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**ADDIS ABABA UNIVERSITY  
COLLEGE OF LAW AND GOVERNANCE  
STUDIES**

**THE NEED FOR RURAL LAND TRIBUNALS IN ETHIOPIA: A CASE  
STUDY OF SOUTHERN NATIONS, NATIONALITIES AND PEOPLES  
REGIONAL STATE**

**By**

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Law in Partial Fulfillment of the Requirements for the Masters of Law  
(LL.M) in Business Law**

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**Addis Ababa, Ethiopia**

## **Declaration**

**I, Misganu Degif, hereby declare that this research paper is my original work and has not been submitted to any other institutions before. Further, I confirm that all resources used in writing the research have been dully acknowledged.**

**Misganu Degif-----**

**February, 2021**

## **Approval Sheet by the Board of Examiners**

### **The Need for Rural Land Tribunals in Ethiopia: A Case Study of Southern Nations, Nationalities and Peoples Regional State**

#### **Approved by Board of Examiners**

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## Abstract

*This study proposes for the introduction of land tribunals at kebele and woreda levels and land benches in higher courts and Supreme Court in Ethiopia in general and SNNPRS in particular as a solution for problems faced by the existing rural land disputes settlement system. The study adopted qualitative research methodology in investigating the research topic under consideration. The review of literature and relevant legislations; review of experiences of some selected jurisdictions which have introduced land tribunals; and analysis of qualitative data obtained from informants through interviews have been used to identify problems faced by the existing RLDSS in SNNPRS and to substantiate the arguments for introduction of land tribunals and land benches therein. The study has identified inaccessibility of judicial services to the majority of the rural community owing to absence of judicial body handling rural land disputes at kebele level; higher costs of litigation; delays and absence of adequate treatment of rural land disputes as problems faced by the existing rural land disputes settlement system in SNNPRS.*

*The study argues that the introduction of land tribunals both at kebele and woreda levels and land benches in higher and supreme court of SNNPRS can resolve such problems by: making accessible judicial services to the rural community at local level, relieving the burden on regular courts entertaining a wide range of cases and thereby promoting timely disposition of rural land cases and reducing costs of litigation attributable to delays and absence of judicial services at the local level and making available special expertise needed in the adjudication of rural land disputes. The study concluded that there is a need for setting up rural land disputes settlement system in Ethiopia in general and SNNPRS in particular that can address the problems identified in this study and that can be achieved through the introduction of land tribunals and land benches exclusively dealing with rural land disputes. Finally, the study recommends for the introduction of land tribunals and land benches exclusively dealing with rural land disputes as a way out to the problems faced by the existing rural land disputes settlement system.*

Key words: Land Tribunals, Kebele, Land Benches, Rural Land Disputes, Rural Land Disputes Settlement System, SNNPRS, Woreda

## Acronyms

|               |                                                            |
|---------------|------------------------------------------------------------|
| <b>FDRE</b>   | Federal Democratic Republic of Ethiopia                    |
| <b>GDP</b>    | Gross Domestic Product                                     |
| <b>HPR</b>    | House of Peoples’ Representatives                          |
| <b>LTs</b>    | Land Tribunals                                             |
| <b>MOA</b>    | Ministry of Agriculture                                    |
| <b>NRS</b>    | National Regional State                                    |
| <b>RLDs</b>   | Rural Land Disputes                                        |
| <b>RLDSS</b>  | Rural Land Disputes Settlement System                      |
| <b>RLLs</b>   | Rural Land Laws                                            |
| <b>SNNPRS</b> | Southern Nations, Nationalities and Peoples Regional State |
| <b>WB</b>     | World Bank                                                 |

## Chapter One: Introduction

### 1.1. Backgrounds of the Study

A specialization in the field of judiciary has now become a trend in the legal systems of many states. Myriad reasons support the introduction of specialized courts and tribunals.<sup>1</sup> The reasons for the introduction of specialized courts or tribunals may relate to history, geography, sociological factors and structure of government.<sup>2</sup> Some of the factors which can engender the introduction of special courts or tribunals are: disputes involving technical complexity and intertwined statutory provisions; when the volume of litigation is high and there exists a need for: a speedy and prompt resolution of a dispute; and when there exists a need to tailor a unique procedural framework for disputes in a given field.<sup>3</sup> Heike Gramckow and Barry Walsh have identified the four main reasons as well as conditions for judicial specialization.<sup>4</sup> These are: 1) complex legal requirements and specialty knowledge; 2) need for additional services and/or separate processes; 3) case type volume; and 4) external demand for specialization.<sup>5</sup>

As stated above, the introduction of special tribunals is a mechanism used for separate treatment of some category of cases to resolve problems faced by the judiciary in the adjudication the same.

