



ASSOSA UNIVERSITY

**College of Agriculture and Natural
Resource**

**Customary tenure; Its implication to women's land right and
forest land Security: the case of Belojiganfoy district,
Western Ethiopia**

By

Habtamu Seyoum Arega

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Abstract

The nature of land tenure system that exercised in a certain country, may have positive/ negative implication on the security of communal land, namely, that of forest and women's land right. This situation is very intense and an important issues in the developing country like Ethiopia, at which livelihood largely agriculture. The rationale of this investigation is an assessment on customary tenure system and its implication to women's land right in and security of communal forest land, Belojiganfoy woreda of Benishangul Gumuz Regional State. The required data for the study is generated both from primary and secondary sources. Hence the instrument used are key informant interview (from 19 respondents), focus group discussion and questionnaire from a house hold survey of 161 heads of households, review of related document and personal observation. The findings of this study confirmed that the institution of customary tenure and its rules are presently dissociated and lack recognition. However, its long year negative implication in undermining women's land right still dominate peoples mentality and constructed as a societal traditions. Because of this reason women's have no equal position in terms of ownership, access and the right to convey their farm land, as of their men counter parts. Again, the case of communal forest is at a risk. Because, every one use them without limit due to dissociation of the power of customary tenure, plus the absence of strong statutory legislation in the area. At extreme case, forest land and other reserved sites are massively converted to agricultural land both by investors and farmers. Due to this reason, the region and the woreda government attempt to formalize the land tenure system, by launching a gender sensitive land tenure law and with the formal delineation of forest land for protection. However, its smooth implementation are became tedious task, due to the complexity land holding issue emanating from overlapping personal and institutional interest.

Key words: *tenure, land tenure, customary tenure, formalization, land right and tenure security, forest., communal land*

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The concepts and guiding principles for land issues have been subject to rapid change in the past years. Land stands for property; it is an object of agricultural and industrial use, i.e. a production factor besides labor and capital. Land embodies many more dimensions such as homeland, place of ancestry, a prerequisite for realizing individual freedom, basis for survival (GTZ, 1998). It is also an object that is taxed and desired by governments and interest groups (ibid). It is a basis of power and dependency and a cause of conflict and war (ibid). However, to the vast majority of African societies land is regarded not simply as an economic or environmental asset, but as a social, cultural and ontological resource. Land remains an important factor in the construction of social identity, the organization of religious life and the production and reproduction of culture. Indeed, land is fully embodied in the very spirituality of society (AU et al, 2010). These all ideas tie the physical object to the human idea of how to monopolize, own, use and secure and the tenure policy development must address them if prescriptions for change are to be internalized.

Land tenure affects a country in many ways. In the first place, it determines the distribution of incomes and the use of land. Its influence goes far beyond the economic sphere as land tenure systems determine social attitudes and satisfactions. The change in land tenure system has vital roles in shaping farmers' land-use decisions. Specifically in the area where shifting cultivation is dominantly practiced, farmers need a vast tract of land for investments that is occupied through the rotational farming practice and continues clearance of new land for cultivation. However, their investment decisions may be affected if they are not sure how long they would be allowed to use the newly cultivated land, if the mode of access to new cultivable land is not fits their tradition and the way of resolving land related conflict is directly shifted to formal kind of negotiation (Shimelles, et al, 2009).

Specifically, throughout developing countries like Ethiopia, land is a fundamental issue for economic development, food security, poverty reduction and the way of living for both state and communities as whole. In other word land is a critical asset and a vital source of livelihood for the majority of Ethiopians. However it becomes increasingly scarce for numerous reasons: rapid population growth,

high population density in productive areas, degradation of agricultural lands, urbanization, and competing demands from different users, including investors. These pressures have resulted in increased competition for land within different groups of users. Moreover, socio-economic change eroded the customary tenure rules and institutions in many ways that had traditionally regulated and governed land rights (Cotula, 2004, Hirut and Giovarelli, 2013).

As a result many countries are at different stages of formalizing land administration system as a part of their national development strategy. The formalization process is driven by the need to provide security of tenure and equitable land distribution, resolve disputes, and establish best practice of resource use and management. This process typically requires the identification and registration of land ownership reflecting western concepts and technologies. However, these formalization techniques often fail to deliver overriding objectives to the majority of beneficiaries, where poverty is overwhelming, social stability is lacking, lawlessness is common and culture and tradition are strong (Dalrymple, 2005).

Land policy is the real source of power in imperial and contemporary Ethiopia and remains at the center of a controversial policy debate. The introduction of new land legislations and policies, specifically in low land parts of the countries, often leads to situations of legal pluralism, that is customary and modern institutions of land tenure co-exist, although their rules may partly contradict each other (Crewetteteal, 2008). This study is conducted in Benishangul-Gumuz Regional State of Belojiganfoy woreda. The region is known for the practice of shifting cultivation and land issues has been administered customarily under the leadership of clan chief or elders for a long period of time. Since 2003, the regional government has embarked on formalizing land tenure and building a land administration system to promote greater tenure security for the tenants, specifically that of women. However, it is hardly implemented at the beginning and resisted by the farmers, especially by indigenous residents who formerly administered their land customarily.

Thus, this study is principally designed to describe the existing customary land tenure system and its implication to the women land rights. Specifically, it is concerned with assessing the nature of the customary land tenure practiced in the study area, its direct and indirect implication on the protection of land rights for all sections of society specially women.

1.2 Problem Statement and Justification

Land tenure is the complex relationship among people with respect to land. It defines how access is granted, the rights to use, control and transfer land resources, as well as associated responsibilities and restraints related with the land right. The land tenure system reflects the power structure in a society, because land and other natural resources are central to social, cultural identity and economic wealth (FAO, 2008). A recognized interest in land or property vested in an individual or group can apply separately to land or development on it. This recognized interest may include customary, statutory or informal social practices which enjoy social legitimacy at a given time and place. (Lasserve and Selod, 2007).

The Problems might occur, when one tenure system does not recognize the other as valid. A century of outsiders' refusal to recognize the strength and validity of customary land rights has resulted in widespread tenure insecurity across Africa. A lack of legal protection for local land rights would result in losing of access for users (FAO, 2010). As a result of this, it is now generally recognized that land policies and laws must build on local concepts and practices. This entails, legally recognizing local land rights, which are the entitlements through which most people gain access to rural land (FAO, 2006). Contemporarily, the situation in many third world countries including Ethiopia shows that governments have sought to unsystematically formalize customary land tenure, based on state legislation without undertaking further investigation on the effectiveness of the program. They struggle to implement the newly formulated land legislation, whereas most resource users gain access to land on the basis of local land tenure systems (Cotula, 2007).

The assumption is that, formalization of land tenure can facilitate mode of land transfer and access, provide secure rights of tenure and protect the rights of vulnerable groups such as women. The situation in the study area of the Benishangul Gumuz Region is not distinct from the above statement. The nature of land tenure system practiced in the region for a long period of time is a kind of customary tenure which is distinct from the highlands of Ethiopia and from the Eastern low-lands where pure nomadic pastoralism is practiced. Currently, however, the government of the region formulates land administration legislation and is in the process of formalizing land tenure through land rights registration and surveying tools. This study is designed to investigate the nature of customary tenure system and its

direct and indirect implication to women and other tenants land right. Therefore, this study is conducted to fill the gap associated with these matters concerning the challenging aspects of customary land tenure and its legitimacy in Benishangul Gumuz regional state of Belojiganfoy woreda.

1.3 Objective of the Study

1.3.1 General Objective

The overall objective of the study is to describe the status of customary land tenure system and examine its implication to women's land right and forest land security, in Western Ethiopia, Benishangul Gumuz regional state, in the case of Belojiganfoy woreda.

1.3.2 Specific objectives

In line with the general objective, this study addresses the following specific objectives:

- To examine the nature of customary tenure system that had been practiced in the region
- To evaluates its current scope of application.
- To examine its implication to women's land right.
- To observe its repercussion on communal land of forest
- To identify the challenge associated with customary land transfer.

1.4 Research Questions

- What is the nature of customary tenure system which exists in Benishangul Gumuz Region of Belojiganfoy woreda
- Is it really being in practice today in the region?
- What is the implementation status of the statutory tenure system in the region?
- How was the fate of women's land right protection under customary land tenure system?
- What are the main challenges associated with customary land transfer in the study area.

