being viewed as challenging the prevailing social, cultural or traditional norms. In disputes related to immovable properties, each had resorted to traditional forums as first entry points to the justice system not just through the exercise of free will but under the 'impression' that they were 'duty bound to first submit claims to such forums'. They faced 'pressure from different sources to primarily handle disputes through the employment of

⁸³Interviews with Nataa Xurii.*Wechna*.Note 59; Sermiso Semago.*Hawassa, Doyo Otilcho Kebele*.Note 31;DarimoDarusa and Hanaqo Ebiso, *Dore*, Note 31.

⁸⁴Interview with Lemlem Alemu, *Bafano Kebele, Dore*. Note 45.

local elders'.⁸⁵ The information obtained from interviews held with key informants working in 'state' structures in *Hawassa* and *Ambo* districts squarely corresponded to the accounts of women hailing from *Dore*.

In conclusion, it was noted that several women in both study areas had been subjected to actual pressures – a fact which was also attended by own perceptions that the community would react negatively if they bypass local institutions of justice. Often, these facts affect their free will and shape the decisions they make. A second way to look at the concept of competition between formal and informal justice institutions could also center on the investigation of the variety of schemes which state agencies implement either as extension of their institutional mandates to wrestle with cultural stereotypes or because they have to manage local violations which, if entrenched, may threaten constitutional values and orders.

A cursory review of the intervention approaches pursued by state institutions in improving the conditions of women have revealed that while the state encourages communities to practice and develop their cultures, it also fights against societal traditions which it termed are 'harmful' to the protected rights and interests of women. This approach is inspired by the constitution and the National Culture Policy endorsed by the Council of Ministers (1997), which gave recognition to 'traditional ways of social governance' as one aspect of culture but emphasized the need for a gradual abolishment of deep-rooted causes of prejudice against women, chauvinism and 'backward traditions' that violate human rights and cause physical, psychological and moral damages. Therefore, across tiers in the study areas, state structures have been tasked with the responsibility of ensuring women's enjoyment of all rights in equality with men and without being subjected to discrimination in all walks of life.

In both districts where detailed data was availed to gauge the perception of government offices, the state's actions in relation to women, immovable property rights and the role of traditional forums depart from a very distinct stand that customary institutions are 'not immune' from the prejudicial effects of culture. As a result, it was submitted, the decisions they give are often 'unfavorable and openly discriminatory' to women in inheritance and divorce cases; such forums, wholly constituted of men, are prone to sexual prejudices.⁸⁶

From this, followed a two-thronged approach, which the lower tiers of the state structure in *Dore*, and in some measure, *Ambo* districts – the *woreda*/high courts and the women and children's offices – exerted to

⁸⁵Interviews with Meseret Dasalo *et al.* Note 45.

⁸⁶Interview with Kebede Fokoro. Hawassa. Note 68.

accomplish. The intervention schemes are set with clear objectives: to forestall/abate the suffering of women affected in immovable property claims in the hands of customary justice institutions and correspondingly augment the roles of the respective *woreda* courts. The strategy is straight forward: the first measure entails improving women's education and legal consciousness through continuous trainings offered by the *woreda*, *kebele* and other stake-holding functionaries so that women make informed decisions with regard to the forums they shop. Evidently, this intends to weaken the pull-factors that make traditional justice systems 'more attractive' to women pursuing property claims.

The second measure is more pertinent to the *Dore woreda* court; it strategized to work on institutional inefficiencies and organizational challenges that impeded women's recourse to its jurisdiction. In this context, a series of measures were adopted to make the *woreda* court more accessible to women in the 23 *kebeles* of the *woreda*, to establish one 'roving *woreda* bench' for each group of 3-4 *kebeles*, and to intensify the educational and legal aid works of the court's officers and the Access to Justice Project in the *woreda* and farthest localities. These key intervention measures had anticipated to minimize the impacts of the push factors in relation to the court.

There is little doubt that such positive measures would enhance the competitive edge of the courts in relation to customary justice institutions. Education and training provide women the tool for informed decisions; in fact, over the years, it was contended that the number of women who chose to institute actions before the women and children's offices and the *woreda* courts has increased- whether directly or after exhausting local remedies available with the traditional institutions.

On the other hand, it also appears that the state's sustained pressure and political drives on issues of equality and non-discrimination has modestly affected how customary justice forums conceive of women and their status in society in relation to the ownership and management of immovable properties. This has influenced them to adopt certain 'reforms' that in turn contributed to the continued vitality, accessibility and equitability of traditional justice forums and augmented their competitive poses in both districts.

VII. Concluding Remarks

The study on women's experience in relation to the exercise of property rights should not be contented by simply highlighting the need for instituting a national system that ensures the effective treatment of women's claims before the law. Each factor informing their choice must be investigated, but more importantly, opportunities availed to women in terms of 'actual' access to formal justice procedures should be explored. This is very fundamental to guaranteeing women's entitlements and effective remedies

If the state structures exert on the 'push factors' that undermine their usefulness, customary institutions would eventually culminate with a very limited jurisdiction, or worse, they may no longer play their conventional roles as dispensers of local justice. Reforming the normative orders of traditional justice institutions, whether imposed or self-initiated, is unavoidable. Customary norms - pervasively inconsistent with formal laws - will operate only while the state invests in resources to ensure the physical stretch of its justice infrastructure at the lowest levels of social life.

Against this background, future interventions must be directed to understanding why women made negligible uses of courts and the new institutional setups under the rural land administration and use proclamations. Such enterprises must highlight the organizational and professional inadequacies of the *kebele* structures in providing timely and effective remedies in land disputes. The vitality of the *kebele* institutions could be ensured if their processes are attended by adequate training of personnel charged with the handling of women's property claims and by the availability of legal advice, representation and assistance schemes involving clerical services. To date, no such facility extends at the *kebele* levels in both districts, except for the awareness-raising programs hurled by the women's offices; the focus of free legal aid interventions had only whirled on select *woreda* courts.

On the other hand, the study also noted that the *kebele*-level educational sessions had primarily focused on enhancing women's legal consciousness and the possibility of enforcing such rights through adjudicatory mechanisms. However, the programs could have been pursued in a manner which proactively involves the *kebele* administration itself and the local elders, the two key institutions often called upon to mediate on land disputes presented to the *kebele'* jurisdiction. The institution of such scheme provides multiple benefits: it helps in pulling a wider and participatory process (including elders) that enhances women's psychological clout to

resist harmful communal values. A 'localized adjudication' by 'informed mediators' also helps women to deal with stereotyped pressures from powerful actors which would otherwise require that they submit land-related disputes to traditional justice forums. This approach may also assuage women's fears of being stigmatized for defending land rights and enhance the equality of arms before *kebele* proceedings. More fundamentally, the institutional reinvigoration encourages women to make frequent use of the *kebele* forums without enduring the economic burdens of litigation elsewhere and without staying away from families – while at the same time benefiting from quick and affordable local remedies.