This study proposes for the establishment of Land Tribunals (LTs) at kebele and woreda levels and land benches in high courts and Supreme Court of SNNPRS as a solution for the problems faced by existing rural land dispute settlement system (RLDSS) such as inaccessibility of judicial services to the majority of rural communities, delays and higher costs of litigations owing to rigid court procedures and case congestion in regular courts and absence special expertise needed in the adjudication of rural land disputes( RLDs) and lack of special treatment of RLDs in light of their volume and utmost importance to the rural majority. This study proposes for the

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<sup>1</sup> Nir Mualam (2014), “Appeal Tribunals in Land Use Planning: Look-Alikes or Different Species?” A Comparative Analysis of Oregon, England and Israel, American Bar Association The Urban Lawyer, Winter 2014, Vol. 46, No. 1, p.35

<sup>2</sup> Id. p.36

<sup>3</sup> Stephen H. Legomsky (1990) , “Specialized Justice: Courts, Administrative Tribunals, and a Cross-National Theory of Specialization” *cited in* Nir Mualam, *supra note 1*, p.35

<sup>4</sup> Heike Gramckow and Barry Walsh (2013), “Developing Specialized Court Services : International Experiences and Lessons Learned”, World Bank: Justice and Development Working Paper Series 24/2013, p.16

<sup>5</sup> External demand for specialization may be assessed in terms of user needs, other agency requirements or even broader jurisdiction requirements. Id. P.5

introduction of LTs and land benches in SNNPRS on the grounds that : 1) it can help make accessible judicial services to the majority of rural communities at local level; 2) it can help provide justice on a timely basis to the rural communities by adopting separate procedures in the adjudication of RLDs; 3) it enables making accessible the RLDSS to the rural communities with the least costs; 4) it can provide special expertise needed in the adjudication of RLDs; and 5) it can help provide special treatment to RLDs taking in to account the utmost importance of RLDs to the majority of the rural communities and the volume of RLDs litigated before regular courts. On the basis of the above mentioned reasons, this study proposes the establishment of land tribunals composed of members with various professional background and skills at kebele and woreda levels and land benches in high courts and Supreme Court of SNNPRS dealing with RLDs of civil nature.

## **1.2. Review of Literature**

The idea of introducing land tribunals in Ethiopia has not got the attention of researchers in the area of land laws. That is why it is difficult to find any explicit attempt by researchers of examining the relevance of introducing land tribunals to the Ethiopian legal system. Though from a different perspective, there are some researchers who tried to figure out problems associated with the current land disputes resolution in Ethiopia and recommended some sort of reform to the current land dispute settlement system. For instance Desalegn Rahmato in his essay titled as “The Peasant and the State” mentioned the absence of clear justice system for settling land disputes as one of the factors that have added to tenure insecurity among land holders.<sup>6</sup> He also stated that due to kebele social courts’( successor of Judicial Land Tribunals of the Derg regime) limited jurisdiction over land and other types of disputes, peasants are forced to take their cases to the Woreda courts which is inconvenient, time consuming and costly to the average peasants as Woreda courts are located far away from their locality.<sup>7</sup>

Abebe Mulatu argued that the reform measures taken with respect to RLDSS especially after exclusion of social courts from entertaining RLDs, has failed to envisage a different rural land disputes settling body capable of handling future land disputes that may arise in relation to land

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<sup>6</sup> Desalegn Rahmato (2009), “The Peasant and the State: Studies In Agrarian Changes In Ethiopia 1950s-2000s”, (Addis Ababa University Press) p.302

<sup>7</sup> Ibid.

registration, certification, population growth and expansion of investment.<sup>8</sup> He also stated that “...none of the laws [regional states land laws] have come up with a new land dispute settlement system that can prove convenient to farmers.”<sup>9</sup>

Tesfaye Teklu also argued that judicial uncertainty regarding the adjudication of land disputes persists and continues to weaken security in land rights.<sup>10</sup> He also stated that “the existing legal system suffers from institutional instability and there is a question mark over its competency in terms of adjudicating land disputes consistently in a way that laws are interpreted objectively and equitably, and enforced effectively”.<sup>11</sup>

Haftom Tesfay, who conducted a research on rural land dispute resolution mechanisms in Tigray argued that the judicial power bestowed on rural land judicial committee in the region should be revoked.<sup>12</sup> He also proposed the establishment of mixed dispute settling body under rural land administration unit which adjudicates land disputes only after the party to the dispute has tried but failed to resolve their disputes through mandatory mediation.<sup>13</sup>