1.5 Significance of the study

Land tenure and its change may have immeasurable implication on the socio economic and political situation of a given country. Tenure system, either customary or statutory may have problems related to insecure tenure, marginalization and vulnerability of people, specifically Thus, this study aims to assess the nature of customary tenure system that had been practiced in Belojiganfoy woreda and examine its

direct and indirect implication to protection of land rights for women's and other vulnerable section of societies. By doing so, the study will provide information for policy makers, planners and land administrator to evaluate their respective tenure system at national level and for regional government

1.6 Scope/Delimitation of the study

The study is concerned with in depth description of customary tenure system and its implication on the modality of customary land transfer, protection of land right for women's and other vulnerable section of societies at a large. Due to time and budget constraints the study is geographically limited to resources found in the Belojiganfoya woreda of the Benishangul Gumuz region

1.8 Conceptual Definition of Terms

In this section, some fundamental and repeatedly used terms that may have different meaning in different contexts have been defined in order to make them easy for the readers to understand. However, there are also several additional terms that are specifically related to land tenure system and tenure formalization which haven't been defined in this section. They are left to be discussed in detail and depth manner under the section of review of related literature with the empirical and theoretical considerations to avoid unwanted redundancy. Hence, the researcher identified the conceptual terms that are repeatedly used throughout the study and define them according to the purpose of the research in the study.

Tenure: the term tenure is derived from a Latin word for holding or possessing a land. It is the legal term that justifies the manner how something is held including the rights and obligations of the holder (Dalrymple, 2005).

Land tenure: is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. It may be defined broadly as the complex relationships between categories of individuals, groups and the government with respect to land, water, forests and respective products. These relationships can be analyzed in terms of sets of rights, responsibilities and restrictions held by these categories of people or bodies with regard to access, control, management, and transfer of specific land rights (FAO, 2002; Nkwae, 2006).

Land tenure systems: include the entire scope of land tenure relationships and are part of the more comprehensive property rights system. Thus, they set the framework for implementation of land policy and land-related objectives (Dalrymple, 2005).

Customary land tenure system: can be simply defined as the set of rights in land that derive from customs or practices handed down from generation to generation. It refers to the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer. Unlike introduced landholding regimes, the norms of customary tenure derive from and are sustained by the community itself rather than the state or state law (Paaga, 2013; Wily, 2012).

Statutory land tenure systems: Sets of formal rules and institutions which determine access to and control over land. In the context of this study, it is the formalization process by which customary tenure is integrated into a system recognized by public authorities. It is often presented as a means to ensure tenure security that can be achieved through formal administrative recognition of the occupation or transfer of real property rights (Lasserve and Selod, 2007).

Tenure security: is the right of all individuals and groups to have effective protection or guaranty by the State against forced evictions, or displacement by any organ either legal or juridical person. Under international law, it can be defined as the protection from permanent or temporary removal against their will of individuals, families and/or communities from the home and/or the land they occupy without the provision of and access to appropriate forms of legal or other protection (Lasserve and Selod, 2007).

Communal tenure systems: are in fact mixed tenure regimes, comprising variable bundles of individual, family, sub-group and larger group rights and duties in relation to a variety of natural resources. On the other hand, these systems generally involve the conferral of rights on the basis of accepted group membership, and a degree of group control or supervision of land matters to a greater degree than in systems of private property (Clarke, 2009).

Land rights transfer: can be defined as the way a title holder can transfer use and appropriation rights to third parties, either temporarily, as with lease agreements or permanently as with the sale or bequeath of title (Ampadu, 2013).

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Introduction

Identifying and reviewing of the related previously conducted research work is unforgotten components of the research during the research study. Thus, this section addresses the task of searching for relevant literature in the information age accordingly. Hence, the researcher attempts to review existing literatures and previous studies related to the land tenure system and its sub-components that have been treated under the study.

So this chapter tries to include the general theory and concepts of land tenure system, different tenure types and important concepts of customary and formal types of land tenure system. In such manner, the researcher has made consideration and sharpened his idea on the existing concepts, theories, and empirical literatures relevant to the subject under investigation in order to analyze conclude and forward the necessary recommendation on the basis of what is real on the ground.

2.2 The Nature and Definition of Land Tenure

Before directly dealing with the land tenure system, let us begin by defining the term tenure. Tenure as a key component of land administration and management systems, it requires more discussion to identify the appropriate, secure and sustainable land tenure options for development of a given nation. Tenure is the mode by which land is held or owned, or the set of relationships among people concerning land or its product (Bruce, 1998). The word “tenure” comes from Latin origin and is used to describe the holding of land in legal terms of rights and obligations of the owner.

Whether legally defined by a statutory structure or conferred by customary practice, land and natural resource tenure is the relationship of people and groups with respect to land and related natural resources. Tenure institutions define how property rights to land and natural resources are allocated, used, and managed within society while tenure systems define who can hold and use resources for what length of time and under what conditions (ARD, Inc,2007). Generally elements of acquisition, evidence, boundaries, ownership, relationship, use, duration, value and transfer describe general characteristics of tenure (Dalrymple, 2005).

Land rights and tenure arrangements have evolved over long period in response to ecological conditions and resource endowments and often reflect society's values and norms. In many African countries, external factors such as colonization have significantly affected land administration arrangements and institutions. Attempts to assess land institutions that fail to draw on local knowledge and instead try to impose one-size-fits-all solutions are unlikely to be effective because the solutions may not be appropriate to the specific characteristics of a given location. Initiatives undertaken without local knowledge or out of sequence (for example, surveying or titling without a policy framework to secure rights and ensure an accessible and transparent process) have often had undesirable impacts (Deininger et al, 2012).

The system of land tenure is composed of a static and a dynamic component. The static component subsumes instruments for land administration while the dynamic component comprises instruments for land development and reform processes. Land tenure is one of the four fundamental principles of land administration function which comprises (land tenure, land use, land value and land development) which are interrelated and involving a number of processes. Land Tenure refers to the allocation and security of rights in lands; Land Value is concerned with the assessment of the value of land and properties; Land-Use: the control of land-use through adoption of planning policies, whereas land development is concerned with the improvement on the land (Dalrymple, 2005 and Mukupa, 2011).

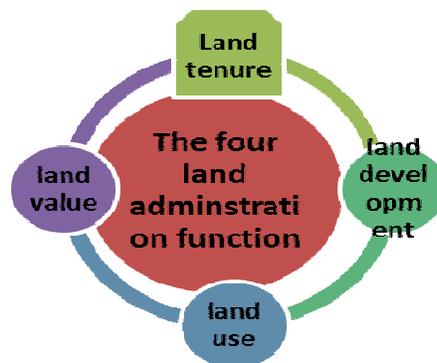


Fig 1.Diagrammatical representation of the four land administration function

Source: Owen Sketch

Land tenure is a historically and culturally complex concept. Consequently, the right to tenure can be established through a range of processes: statutory, customary, religious and informal. Such processes influence attitudes towards the use, development, transfer and inheritance of land and property. The

variety in process also means that some forms of land tenure do not provide tenure holders with formal documentation of their legal status, comply only with legally stated norms when land is legally held, but developed for uses that are not officially sanctioned. A further consideration in many countries is that more than one legal tenure regime may exist in the same country at the same time and may create further degrees of uncertainty. For example, statutory law may apply in urban areas and customary law in rural areas, making land tenure status ambiguous in peri urban locations. Different forms of tenure may exist within a given locality and even on the same plot of land, posing considerable challenges for land administrators (Payne, et al, 2015).

It is also institutional (political, economic, social, and legal) structure that determines how individuals and groups secure access to land and all resources contained on it. The basic rules of land tenure define how property rights of (use, control, and transfer) are to be allocated within societies. They may be well defined in these systems or they may be ambiguous and open to misinterpretation and exploitation. Land and natural resources tenure is central to sustainable natural resources management. Land tenure may also have both spatial and temporal dimensions and can be differentially impacted by gender, ethnicity, class, and political affiliation (ARD, Inc, 2007).

The system of land tenure is an institution, i.e. rules invented by societies to regulate behavior, the relationship among people, as individuals and groups, with respect to land and other natural resources. This relationship may be defined by statutory law or by customary practice. The rules of tenure define how rights to land are to be assigned within societies and how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources of the land for how long, and under what conditions (FAO, 2005).

Land tenure is a derivative of the concept of natural resource tenure, while the concept of tenure implicates a social construct, defining the relationships between individuals and groups of individuals by which rights and obligations (with respect to control and use of land and related resources) are defined. The four specific concepts relevant to land tenure are free hold, lease hold, statutory tenure and customary tenure. Freehold is traditionally western concept implying the absolute right to control,

manage, use and dispose of a piece of property, Leasehold is a concept in which land belonging to one entity is, by contractual agreement, leased to another entity for a fixed period of time. Statutory allocations refer to a particular form of state land where such land, by virtue of some statutory provision is allocated for the use of some legally constituted body. Customary systems refer to tenure system, in which tenure rights are ostensibly controlled and allocated according to traditional practice (ECA, 2004). For the sake of this study, we will see the statutory and customary systems in details.