A research report by World Bank (WB) has identified issues which needs improvement with respect to land dispute resolution and conflict management in Ethiopia.<sup>14</sup> One of the issues identified by the research is strengthening dispute resolution institutions with a focus on building the capacity of informal/traditional mechanisms and clarifying their relationship to the formal system.<sup>15</sup> The research points out that the public in rural areas prefer mediation of disputes through traditional local procedures to taking their cases to formal dispute resolution institutions.<sup>16</sup> Finally, the research recommended for, use of the traditional land dispute

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<sup>8</sup> Abebe Mulatu (2009), “Access to Justice and Rural Land Dispute Settlement Systems” in Ethiopia in Muradu Abdo (ed), “Land Law And Policy In Ethiopia Since 1991: Continuities and Changes”, 2009, Ethiopian Business Law Series Vol.3. p.249

<sup>9</sup> Ibid.

<sup>10</sup> Tesfaye Teklu (2014), “Rural Land Rights and Security in Cultivated Highland Ethiopia: Incremental Reform but Persistent Uncertainty”. International Journal of African Development Vol.2 No.1.Fall 2014, P.10

<sup>11</sup> Ibid.

<sup>12</sup> Haftom Tesfay(2011), “Rural Land Dispute Resolution In Tigray: The Case of Humera” ( LLM Thesis: Addis Ababa University School of Law ) p.96

<sup>13</sup> Ibid

<sup>14</sup> World Bank (2012), “Federal Democratic Republic of Ethiopia: Options for Strengthening Land Administration” ( World Bank, Report No: 61631-ET 2012) p.13 available at <http://documents1.worldbank.org/curated/en/428401468252886112/pdf/616310ESW0AMHA0DMINISTRAT0R0REPORT.pdf> (accessed Sep 12,2020)

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

resolution mechanisms widely and effectively as a means of reducing conflict over land; the integration of traditional and formal disputes resolution mechanisms through training individuals involved in a traditional dispute resolution both the local rules and the applicable formal legislation and making accessible to them relevant information including key pieces of legislation.<sup>17</sup>

The above mentioned researches in one way or another recommends some sort of reform to the existing land disputes resolution institutions such as broadening the jurisdictions of social court in adjudicating land disputes and strengthening customary dispute resolution mechanisms. Unlike the researches mentioned above, this study, by proposing the establishment of LTs at kebele and woreda levels and land benches in high courts and the supreme court of SNNPRS exclusively dealing with RLDs, takes an entirely different approach to deal with the problems on RLDSS in SNNPRS. It can therefore, be taken as a unique one.

### **1.3. Statements of the Problems**

As stated above, the existing RLDSS in Ethiopia in general and SNNPRS in particular is faced by different problems. The following are the major problems identified in this study:

Inaccessibility of judicial services owing to absence of judicial organ dealing with RLDs at the local level is one of the problems of RLDSS in SNNPRS. The closest judicial institutions available for peasants to have their rural land cases being heard and decided are woreda courts. Accordingly, peasants are forced to travel to woreda courts to access judicial services there and which is inconvenient, time consuming and costly to the average peasants as Woreda courts is located far away from their locality.<sup>18</sup>

A higher cost of litigation with respect to RLDs is the other problem faced by the existing RLDSS. Higher costs of litigation may be attributable to delays in the resolution of RLDs. Delays in turn may be the results of court congestion and rigid procedural rules courts are required to adhere to. The more the litigation processes take a time, the greater the costs of litigations will be. Furthermore, delays in the resolution of RLDs, by consuming the time of peasants that may be invested in agricultural activities, can affect agricultural productivity.

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<sup>17</sup> Ibid.

<sup>18</sup> Desalegn Rahmato , *supra* note 6, p.302

Lack of special expertise in the adjudication of rural land disputes is another problem faced by the existing rural land disputes resolution mechanisms in SNNPRS. Since RLDs are not purely a legal matter, there is a need for some sort of expertise besides legal knowledge in the resolution of land disputes. However, the existing RLDSS lacks the special expertise needed in the adjudication of RLDs in regular courts.

Finally, the problems faced by the existing RLDSS in SNNPRS could be attributed to absence of separate treatment of RLDs. While RLDs are representing the majority of cases litigated before regular courts and have a critical role in the life of the overwhelming majority of the rural communities; no sufficient attention has been given to RLDSS in Ethiopia in general and in SNNPRS in particular. The way RLDs being handled, the time it takes and the procedures to be followed in determining those disputes and the nature of decisions to be arrived at and its costs have a significant impact on the life of the rural community. Despite the critical role of RLDs to the majority of rural communities, RLDs have not been treated adequately.