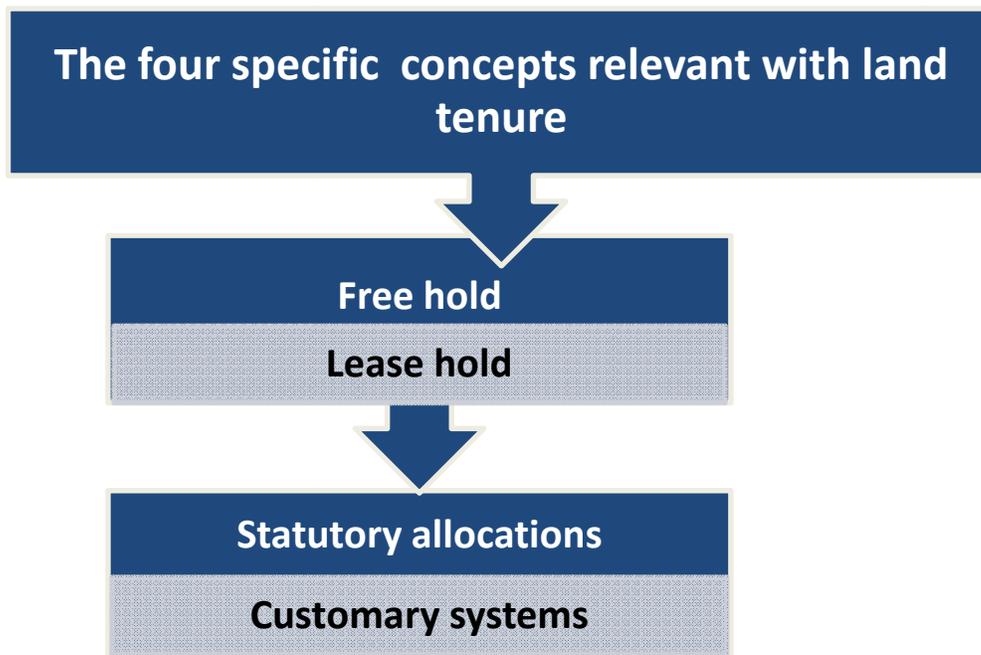


Fig 2

.Diagrammatical representation of the four concepts relevant with land tenure

Source: Owen sketch

2.3 The Significance of Dealing with Land Tenure System

More broadly, land is not only an asset. It is an issue of wealth, power and meaning Local land rights are frequently embedded in social norms and institutions, and cannot be isolated easily. Issues with land tenure formalization are not only economic; they also have to do with heritage, identity, citizenship, and governance. Where local land tenure is not only defacto private ownership, land registration processes based on private ownership will transform the rights in the process of survey and adjudication and it can produce exclusions, social costs, and conflict (during or after registration) with few or no economic gains and strong social costs. So the opportunity for land registration is a real issue, which requires strong analysis (Deininger et al, 2012).

Thus the issue of land tenure has become increasingly an important issue specifically in developing world within their rapid transition in tenure system. Problems such as high population pressure, increases in resource degradation, recurrence of food shortages, and the low capacity of the non-farm sector to support excess population from rural areas have made land tenure a politically sensitive issue. The rights to use and/or of control over land are central to the lives of rural populations especially in countries where the majority of the population lives in rural areas and the main sources of income and livelihood are derived from land. In areas where other income earning opportunities are limited, access to land determines not only households' level of living and livelihood, but also their survival (Belay and Manig, 2004).

Land tenure has enormous political implications and the issue of tenure liable to be politicized. Social stability may depend on whether or not there is a broad consensus on the fairness of the tenure system. Tenure can cause problems and instability. For instance, since the early 1980s, major donor and implementing development agencies have expanded their programs and activities in land policy and administration in an effort to formalize land rights. However, most of the launched programs failed to achieve the expected goal and in opposite manner contributed not only to gender inequality but also to more general social inequality by supporting individuals who are already advantaged by wealth, power, or custom to the disadvantage of those who are poor and vulnerable (Cornhie,2009).

Without secure tenure, people are marginalized and vulnerable to being evicted from their land and excluded from society. Where access to resources is poorly governed, the natural environment and its biodiversity are in danger of overexploitation. So, inadequate tenure and unsystematic way of changing tenure system is one of the major impediments to economic and social progress in a certain country (FAO, 2009).

Contemporarily, numerous title alternatives are used around the globe in attempts to provide low cost, low resource intensive, fast, easily adaptable tenure security. They have various legal, institutional and technical qualifiers for local systems to adopt. Examples are: the right of occupancy; cadastral certificates; qualified titles used in Malaysia; land concessions used in Cambodia; codification; village

titles and land credit programs recently adopted by The World Bank. These options involve a variety of methods for boundary surveying, qualification, accuracy and recording of title boundaries, registration processes, proof of evidence, use rights, market and credit options, legal system requirements and the registration of beneficiaries (Dalrymple, 2005).

2.4 Concepts of Customary Tenure Systems

The term “customary” is very ambiguous term. Because the term traditional, communal and indigenous have been used many times interchangeably to describe all indigenous tenure systems in Africa. However, for the purpose of this study the term customary is used to describe a system of authority that is based on anteriority and alliance, in which access to resources depends on social belonging, and in which rights are allocated under the auspices of land management institutions (Adjei, 2011).

It is the body of rules whose legitimacy is founded on tradition. The term tradition has been variously defined by different writers, but generally denotes the idea of a set of norms, values and practices that have been applied from time immemorial in a locality or among a group of people. Customary land tenure is simply the set of rights in land that derive from customs or practices handed down from generation to generation. The right to use or to dispose of use rights over land under customary land tenure rests on the fact that such rights are recognized as legitimate by the community where the rules governing the acquisition and transfer of these rights are generally known, though they mostly are not normally recorded in writing (Paaga, 2013).

Customary rules are not viewed as informal, because it enjoys social sanction by a community. It come with administrative institutions and powerful advocates and has deep cultural resonance. Generally, in areas where state infrastructure and administration are absent or inaccessible, customary legal systems flourish to address community’s legal needs, enforce community rules and mediate and resolve local conflicts as necessary among other actions. In some nations, customary leaders adjudicate and resolve almost all rural land conflicts (FAO, 2010). Customary tenure refers to the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer (Wily, 2012).

2.5 Customary Tenure System and Land Transfer

Customary tenure covers how land is managed in relation to members of communities; how land rights can be transferred within the group; and how land rights can be transferred to other persons outside the group. The major difference between customary tenure systems and other common property regimes is that the former usually includes both use rights allocated to households or individuals, and common use rights. Given the remarkable diversity in the composition of the groups, their structure, culture and the physical environment, it is not surprising that customary tenure systems exhibit a wide range of different tenure relations. Although customary tenure and its rules are not static, they evolve continually in response to diverse factors, including cultural interaction, population pressure, socio-economic change and political process (Adjei, 2011).

The first obvious point is that customary land tenure systems are in the state of changing from time to time. This is not a strange phenomenon. For a long time, it has been recognized that customary systems are continually reinterpreted and readapted to fit with changed economic, social, political, cultural and environmental contexts and challenges (Cotula et al, 2007). The flexibility and resilience of local customary institutions show that local laws are still valued in local communities. The overlap of objectives of state-led reforms of local land tenure shows a possibility of marrying customary and state laws on land tenure. It suggests that sustainable state led tenurial reforms can be attained if the right bridges between state legislation and customary practices are built (Ampadu, 2013).

However, the problem is that the random formalization of customary tenure arrangement without ensuring that the (new) policies will have legitimacy among the target population does not always guarantee positive change. On the contrary, it is likely to worsen the already undesirable situation of insecurity, conflict and inequity over land, particularly when the customary system is still strong and highly praised or appealed to. Social legitimacy of the new rules and the extent of interaction between the legal systems are critical for determining its success or otherwise. It is therefore argued that, for any land tenure reform to achieve its objectives, such policies or reforms must be designed based on enhanced understanding of the responsiveness of local people to the new policies, and the logics and relations of power structures within local communities (ibid).

Rights in customary land can be transferred in many ways, including via grants, rents, sharecropping contracts, inheritances and gifts. The roots of these land transfer mechanisms are embedded in tradition, and reflect the socio-economic arrangements of the area where the land is located. The customary institutional set-up and land management activities have several informal characteristics. In some areas, the land owning institutions may differ. Land allocation processes may be controlled by several people who work in an uncoordinated manner. Furthermore, all land transfers and transactions used to be oral. Such arrangements have created a number of problems, including uncertain boundaries of adjacent customary areas; protracted chieftaincy disputes within particular stools and families; the allocation of the same piece of land to two or more persons; and informal land markets (Adjei, 2011).

In most customary land tenure systems in Africa, restrictions applied and often continue to apply to the transfer of land rights. The bundle of rights over a piece of land to access, to cultivate, to exclude others and to transfer land rights is held by a range of different actors. Operational land rights such as access, use, etc. may be vested with smaller family units (households or individuals) management rights. However, the emergence of individualized and transferable land rights is the result of the changing balance between the expected benefits of establishing such rights and the cost of excluding others from using the resource. Changes in customary land tenure systems in Africa is the result of development of perennial plantations, disappearance of mobile cropping systems, shorter fallow periods, the increase in the value of land that spontaneously lead to greater individualization of land rights. This entails a concentration of the bundle of rights, including the right to transfer, in the hands of a single right holder. This translates into increasingly monetized access to land through sales and rental (Cotula et al, 2006).

2.12 Tenure System and Gender Relation

All around the globe, women do not have the same rights as men, and rural women especially are among the poorest and most disadvantaged groups. Land rights may be transferred or transmitted at the discretion of the holder and depending on the tenure system. As the argument of Cross and Friedman cited in (George, 2015) specifies, tenure is unspoken social assumptions and it is not easy to attack gender through legal process. Above the law, women are disadvantaged by social assumptions and informal land practices that are not controlled by law. For women to enjoy their right to land it is imperative that there be a societal change of attitude on the various assumptions that deny them their rights (George, 2015).

Thus the role of women to provide the essential requirements for a family is a direct and indirect result of the land tenure system. For example, in African systems of customary tenure, women generally claim access to land on the basis of their relationships with men and can claim access to their husband's land. They are often acknowledged as a de facto land holder, without real entitlement to property rights. Such insecure tenure for women, causes a great deal of uncertainty, financial dependence, lack of freedom, and more serious problems of landlessness if the relationship ends or the husband dies (Lankhorst and Veldman, 2011).

Recently, there is an attempt of acknowledging customary land law in national legislation; however it is very difficult to completely change and support the real life of the poor in rural areas. There are no launched appropriate state oversight mechanisms to protect citizens against intra-community injustices, no village-level supports to help women to enforce their land rights and no penalties for intra-community discriminatory practices. Such lack of state oversight combined with rural communities lack of ready access to state justice has meant that, largely women's land rights have not been adequately protected and enforced (FAO, 2012).

The formalization of customary tenure system is also not a panacea for culturally and socially deep-rooted based women's land right problems. Because gender discriminatory customary practices are not constitutionally or statutorily valid, but persist because of power imbalances between the sexes within communities and ignorance about women's legal rights. It is, therefore, not surprising that statutory provisions have limited efficacy in improving the gender equitability of land management practices in such condition. However, securing women's land rights through land titling programs is viewed to be potential means for enhancing their tenure security in the expectation that women may gain greater influence to make decisions on how to use the land, if they are registered as joint owners (Kapur, 2011; Utrecht, 2015).

Likewise, the new land tenure legislation has been proclaimed continuously without careful consideration of its social, economic and political implications in many least developed countries like

Ethiopia. The formulated statutory legislation to provide access to land may conflict with or totally ignore persisting customary tenure that have survived in a given village or community for a long time.

The land tenure system in Benshangul Gumuz region including the study area is not completely related to that of high-land and low-land parts of Ethiopia. The region has been known for the practice of shifting cultivation and access to land is administered by groups of clan and clan chiefs. Currently, the government of the region currently formulated formal land legislation which is to that of the high-lands of Ethiopia even if it is hardly implemented throughout the region. This study examines in depth the nature of the tenure systems of the region and its positive and negative implication on the process of land administration such its effects on women's land rights

CHAPTER THREE

Description of the Study Area and Research Methods

This section discusses the description of the study area and methodological choices employed throughout the research processes to uncover the required information to address the questions posed at the beginning of this study.

3.1 Description of the Study Area

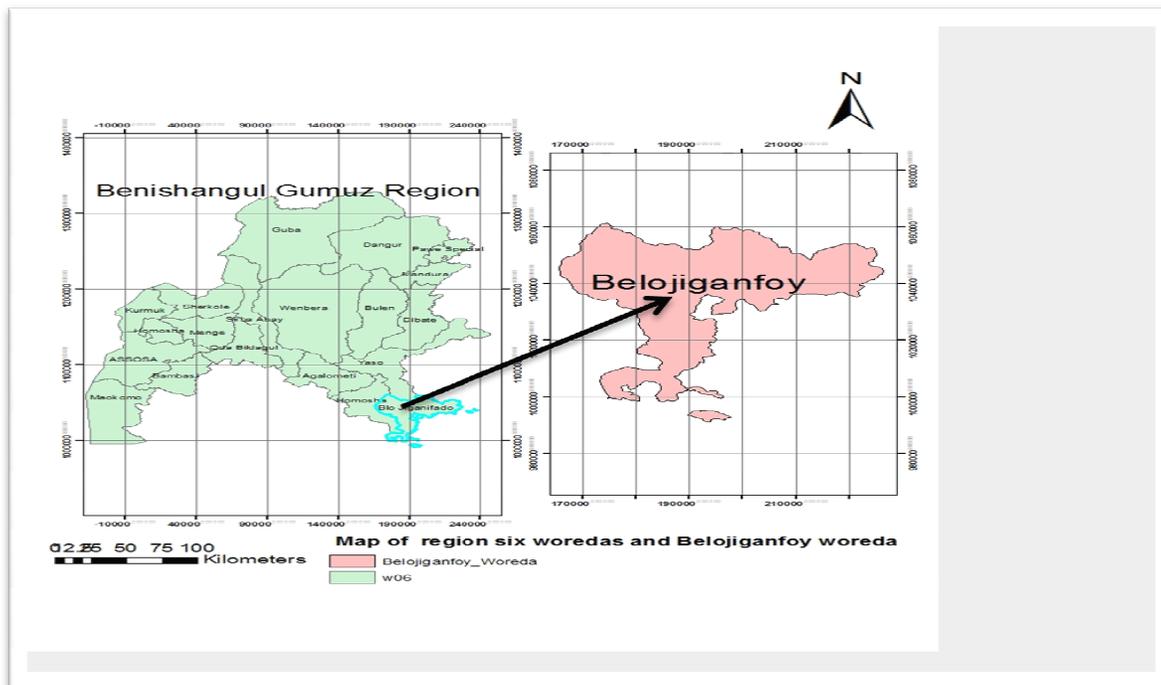
The Benishangul gumuz region is located in the western part of the country between 09.17° - 12.06° North latitude and 34.10° - 37.04° East longitude. The region has international boundary with the Sudan in the west and is bordered by the Amhara region in the north and northeast, Oromiya in the southeast and south. The region is divided in to three administrative zones and 20 woredas (BGRFSS, 2004).

The study was conducted in Belojiganfoy woreda which is one of the nineteen woredas existing in the Benishangul gumuz region. It is situated in Kamash administrative zone in the south eastern part of the region, bordered in east and south by Oromya region, in north by Oromya and Yaso woreda, and by

Kamash woreda in the west. It has an area of 1658 square kilometers with an annual temperature of 30 degree centigrade and annual rain fall of 800-1200mm. As it was indicated in the recent study, the total populations of the woreda is estimated to be about 34,944 .The woreda has about 10 rural kebeles and one kebele under municipal government. Out of the total area of the woreda, about 85 % of the land is used for agricultural purpose and the rest is covered by forest, grazing land, wheat land and plateau. The majority of the population which is over 90% is live in the rural areas and directly or indirectly depends on agricultural production for their lively-hood.

The farming system that is predominantly practiced for a long time in the woreda is a kind of shifting cultivation (rotational farming). However, the current changes in land tenure system due to greater population pressure led to an increase in land values, fostering a shift towards a settled kind of agriculture with a mixed-crop and livestock production. The principal agricultural activity is crop cultivation with livestock rearing as a secondary activity. Since it is the major potential area for cash crop production, especially sesame, the flow of people from neighboring regions is very high and above control. For this reason, the Belojiganfoy woreda is known by illegal kinds of land transfer and land holding which is the major cause for problems of good governance in the woreda (OFED, 2011).