#### **1.4. Research Questions**

This research sought to answer the following questions:

1. What are the problems faced by the current rural land disputes settlement system in Ethiopia in general and SNNPRS in particular?
2. Why should rural land disputes be treated differently?
3. How could the introduction of land tribunals and land benches resolve problems faced by the existing rural land disputes settlement system in Ethiopia in general and SNNPRS in particular?
4. What lessons should Ethiopia in general and SNNPRS learn from the experiences of other states which have introduced land tribunals?

#### **1.5. Objectives of the Study**

##### **1.5.1. General Objectives**

The general objective of this research is to examine the efficacy of the current rural land disputes resolution mechanisms in Ethiopia in general and SNNPRS in particular with an emphasis on institutional mechanisms; and to propose a solution for problems faced by the rural land dispute settlement system. The research intends to identify problems faced by the current rural land

dispute settlement system in Ethiopia in general and SNNPRS in particular and propose the introduction of land tribunals and land benches exclusively dealing with rural land disputes as a solution for problems identified.

### **1.5.2. Specific Objectives**

Specifically, the study aims to:

1. Identify problems faced by the current rural land disputes settlement system in Ethiopia in general and SNNPRS in particular;
2. Study why the adjudication of rural land disputes requires separate treatment and special expertise;
3. Examine how the problems on current rural land dispute settlement system in SNNPRS could be resolved through the introduction of land tribunals and land benches at different level;
4. Explore lessons Ethiopia in general and SNNPRS in particular may take from the experiences of other states regarding the practice of land tribunals.

### **1.6. Significances of the Study**

As the study intends to identify the problems faced by current RLDSS in Ethiopia in general and SNNPRS in particular and proposes the introduction of land tribunals and land benches as a solution for such problems; it is believed to play a substantial role in achieving better land dispute settlement system in Ethiopia. Particularly, the study has an immense role in showing how the problems of current RLDs resolution institutions could be resolved through the introduction of LTs and land benches to Ethiopia which is almost absent in current Ethiopian literature. Furthermore, the study will serve as a base for further researches by interested researchers on the subject matter.

### **1.7. Methodology and Method**

This study proposes the establishment of LTs in Ethiopia in general and SNNPRS in particular as a solution for problems faced by the current land disputes resolution mechanism in Ethiopia. The study involves textual analysis of land and other relevant laws pertaining to land dispute resolution, examination of the practices of courts in relation to the adjudication of land disputes, considering stakeholders' views on the proposed land tribunals and consulting literature on the

subject matter in comparative manners which are expected to generate both primary and secondary qualitative data. Accordingly, the research methodology of this study makes use of both primary and secondary qualitative data. The following methods were used to collect such data.

### **1.7.1. Methods**

#### **1.7.1.1. Primary Data**

##### **a. Interviews**

In order to get the views of informants on the problems faced by current land disputes resolution and advisability of the establishment of LTs and land benches in SNNPRS, in-depth interviews were held with some purposely selected key informants such as judges of some selected woreda and high courts, and supreme court of SNNPRS, litigants on land disputes and rural land administration officials, land researchers and practicing lawyers. The informants were selected purposively based on their knowledge of the subject matters. In other words, informants who can best answer the research questions were selected.

The informants are selected purposively from sample research sites which are also selected purposively. Accordingly, two zonal administrations i.e. Gurage and Wolaita zone in the SNNPRS Regional State are chosen as sample for the purposes of this study based on the size of their population. From each zonal administration, one woreda administration( Damotgale Woreda in Wolaita Zone and Gumer Woreda in Gurage Zone) is chosen based on the density of population and one kebele administration in each woreda( Shahagale kebele in Damotegale woreda and Burda-Denber kebele in Gumer woreda) have been taken as sample for the purposes of investigating the issues.

Judges from the two woreda courts i.e. Damotgale and Gumer woreda court and the high court of Wolaita zone and Gurage zone and the Supreme Court of SNNPRS and land administration officials at the level of those selected rural kebeles, woredas, and zonal administrations, SNNPRS Regional State Agriculture and Natural Resource Development Bureau and Ministry of Agriculture were selected purposively as informants for the study. Further, litigants on rural land, lawyers practicing in courts of SNNPRS and land researchers were also interviewed to get their views the proposed land tribunals.

## **b. Documents**

Primary documentary sources such as FDRE Constitution, Federal Rural Land Use and Administration Proclamation No.456/2005, Expropriation of Land Holding for Public Purposes, Payment of Compensation and Resettlement Proclamation No.1161/2019, Federal Courts Establishment Proclamation No.25/1996 (as amended), SNNPRS Rural Land Administration and Use Proclamation No.110/2007, civil procedure and the civil code of Ethiopia, SNNPRS court establishment laws, land laws of other regional states and other relevant legislations were consulted.

### **1.7.1.2. Secondary Data**

Secondary sources such as books, journal articles, and commentaries on laws, researches and report by the national and international institutions and internet sources have been considered.

## **1.8. Scope of the Study**

The geographical scope of this study is limited to Southern Nations, Nationalities and Peoples Regional State (SNNPRS). In terms of subject matter, rural land disputes referred in this study are those rural land disputes of civil nature currently under the jurisdictions of regular courts (both first instance and appellate jurisdictions).

## **1.9. Organization of the Study**

The study is organized into five chapters. The first chapter introduces the general background of the study, the reasons that necessitate the study, the questions the study seeks to answer, the objectives of the study and the research methodology adopted by the study. The second chapter presents the meaning, purposes and characteristics tribunals and arguments commonly raised against tribunals in general and land tribunals in particular and the experiences of some selected jurisdictions which have introduced land tribunals. The third chapter discusses the legal and institutional framework for the resolution of RLDs in Ethiopia in general and SNNPRS in particular and problems faced by the current rural land disputes settlement system. The fourth chapter, based on the analysis of data collected, problems identified under chapter three and lessons drawn from the experiences of selected jurisdictions which have introduced land

tribunals, proposes the establishment of land tribunals in SNNPRS. Finally, the fifth chapter presents findings, conclusions and recommendations.

## Chapter Two: Land Tribunals

This chapter presents the meaning, purposes, characteristics and arguments commonly raised against tribunals in general and land tribunals in particular. Furthermore, a brief account of the experiences of some selected states which have introduced land tribunals is presented.

### 2.1. Meaning

As the term tribunal is susceptible to different meaning depending on the context in which it is used, perhaps it is difficult to provide a single definition which can embrace all of its attributes. In its broadest sense, a tribunal may mean a court or other adjudicatory body.<sup>19</sup> It may also mean the seat, bench or place where the judge sits.<sup>20</sup> The word ‘tribunal’ is given to many different types of bodies with widely differing functions, and covering a vast range of subject areas including private as well as public law issues.<sup>21</sup> The term in question may also be used to refer to bodies adjudicating disputes/matters within or outside the judicial branch of government. Within the judicial branch of the government, the term ‘tribunal’ is used to denote special courts exclusively dealing with a particular category of cases.<sup>22</sup> Bodies adjudicating disputes arising out of administrative functions or reviewing decisions made by administrative agencies of state are termed as administrative tribunals.

Land tribunals may be called by names such as Land Title Tribunals, Cadastral Commissions or Land Courts.<sup>23</sup> Land tribunals can be generally defined as bodies established to adjudicate land related disputes outside the regular court system. Land tribunals are specialized bodies having the objective to deal explicitly and exclusively with land related conflicts.<sup>24</sup> Distinctions could be made among land tribunals based on the range of land disputes the tribunals are entrusted to deal

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<sup>19</sup> Black’s Law Dictionary, (9<sup>th</sup> ed. 2009), p. 1646

<sup>20</sup> Ibid.

<sup>21</sup> Hazel Genn (1993), “Tribunals and Informal Justice”, The Modern Law Review, May, 1993, Vol. 56, No. 3, Dispute Resolution. Civil Justice and Its Alternatives, p.394

<sup>22</sup> Collin English Dictionary, available at <

<https://www.collinsdictionary.com/dictionary/english/tribunal>> (last accessed sep,14,2020), see also

Markus B. Zimmer (2009), “Overview of Specialized Courts”, International Journal for Court Administration, p.1

<sup>23</sup> Babette Wehrmann (2008), “Land Conflicts: A Practical Guide to Dealing with Land Disputes”, Eschborn (GTZ). P.78 available at

<[https://www.researchgate.net/publication/42766163\\_Land\\_Conflicts\\_A\\_Practical\\_Guide\\_to\\_Dealing\\_with\\_Land\\_Disputes](https://www.researchgate.net/publication/42766163_Land_Conflicts_A_Practical_Guide_to_Dealing_with_Land_Disputes)>

<sup>24</sup> Ibid.

with. Some land tribunals deal with all kinds of land disputes, while others concentrate on one major type of land disputes.<sup>25</sup>

## **2.2. Why tribunals?**

The rationales behind establishment of tribunals in general and land tribunals in particular depend on the nature of the problems intended to be resolved or the result desired to be achieved through the establishment of the tribunals. One of the grounds for establishment of tribunals is improving public access to dispute resolution mechanisms.<sup>26</sup> Providing simpler, speedier, cheaper and more accessible justice which may not be achieved through ordinary courts is the other ground for the introduction of tribunals.<sup>27</sup> The need to apply different values which may not be plausibly applied to courts,<sup>28</sup> search for special expertise in the resolution of a particular category of cases,<sup>29</sup> alleviating the burden on regular courts dealing with a large volume of cases are also the grounds for establishment of tribunals in general and land tribunals in particular.