Figure 3 below is the locational map of BenishangulGumuz Region and Belojiganfoy woreda.



Own sketch: 2016

Out of the 11 kebeles in the woreda, the researcher purposively used only three kebeles namely Jiganfoy, Saidalecha and Belodidessa. This is due to the introduction of the practice of a formal kind of land titling and certification programs in such kebeles, selected as a pilot trial in the woreda. Such practice is assumed to completely replace the former long standing customary tenure system once and for all.

3.2 Research Methods and Methodology

Methodological choices are essentially about carefully thinking about the construct that you are trying to measure or assess in the research. The choices you make are highly dependent on how much you already know about the phenomenon under consideration. The use of more or less structured methods depends on what you as a researcher want to get out of your study, but also on your skills and your time. The fieldwork was combined with a study of the wider social, political and historical contexts within which the actions/inactions of social actors and institutions were embedded. Given that people’s perspectives, social life experiences and knowledge of their communities and their effects on wellbeing and lively-

hoods are critical to the understanding of the transformation occurring within the communities. So they have a prominent place in my investigation.

In order to make a closer investigation of the effect of the formalization of customary land tenure, the required information was collected from the selected localities of study area by means of key informants interview, direct (personal) observation, focus group discussion and questionnaires. Accordingly, the required information is obtained from both primary and secondary sources. The primary data has been collected from household surveys and through participatory approach which included focus group discussions, key informants interviews and direct observation and both open and closed ended questionnaires. Secondary data are collected and used from the relevant literature and legal frame work.

Thus, the method of data collection are, deskwork, interview with sample household heads, participatory group discussions and interview of key informants from the community and officials of relevant offices. The types of research method that are employed for this study are a kind of mixed design in which the qualitative methodology takes the greater part. Quantitative design is also employed to some extent to address some information that cannot be obtained through qualitative method. Finally, the research methodology is organized under the following sections: research design, population sample technique, research instruments, data collection procedure and data analysis.

3.2.1 Research Design

Research design is a comprehensive plan for data collection and it is a blueprint for empirical research aimed at answering specific research questions or testing specific hypotheses. The research design that is utilized for this study is a kind of mixed mode design. In this study mixed mode design qualitative method takes the greater part and a simple kind of quantitative design is also employed to some extent to address some information that cannot be obtained through qualitative method. As justified by Bhattacharjee (2012) the joint use of qualitative and quantitative data may help to generate unique insight into a complex social phenomenon that are not available from either types of data alone. This is highly desirable since it combines both kinds of data.

The issues over land tenure are often laden with socio-cultural connotations of identity and power and the effects it may have on various factors can be explored. Thus, a mixed research method is deemed

suitable for this study since it is basically aims at sampling the views of various stakeholders on the nature and formalization of customary tenure system and its implications on customary land transfer, land disputes or conflicts, protection of land right for women and other section of societies and finally the effects it may have on the fate of the communal land.

3.2.2 Population

The study population that were mainly involved in the research sample are respondents from Belodidessa, Jiganfoy and Sayidalecha kebles, experts and officials from environment, forest and land administration, officials from woreda and kebles administration and, depending on the circumstances, from rural development and agriculture office and women's affair office. The study also needs the inclusion of the prominent clan chiefs and influential elders and religious leaders for interview to obtain information about the old customary tenure system vis-a-vis the new statutory one. The maximum number of respondents that are set for interview is 19. The three kebeles such as are chosen purposively by the researcher, considering the extent of the implementation practice of formal titling and land transfer process as a pilot trial for the first time during the new formal kind of land registration in the woreda.

3.2.3 Sampling Technique

The sampling technique employed to carry out this study is purposive. Purposive sampling involves selection of informants based on an important characteristic under study, such as, position in society (for example, community leader or influential ordinary households) with specific cultural knowledge. The information is selected with the assistance of local leaders and other local persons. The informants will be repeatedly interviewed in order to explore issues of land tenure with an in-depth manner. For the sake of this study, it was purposive in the sense that the selected respondents or sites are important persons or potential area for the problem under investigation.

In such manner, the three kebeles are selected purposively by the researcher because of the wide implementation of formal kind of land titling and certification process in such kebeles, relative to the other kebeles. These kebeles are important sites for examining the problem under investigation. Also 19 important persons that have some position in a society and with specific cultural and land tenure knowledge, including government officials and experts at woreda and kebele levels are purposively

selected by the researcher for an in-depth discussion and interview. In the final stage, household heads in the selected kebeles are listed down. Given the limited resource and time at the disposal of the researcher, a total of 161 households (about 8% in each kebele) are selected purposive sampling technique in which open ended and closed ended questionnaires are presented to them as data collection instrument for the purpose of data triangulation.

Table 1: Number of Households and Sample Size by Keble

Keble	Total number of households	Sampled households
Jjiganfo	733	59
Belodidessa	609	49
Saidalecha	659	53
Grand total	2001	161

Source: own sketch

3.2.4 Research Instruments

The instruments of data collection that will be employed for this study are structured and unstructured checklist and guideline for questionnaires; interviews and observation. Questionnaires checklist are employed to those people who are knowledgeable about the customary tenure and the introduced formal tenure system of their area. Interview guidelines are carried out with 19 expert, official, prominent clan chief and influential elders and religious leaders. These instruments were reproduced by the researcher with the aim of gaining complete and detailed information to support the study.

3.2.5 Method of Data Collection

Both qualitative and quantitative information about the processes of tenure arrangements were gathered from social groups and individuals. The mixed method approach that was followed included a survey with a structured questionnaire and qualitative data collection through focus group discussions (FGD), in-depth key informant interviews and personal or direct observations (PO). This strategy not only allows triangulation but also ‘allows the researcher to draw on the strengths and minimize the weaknesses inherent in both qualitative and quantitative data in a single study’ (Johnson and Turner, 2003)

Thus the method of instrument development and sampling process employed in this study is interpretive method. This employs an inductive approach that starts with data and tries to derive a theory about the phenomenon of interest from the observed data (Bhattacharjee, 2012). Therefore, the data collection instruments employed in this study are review of related documents, administering standardized questionnaire, interviews, field (personal) observation, focus group discussion and recording of available data. The interview takes place within the respondents working offices and in the kebeles sites for keble level respondents.

The questionnaires are distributed for some very few respondents who can read and understand the questions independently and they will be given about two week’s period to fill them. However, since the majorities of the respondents cannot read and understand by themselves, the questions are read and interpreted for them by the language they can understand with actual filling of the questionnaire by the reader. Then the researcher collects, analyzes and uses them, to achieve the objective of the research.

3.2.5.1 Review of Secondary Data or Related Document

This begins with collecting and reviewing relevant documents and research papers accessible from various sources such as internet, regional offices, woreda offices, scholarly studies and reports that are related to the title of the research, BGNRS as a whole and the respective woreda in particular.

3.2.5.2 Primary Data

The primary data collection will be conducted by using various socio-economic survey techniques.

These are:

Key informant interview: informants are interviewed at various institutional levels beginning from the community (influential elders and religious leaders) to woreda offices. A total of 19 key persons have participated that comprise woreda administrator, environment, forest and land administration office (EFLAO), woreda office of agriculture (WOA), kebele officials and land administration committees (LAC) and representative of the community.

Focus group discussion: A variation of the personal interview is a group interview, also called focus group. In this technique, a small group of respondents are interviewed together in a common location (Battacherjee, 2012). From each of the three kebeles, focus group discussion is arranged in Belo Didessa and Saidalechakebele, since they are geographically far apart, with different tenure problems. From the sampled kebele, Belodidessa and Jiganfoy kebeles are known for their having the plenty of farm land and each farmer holds a vast tract of land with the existence of small number of land less households in the kebele relatively. Whereas Sayidalecha kebele is known for having many land less farmers and the practice of illegal land transfer like informal selling of land. So in order to grasp additional information related to rural land transfer and the tenure system in general, a group of excess land-holders and a group of land less households are formed in a separate manner for the FGD. In each group, there are about 10 households which are purposively selected from the households of selected kebele.

Personal observation: As a civil servant and expert of land administration working in the study area under OEFLA authority, I can observe and judge the existing tenure system and the manner of land transfer in the woreda. In addition, as one of the practitioner of the newly launched formal land registration and administration process, I had access to the realties on the field across the kebeles under scrutiny.