## **2.3. Basic Characteristics of Tribunals**

Tribunals in general and land tribunals in particular have some basic characteristics. Some of the characteristics of tribunals include public accessibility both in terms of cost and public awareness of opportunities to seek redress through tribunals; speedy and efficient determination of cases; membership and expertise appropriate to the subject matter; actual and apparent independence; informal and simplified procedures; sufficient powers to carry out their functions; and appropriate avenues for appeal or review of tribunals' decisions.<sup>30</sup>

## **2.4. Arguments Commonly Raised Against the Establishment of Tribunals**

Despite their perceived advantages over ordinary court system, there are arguments forwarded against the establishment of tribunals in general and land tribunals in particular. One of criticisms raised against tribunals is lack of independence. Due to the involvement of governmental ministries in the appointment of members of the tribunals, the latter are perceived

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<sup>25</sup> Ibid.

<sup>26</sup> New Zealand Law Commission(2007), "Tribunals in New Zealand", Issues Paper/law Commission, Wellington, P.41

<sup>27</sup> William Wade and Christopher Forsyth(2004), "Administrative Law" *cited in* New Zealand Law Commission(2007), "Tribunals in New Zealand", Issues Paper/law Commission, Wellington, p. 41

<sup>28</sup> New Zealand Law Commission, *supra* note 26, p.41

<sup>29</sup> Stephen H. Legomsky (1990), "Specialized Justice: Courts, Administrative Tribunals, and a Cross-National Theory of Specialization" *cited in* Nir Mualam, *supra* note 1, p.35

<sup>30</sup> New Zealand Law Commission, *supra* note 26, P.43-49

to be dependent on and their decisions are influenced by state administrative organs. However, tribunals can still be independent in their jobs as long as their independence is legally recognized and measures ensuring the independence of tribunals have been taken such as making their decisions appealable to courts and mechanisms for accountability of members of tribunals is devised. Tribunals are also criticized for lack of legal expertise. Since tribunals in most cases are composed of members with non-legal expertise, they are perceived to be lacking legal expertise. However, it is also possible to have tribunals composed of legal members as well. The experiences of states discussed below which have introduced land tribunals is a good example in this regard. In those states land tribunals are required to be chaired by qualified legal practitioners.<sup>31</sup>

## **2.5. A Brief Overview of Experiences of Selected Jurisdictions on Introduction of Land Tribunals**

The followings are brief discussions of the experiences of three states namely Tanzania, Kenya and Uganda which have introduced land tribunals as a solution for problems the states' have been facing in the resolution of land disputes. Those states are selected based on the experiences they can provide to Ethiopia with respect to treatment of land disputes. Particularly, the problems intended to be solved through the introduction of land tribunals in those states are similar to problems faced by the RLDSS in Ethiopia in general and SNNPRS in particular.

### **Tanzania**

In the United Republic of Tanzania, land tribunals were introduced in 1990's as part of the land reform measures based on the findings of the Presidential Commission of Inquiry in to Land Matters. The commission was appointed by the then President of Tanzania in 1991 to listen to the grievances of the people concerning the allocation, tenure, use and development of land and to make its recommendation to a new land policy and tenure.<sup>32</sup> Inaccessibility of courts to the large number of people, delay in the resolution of land disputes by the court and lack of

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<sup>31</sup> United Republic of Tanzania Land Disputes Courts Act, 2002, section 25 available at < <http://extwprlegs1.fao.org/docs/pdf/tan34431.pdf> > ; The Uganda Land Act, 1998( as amended), section 74, available at < <http://mlhud.go.ug/wp-content/uploads/2019/03/Land-Act-1998-as-amended-CAP-227.pdf> > ; Environment and Land Court Act No. 19/2011( revised in 2012), section 5-7, available at [www.kenyalaw.org](http://www.kenyalaw.org) (last accessed Sep.16,2020)

<sup>32</sup> Gertrude Sackey (2010), "Investigating Justice System in Land Conflict Resolution: A Case Study of Kiondoni Municipality Tanzania" ( LLM Thesis: Twente University) p.35

independent and impartial dispute resolution bodies were also problems surrounding the land dispute resolution mechanisms at the time.<sup>33</sup> Based on the Commission's recommendation for the formulation of a new land policy and land act for the establishment of independent land disputes settlement institutions, National Land Policy was adopted in 1995.

The policy upheld the commission's recommendations for the establishment of independent, expeditious and just system for the adjudication of land disputes. The National Land Policy was followed by the promulgation of Land and Village Land Acts in 1999 which established courts exclusively dealing with land disputes. Later in 2002, Land Disputes Court Act was enacted which sets out the procedures, formation and operation of the land disputes settlement machineries such as the Village Land Council, the Ward Tribunals, the District Land and Housing Tribunals, the High Court of Tanzania( Land Division) and the Court of Appeal of Tanzania.<sup>34</sup> Those land tribunals were established with a view to create an independent, impartial bodies expeditiously dealing with land disputes.<sup>35</sup>

## Uganda

Uganda introduced land tribunals on the basis of the recommendations of Constitutional Commission for constitutional reforms which lay firm policy principles regarding good land tenure policy in Uganda.<sup>36</sup> The commission in its final report recommended for, among other things, the establishment of land tribunals at various level with a view to adopt simpler, cheaper and speedier procedures than those of the ordinary courts in settling land disputes given that parties dissatisfied by the decision of the tribunal have the right to appeal to a court.<sup>37</sup> The

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<sup>33</sup> Mbesi, E.G (2002), "New Dispute Settlement Mechanisms in Tanzania". A paper presented at the Conference of Resident and District Magistrates, Morogo, Tanzania, *cited in* Gertrude Sackey, *supra* note 32, p.35

<sup>34</sup> United Republic of Tanzania Land Disputes Courts Act, 2002, section 3 available at <<http://extwprlegs1.fao.org/docs/pdf/tan34431.pdf>> (last accessed Sep.16,2020)

<sup>35</sup> Sigsbert Ngemera (2017), "Land Dispute Settlement Machineries: Is Inaccessibility A Source Of Village Land Disputes In Morogoro?" International Journal of Scientific and Research Publications, Volume 7, Issue 3, March 2017. P. 335

<sup>36</sup> Uganda National Land Policy, 2013,p.6 available <http://extwprlegs1.fao.org/docs/pdf/uga163420.pdf>

<sup>37</sup> Uganda Constitutional Commission Report, 1995, p. 690 available at [http://citizenshiprightsafrika.org/wp-content/uploads/2016/06/Uganda-Constitution-Commission-1995-report\\_missingchaps7-14\\_and24-1.pdf](http://citizenshiprightsafrika.org/wp-content/uploads/2016/06/Uganda-Constitution-Commission-1995-report_missingchaps7-14_and24-1.pdf) (last accessed Sep. 16,2020)

Commission stated that establishment of land tribunals should be aimed at settling land disputes especially at the lower levels speedily and at the least possible cost to the litigants.<sup>38</sup>

The recommendation of the Constitutional Commission for the establishment of land tribunals was given effect under the 1995 constitution of Uganda. The Constitution requires the Ugandan Parliament to establish land tribunals whose jurisdiction shall include the determination of disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda land commission or other authority with responsibility relating to land; and determination of any disputes relating to the amount of compensation to be paid for land acquired.<sup>39</sup> In compliance with its constitutional mandate, the Ugandan Parliament has established District Land Tribunal under the land Act in 1998.<sup>40</sup>

## **Kenya**

Kenya has also introduced land and environment court dealing with land and environment cases based on the recommendations of commissions such as Presidential Commission of Inquiry in to the Land Law System of Kenya, Presidential Commission of Inquiry in to Illegal/Irregular Allocation of Public Land and the Constitution of Kenya Review Commission.<sup>41</sup> The Kenyan National Land Policy of 2009, which was informed by the recommendations of the above mentioned Commissions, anticipated, among other things, establishment of land courts as a separate division of the high court.<sup>42</sup> The establishment of land courts anticipated by the National Land Policy was given effect under the new constitution of Kenya which required the Kenyan parliament to establish courts with the status of high court to hear and determine disputes relating to the environment, the use and occupation of, and title to land.<sup>43</sup> Accordingly, the Kenyan parliament has enacted the Environment and Land Court Act in 2011 for the establishment of Environment and Land Court in 2011 having the overriding objectives of enabling the court to

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<sup>38</sup> Ibid.