Household surveys: For household survey, the sample households are selected from each of the kebele selected purposively at a random. The household sample number is about 161 (8% in each kebele) that

is chosen and selected by using purposive sampling technique for the purpose of data triangulation as indicated in table 1 above.

3.6 Data Analysis

The researcher first examined the collected data, and then he scrutinized the required information by drawing inferences. During data analysis qualitative data analysis takes the lion share and some objective data that was collected for this study, using closed ended questionnaire is analyzed by using simple descriptive statistical tools, mainly by table and percent. While the qualitative data that were collected by using interview, focus group discussion and personal observation are narrated and reported in words or text.

CHAPTER FOUR

RESULT AND DISCUSSION

This chapter brings us to the systematic analysis and presentations of data gathered from the field. In doing so, the chapter has utilized different items and inputs; these are the results of the respondents' idea, voices of the informants, FGD participants and the relevant works of scholars relating to the issues under investigation. The chapter begun by providing a general description and discussion on the demographic characteristics of the respondents such as their respective kebele, sex, age and ethnic composition of the sampled house-hold and community status of informants in FGDs and key informant interviews. The nature and form of customary tenure system that had been in practice in the study areas are explored. Again its hidden and visible implication toward women's land rights is also investigated.

4.1 Demographic Characteristics of Sampled Household

Demographic characteristics of the sampled respondents by kebele, age group, sex, marital status, religion, ethnicity and educational background are shown in Table 2 below.

Table 2. Demographic Characteristics of Respondents.

General characteristics	Kebele	Jiganfoy	Saidalecha	Belodidessa	Total	Percent (%)
Age of Respondent	20-35	19	18	14	51	31.67
	36-45	22	21	19	62	38.5
	46-60	16	14	13	43	26.7
	61 and above	2		3	5	3.1
	Total	59	53	49	161	100
Sex of Respondent	Male	51	48	43	142	88
	Female	8	5	6	19	12

Marital Status	Single	3	1	2	6	3.7
	Married	49	46	40	135	83.85
	Divorced	3	4	2	9	5.59
	Widowed	4	2	5	11	6.83
Religion	Christian	54	49	47	150	93.16
	Muslim	5	4	2	11	6.83
Ethnicity	Gumuz	38	19	35	92	57.14
	Berta	6	22		28	17.39
	Oromo	9	3	8	20	12.42
	Amhara	6	5	6	17	10.55
	Others		4		4	2.48
Level of education	Illiterate	26	24	19	69	42.85
	Read and right	12	13	10	35	21.73
	Primary and junior (1-8)	9	7	8	24	14.9
	Secondary	7	5	6	18	11.18
	Tertiary and above	5	4	5	20	8.69
	Total	59	53	49	161	100

Source: Survey data, 2016

Table 2 shows that about 38.5% (percent) of the sampled households are found within 36-45 years age group and they are at a good age position for understanding and describing the nature of the old

customary tenure and justifying the newly introduced formal tenure accordingly at equal weight. While 31.67 are younger and capable of providing good information about the currently introduced new formal tenure and 26.7% of them is older, they can provide detail information about the old tenure systems. The male to female ratio in the sample household head is 88:12. Fifty seven percent of the sample households are Gumuz, Berta's are seventeen percent, Oromo, Amhara and others are 12.4, 10.5 and 2.48 percent respectively. In terms of education, the highest proportions of the respondents are illiterate, which covers about (43%) percent. Twenty two percent of them can read and write, about 15 percent have reached primary and junior, 11 and 9 percent of them attend secondary school and tertiary and above respectively.

4.2 Sex Composition and Community Status of Informants in FGDs and In-depth Interviews

Sex and community status of the informants in focus group discussions and in-depth interviews were important to generate primary information about the physical attributes of existing land tenure system and attributes of rules around customary landholding. Accordingly, 8 informants in FGDs and in-depth interviews were female and the majorities of them were men with having different position within societies such as prominent elders, former clan chief, religious leader and officials and experts. This is due to the expectation of having in-depth knowledge about the nature of customary land tenure rules and the implementation status of the new formal land tenure regulations among the community.

Therefore, in order to extract primary data that enables to examine the nature of the old, customary land tenure system and to investigate the status of the newly introduced formal tenure, the skillful customary knowledge of such male dominated informants were important. Because, the long live customary rule and title in the community are usually given to them and females are believed to stay at home and count as the properties of men. This is perhaps due to the fact that such customary titles are culturally vested in male (i.e. husband) and governed by men clan chief. Expertise knowledge, lived experiences of former government officials and people were also important to dig out in detail the primary information from key-informants.

4.3 The System of Customary Tenure

4.3.1 The nature of customary land holding in Benishangul Gumuz region

This sub-section of the chapter is dedicated to reflect the views and opinions of informants and the idea of respondents about the nature, character and the current implementation status of customary land holding in Benishangul-Gumuz region of Belojiganfoy-woreda and its analysis. This will be analyzed from the perspective of such issues as a detail character and attributes of customary tenure system in the study area and how they have adapted themselves with the changing circumstance. Not only this, but also the current contribution of customary tenure for land dispute resolution, the contribution it may have on the protection of tenure right for all section of societies, especially women, the fate of communal land of forest in terms of protection and lastly the modalities of customary land transfers are investigated. Hence, the researcher was too much interested in the detail description and investigation of this issue which is not still addressed by the researcher in the study area and assumed that it might also have land tenure policy implications for any government intervention measures that have been practical and could be undertaken in the future.

The customary tenure is regulated by customary institutions which have proved effective for generations in the past. These institutions which differ in a number of respects from one area to another but which are similar in all of their main characteristics consist of rules, codes of behavior and sanctions on the one hand, and authority and dispute settlement structures on the other (Dessalegn, 2007). There is no uniform customary tenure system in Benishangul-Gumuz region due to varying weather condition and the available natural resource. There are very small parts of high-land which are known by settled farming with perennial crops production. The character of their tenure system is somewhat related to other high land parts of Ethiopian.

While the major parts of the region, including the study areas are a low land and sparsely populated. Their patterns of settlement are movable, following the newly cleared farm land for the practice of rotational farming. The settlement and land holding system is achieved following clan territories and it is strictly forbidden for other clans to live with and hold farm-land within other clan territories. There are also other low-land parts of the region that survive by traditional exploitation of minerals such as gold as their primary activities. Thus, we can conclude the existence of three distinct kinds and characters of

customary tenure system in the Benishangul-Gumuz region as a whole. Therefore, the nature and characteristics of customary tenure system in the region is not uniform itself and different from the high lands and eastern low-lands of Ethiopia.

As described by Tsegaye (2013), most of the indigenous ethnic groups in the Benishangul-Gumuz region mainly Berta and Gumuz people, who are the dominant groups, as well as Mao and Komo, are shifting cultivators and practice slash and burn agriculture. Among the Gumuz, land resources are ideally communal property in which rights to these resources are derived from the community. In their customary communal tenure system, patrilineal kin groups or clans own all resources inside the clan territory marked by land features such as rivers, hills, big trees, roads and foot paths. Decisions regarding the overall utilization of natural resources are made by the clan groups while individual members possess only usufruct rights. However, the recent increases in land acquisitions have been affecting this traditional system, which has resulted in the deprivation of the rights of local people from accessing their traditional source of livelihoods.

The issue of land tenure in rural low lands of the region has become very contentious and sensitive issue from time to time. Land is the most valuable resource and the only means of lively hood and survival for the rural poor. Up-on this reality, the new formal land tenure arrangements are introduced in the region since 2010, within the poor institutional capacity to implement or enforce the new systems. However, they often operate simultaneously with earlier forms of customary land tenure.

4.3.2 Customary Land Tenure in BelojiganfoyWoreda

Belojiganfoy-woreda is one of the low land parts of the Benishangul-Gumuz regional state in which the land tenure related problem is undersurface. The gumuz peoples were the original settler of the woreda and their pattern of settlement is sparse, with movable kind of settlement. As one of the prominent elder ato Hanbisa and others in FGD argue, the mobile nature of their pattern of settlement is not purposive. It is the result of the continuous clearance and searching of new farm-land due to the predominance of rotational farming or shifting cultivation farming practice.

The original settlement and land holding system was first undertaken following clan groups territories and it is strictly forbidden for other clans to live with and encroach in other clan territories without forming relation either through marriage alliance or other social relation. Customary tenure system is the original and primary source of the whole kinds of land holding exists in Belojiganfoy-woreda as it was provided by the informants. But through time advancement, the institution that administered customary land and the nature of tenure itself and its management system changes following, the national socio-political change. Let us see in detail the Belojiganfoy-woreda system of customary land tenure in terms of nature and character by dividing the tenure system in to different political regimes.

4.3.2.1 The Nature of Land Tenure during the Imperial Era (pre-1974)

Over its long history, Ethiopia had a variety of land tenure systems and practices, from communally owned forests to quasi-private farmland. There are about different customary land rights regimes that had been practiced prior to 1975. During imperial regimes, the practices of land tenure at national level fell into two broad categories: the usufructuary “rist” system, which predominated in the north and a highly feudal system of private tenure rights which prevailed in the south. Land was concentrated in the hands of run-away landlords. Tenure was highly insecure, arbitrary evictions were common, and many lands were underutilized. High inequality of land ownership reduced productivity and investment and led to political grievances and eventually overthrow of the imperial regime (Vhugen, 2010).

However, the situation of tenure system in low-land parts of the Benishangul-Gumuz region, especially in the study areas of Belojiganfoy-woreda was different from the usufructuary “rist” system and that of a highly feudal one as it was observed in the investigation. Because of the very sparse nature of the population, the settlement is varying from each other within a family member or clan groups. The dominant mode of life during this period is not as such settled kind of farming practice. It is known by hunting and gathering and the beginning of the practice of rotational farming in small amount with the cultivation of cotton and sorghum only for feeding purpose.

Through passage of time, when the shifting cultivation farming practice became predominant in the area, competition for land continued and they organized in a group of clan and held a big territory in the name of their clan by demarcating the area by observable natural features, most of the time by rivers. The

elder (leader of a particular clan or clan chief) who discover his clan's territory for the first time was termed as aba laga (the father of the territory). The aba laga is responsible for any kind of problems related with access to land for personal cultivation, conflict on marriage and with other neighboring clans. Some of the prominent and popular aba laga of the period were Aga Lami from Dabatsa clan of Gumuz, Erena Dosa from Ebanja clan and Qanaa Abadara from Berta.

The territory seized by each clan is the common property of the clan groups and they cultivate, gather food from plants, search honey and hunting animal for food most of the time through group formation. Their territory was respected by other clan groups customarily and it is strictly forbidden for other non-clan to encroach in the other clan territory, without having a special permission from the aba laga. It can be possible through forming marriage relation within the Gumuz clan and through religious relation like abalij and breast father for stranger. Gradually, as the population number increased, the imperial government of sent its agents to the area from the current Sasiga-woreda for administering this low land area and peacefully change the former aba laga to qoro (land lords). Then, they began to collect land use tax from the clan groups house-hold within their territory. The first tax amount imposed on one house-hold as a land use tax is two birr only and it increased from time to time.

4.3.2.2 Customary Land Tenure during the Derg regime (1974- 1991)

After the down fall of the feudal government, the derg regime came to power in 19 74.

The first priority of the military government (1974-1991) was to enact radical land reform to abolish the past tenure systems. Under the Derg regime, the rural peasant associations redistributed land to their members in equal portions. This collective decision-making is similar to the rist system that involved allocation of usufruct rights in land by a rist composed of elders. The land proclamation of 1975 nationalized all Ethiopian land and prohibited the sale, lease, or collateralization of land. It also prohibited farmers from hiring labor to work their fields. Land was redistributed, resettled, and collectivized in order to address landlessness. The result was major losses in productivity, famine, increased poverty, and even death in cases where traditional farmers were settled on arid, pastoralist land (Bodurtha, 2009)

The national change of land tenure also affects the nature of customary tenure system that exists in Belojiganfoy-woreda eve, without radical change to the former tenure system as it was in other part of Ethiopia, even if there is a reform in some extent. The land mark in this woreda was the formal establishment of strong the kebele government structure that overtake the power of the former aba laga. This situation reduces the power of the former aba laga and land lords, in every aspect not only with regard to the issue of the land. Even if there is no launched radical land reform, due to absence of oppressive land lords as of other area the land under the clan continued without redistribution. But the land administration institution is changed from the former aba laga to kebele administration.

In such manner, the allotment of new farm land is undertaken by established committee including the former aba laga under the leadership of kebele. The mandate of the established committee is searching of unoccupied land from different direction and then they divided it for the land seekers and reported to the kebele for further recognition. The role of this committee seems more of technical rather than the final decision maker. During this period, even if it is not completely broken, the land holding system is not based on clan groups. Any person recognized as legal resident of the kebele, can get the farm land from everywhere, without any kind of segregation in terms of clan or other means. The law abolished the pre-existing feudal or a specific clan group domination tenure system.

4.3.2.3 The status of Customary Tenure System After-1991

Nationally, a strong debate was undertaken to fix the nature of land policy. Then it was ratified as the common properties of state and peoples of Ethiopia as it were provided in the FDRE constitution Art 40 (3)). In such manner, the FDRE constitution in its Art.40 (3-8) deals with land right and the property situated on the land. The public ownership of rural and urban land was declared while use right is reserved to individuals. Since the country is structured along the federal setup with nine autonomous regional states, the use and administration of land is left to each regional government. Within the federal government land policy direction, the regional government had been given the power to enact their own regional land legislation.

In such way, it is in 2010 that the Benishangul-Gumuz region promulgated rural land administration and use proclamation No 85/2010 for the first time. Until then like other low-land and pastoral areas of

Ethiopia the land tenure was operating under community-based tenure arrangements and kebele administrator. Of course due to the act of kebele the rule of customary tenure becomes degraded and the power of the former aba lagas diminished. As the majorities of the respondents in the house hold survey indicates, the current practical status of customary tenure is very decreasing in Belojigan-foyworeda. As indicated in Table 3 below, an overwhelming majority (73.3%) of the sampled household heads responded about the gradual diminishing of the customary tenure systems current implementation status due to different reasons. It is only (26.7%) of the respondents that answer the existence of the practices of customary land tenure in some extents.

Table 3: Percentage of household heads response concerning the current implementation status of customary tenure

HHs Response	No Respondents	Percent
Yes	43	26.7
No	118	73.3
Total	161	100

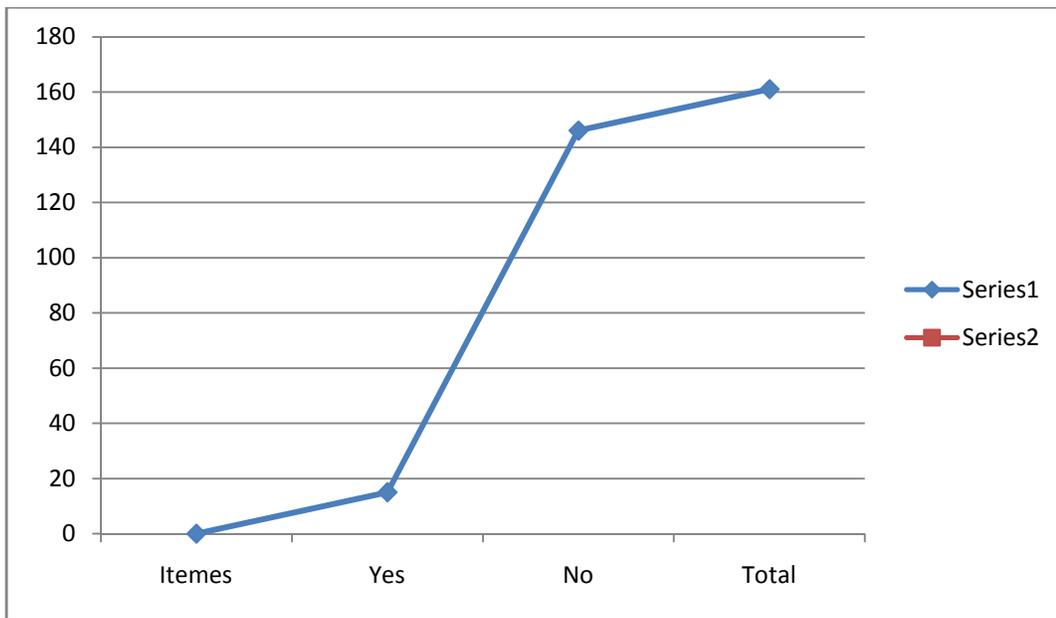
According to the information from key informants and focus group discussions, the main reason behind the current degradation of the rule of customary tenure are the gradual powerlessness of the customary institution, the population growth, the increase in land value and the change in land policy. In such manner, the mandate to transfer land to the land seekers becomes the mandate of the kebele cabinet under the leadership of the chairman. The manner of the transfer is also far from the customary one which is effected orally. Rather they began to introduce a letter of certificate having the information of the amount of land guessing by hectare, the unique name of the area where the parcel of land is located and finally they specify the neighboring land holder in four directions. This letter of certificate is given per parcel and it has given a legal recognition by woreda court as a legal document for a land holder.

The problem is such letter of land holding certificate was given only to the new land assigned by the kebele. But the majority of the land holders who formerly hold land by customary arrangement have not any kind of written document that specifies them as a legal holder. Due such scenario, some of the customary land holders began to collaborate with the kebele administrator to get letter of certificate to

secure their land right legality. As such letter becomes popular and valuable; the kebele administrator began simply to sell the letter of certificate without indicating the actual parcel of land that is going to be acquired. This practice leads to double and triple assignment of land right to two and more persons over a single parcel. This situation continued as the main cause of rural land related problems and disputes in the Belojiganfoy-woreda for a long time. As the regional rural land proclamation was adopted in 2010, formal land registration and certification program was launched in this woreda for the first time, to solve the existing aforementioned land related problems of the woreda.

4. 6 The Systems of Land Tenure and Women Land Right

Some questions regarding how the customary tenure treat women as a holder of land right and the effects of tenure formalization might have on the women land rights were included in the survey questionnaire and qualitative survey tools. Concerning the implication of customary land tenure on women’s land right this graph indicates that out of 161 sample respondents, 146 of them have said that, the surviving customary land tenure respect does not respects women’s land right at a large



According to the results of the questionnaires from house-hold survey, almost 90% of the respondents answered that the customary tenure dose not respects tenure rights of women. Other 10% of them responded that because of the existence of excess amount of land resource, there was no observed kind

of customary tenure influence on the women's land right. But since the women do not stay with their family, it was not sensible to inherit or permanently grant land and other immovable properties to them, culturally from their family.

As provided in FGD and interview of key informants, women are not counted as property owner especially, with regard to land, in the cultures of Gumuz people. There was no parcel of land owned by women originally, except what she inherits from her husband for her children or other means. For example, if her husband died, the land holding under him was respected for his family if she has children. Otherwise, it was not possible and great shame for that family, if she holds her husband land by marrying other person outside her husband family. If she marries her husband family according to the existing culture, she can live with that family under the new husband. So, not only the land right but also her survival with that family was secured if she has a children or she decided to marry what they culturally propose for her. Generally, the investigation clearly shows that customarily women have not any kind of land rights either from her husband family or from her born family because of her sex.

Thus, the land tenure formalization in Belojiganfoy-woreda is the only mechanism that can save women, as the women and most of the male respondents provided in interview and focus group discussion. As it was provided in the regional rural land proclamation No Art 85/2010 (3), the gender issues stated in the provisions of this proclamation set out in the masculine gender shall also equally apply to the feminine gender. In such way, things concerning gender issues are more advanced than before in many ways. For example the former letter of certificate given by kebele administration to certify holding right for a holder was prepared by the husband's name only and given to him.

But the current certification programs which register the name of the wife as equal land holder with her husband is a great achievement in the woreda. Strong awareness creations concerning the equalities of women land right with men are also continuously made. The certification process coupled with the awareness creation campaign enforces women today to exercise their land right without any fears of cultural domination. This is not only during divorce but, the land rent itself does not transfer to the renter without the awareness and signing of the wife. Even if the husband attempts to cheat her, the renter itself does not secure by the husbands rent agreements. Therefore, as the investigation and the realities on the

ground clearly show, tenure formalization has immeasurable positive effects on advancing women's land rights.

CHAPTER FIVE

GENERAL CONCLUSIONS AND RECOMMENDATIONS

This chapter provides the conclusion that the researcher has reached based on the finding and results of both primary and secondary data analysis on the research study. It also includes the researcher's recommendations on measures that are to be taken into consideration to address the problem.

5.1 CONCLUSIONS

This study was intended to examine the effects of formalization of customary land tenure and related issues like protection of communal land, the level of land dispute and the way of resolution and the women's land right issues after and before formalization programs. A special emphasis was given to the case of Belojiganfoy-woreda in Benishangul-Gumuz region. To undertake the investigation, data was collected from nineteen (19) key informant interviews and two focus group discussions (having 10 members). In addition, 161 questionnaires were accessible to house-hold surveys and questionnaires were filled by interview mode. The land owners were from different clans. These selected participants were interviewed to obtain an in-depth understanding of the subject matter.

The result of this study discloses the current absence of practical implementation of the customary tenure system. This happens, due to the degradation of rule of customary tenure system that in turn led to the gradual powerlessness of customary institution to deal with land issue accordingly. In addition the unprecedented population growth, the increases in land value and the change in land policy contributed to the gradual powerless and dissociation of the customary land institution.

The finding of this study provides that the land rights in customary tenure can be transferred in many ways, but dominantly via gift or grants, inheritance and sharecropping. The result of this investigation also found out that, the customary land right transfer modality of bequeath or gift, was affected

originally to some-body by getting first recognition from certain clan. So it was very difficult for non-clan groups within a Gumuz people and other non-natives who come from the high lands, to live and acquire farm land, like the clan groups, unless given special permission from the aba laga through forming marriage, breast father and other religious alliance. However, the social construction of customary land transfer gradually collapsed and changed to informal land sale, due to the increase in land seekers, land value and absence of restriction in the customary land transfer. As a result many farmers informally sale their farm land under the banner of gift and are currently illegally encroaching on communal land of forest.

This research also found out that in the customary land transfer modality of bequeath or gift, interest in land was transferred originally to some-body by getting recognition from certain clan. Then, the land was simply transferred to the person by word either temporarily or permanently. So the formal kind of restriction provided by formalization of customary tenure during the transfer of interest in the current rural land legislation is very good. Because, it restricts random land right transfer and it plays a great role in reshaping positively the outdated and wasteful customary land transfer, even if the process of transfer is very long.

As the finding of the study also pointed out, the old customary tenure dose not really respect tenure rights of women and the forest land. Especially, in the cultures of Gumuz people, women's are not treated as owners of the land by any circumstance. Thus the land tenure formalization is the only mechanism that can save women. Finally, concerning the protection and preservation of communal land, in the former customary tenure system there is no clearly demarcated land as a communal land of forest, grazing land and other holding type. The rule of customary tenure in itself had no value in terms of the protection of the communal land of forest. However, as a part of formalization process there are vast forests lands that are formally demarcated by the government even if not fully protected.

5.2. Recommendations

In this sub-section of the chapter, the researcher gives some recommendations based on the findings of this study.

- The land tenure formalization programs in Benishangul-gumuz as a whole and in Belojiganfoy-woreda should be in the ways it respects the customarily owned land right without any reduction. Because the majority of the farmers who owned vast hectares of land are forced by the then farming practices of rotational farming to do so. After they cleared out the virgin land and used it for many years, it is unethical to say it is not their own holding due to the mere determination of maximum holding size in the new formal land legislation.
- Due to the absence of scarcity of rural land in the regions, there is the need of determination of maximum holding size by the rural land legislation. Rather than proclaiming such kind of ordinance in predominant customary tenure, it is better to work on other alternative to enable the free movement of land from those who cannot use it, or not use it efficiently to those who have no land.
- The setting of time limits for all land rentals and the set of criteria for any kinds of land transfer are good for protection of customary land owners in the study areas. But since all the lands are not registered and certified after reducing the excess land, it is not still functional on unregistered lands. So at least the first level certification programs should be fully carryout in all kebeles to implement them. The registration of any kind of land transfer should be end at kebele levels to reduce the bureaucracy in the process of transfer.
- The beginning for protection of women's land right is very good but with poor achievements. So it needs energetic awareness creation campaign until empowering women and for the complete breakup of the cultural attitude and behaviors that question women's land right issues.
- Finally, all kinds of land holding should be clearly demarcated and certified. With regard to the communal lands of forest some of them are not clearly demarcated on the ground by the public. Others who accordingly demarcated also have no supervision and not assigned with people that follow and watch it. So the responsibilities of each demarcated forest land protection should be directly transferred to the nearby communities to protect by their own rule. If there is someone beyond their capacities, the responsible government organ should assist them to take formal measure on the wrong doers.

- Before simple rushing for formalizing the land tenures, deep investigation and researches should be done by researchers in order to understand its social, environmental, economic and political implication and other related issues. This research has its own limitation of time and other facilities for under taking an in-depth investigation of the issues from different perspectives. So based on this study, other interested researchers can conduct further investigation from multidimensional aspects to draw great understanding on the effects of land tenure formalization

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