<sup>39</sup> The Constitutions of Uganda, 1995, Article 243 available at < [https://www.constituteproject.org/constitution/Uganda\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Uganda_2005.pdf?lang=en)>

<sup>40</sup> The Land Act, 1998( as amended) available at < <http://mlhud.go.ug/wp-content/uploads/2019/03/Land-Act-1998-as-amended-CAP-227.pdf>> (last accessed Sep. 17,2020)

<sup>41</sup> The Ministry of Land, Sessional Paper No.3 of 2009 on National Land Policy, August 2009, p. ix available at < <http://extwprlegs1.fao.org/docs/pdf/ken163862.pdf>> (last accessed sep.17,2020)

<sup>42</sup> Id. Para. 259-263

<sup>43</sup> Ibid.

facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by the Act.<sup>44</sup>

## 2.6. Chapter Summary

In this chapter, the meaning, purposes and distinctive characteristics of tribunals in general and land tribunals in particular has been discussed and the experiences of some selected states which have introduced land tribunals have been presented with particular emphasis on the rationales behind the introduction of land tribunals in those states. Tribunals are bodies established outside the regular court system to deal with a particular category of cases. Land tribunals are specialized bodies having the objective to deal explicitly and exclusively with land related cases.

Providing simpler, speedier, cheaper and more accessible justice which may not be achieved through ordinary courts; the need to apply different values which may not be plausibly applied to courts; search for special expertise in the adjudication of a particular category of cases and alleviating the burden on regular courts dealing with a large volume of cases are mostly cited as the rationales behind the establishment of tribunals.

Public accessibility both in terms of cost and public awareness of opportunities to seek redress through tribunals; speedy and efficient determination of cases; membership and expertise appropriate to the subject matter; actual and apparent independence; informal and simplified procedures; sufficient powers to carry out their functions; and appropriate avenues for appeal or review of tribunals' decisions are the distinctive characteristics of tribunals in general and land tribunals in particular. In the next chapter, a brief overview of the existing RLDSS in Ethiopia will be presented and problems faced by the latter will be identified.

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<sup>44</sup> Environment and Land Court Act No. 19/2011( revised in 2012), section 3, available at [www.keneyalaw.org](http://www.keneyalaw.org) (last accessed Sep.19,2020)

## Chapter Three: Rural Land Disputes Settlement System in Ethiopia

In the previous chapter, tribunals in general and land tribunals in particular have been discussed in terms of their purposes and characteristics and the experiences of some selected jurisdictions which have introduced land tribunals have been presented. In this chapter, RLDSS in Ethiopia and problems faced by the latter is discussed briefly with a particular emphasis on institutions responsible for settlement of RLDs.

### 3.1. Legal and Institutional Frameworks for Rural Land Disputes Settlement in Ethiopia

The FDRE Constitution expressly declared that ownership right over both rural and urban lands is exclusively vested in state and peoples of Ethiopia.<sup>45</sup> Accordingly, ownership right over land can no longer be a subject of litigation. In the current Ethiopian constitutional setup, disputes in relation to land in general and rural lands in particular can only be imagined on issues outside ownership right over lands such as use right of land. The FDRE Constitution is silent on how land disputes are to be resolved. The silence of the constitution on this issue can be understood to mean that the issue is left to be regulated of the law maker.

The HPR has enacted framework legislation on the administration and utilization of rural lands in Ethiopia.<sup>46</sup> RLDs resolution mechanisms is one of the issues prescribed under the federal rural land administration and land use proclamation. The proclamation requires efforts to be made for amicable resolution of disputes over rural land holding right through discussion and agreement of the concerned parties.<sup>47</sup> Where the dispute could not be resolved through agreement, it shall be decided by arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region.<sup>48</sup>

On the basis of the federal framework legislation, most of the regional states of Ethiopia have enacted rural land administration and land use laws applicable to the respective regional states. Those regional states have provided for RLDSS to be applied in their rural land administration

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<sup>45</sup> The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1, Federal Negarit Gazette, 1<sup>st</sup> Year No.1( FDRE Constitutions), article 40(3)

<sup>46</sup> Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, 2005, proc.No.456, Federal Negarit Gazette 11<sup>th</sup> Year No.44 ( FDRE rural land proclamation)

<sup>47</sup> Id. Article 12

<sup>48</sup> Ibid.

and land use laws. The RLLs of almost all of the regional states of Ethiopia such as the Oromia, Amhara, Tigray, Benishangul, Afar and Southern Nations, Nationalities and Peoples regional states, requires RLDs to be resolved first through agreement and / mediation of local elders to be elected by the disputants through the help of kebele administration or kebele land administration committees as the case may be.<sup>49</sup> Accordingly, it is mandatory to try to resolve RLDs first through agreement among the disputants and where the disputes could not be resolved through agreement, through the mediation of local elders to be elected by the disputants. The election of mediators is assisted by kebele administration in Oromia and kebele land administration committee in SNNPRS.<sup>50</sup>

With the exception of Tigray NRS, where RLDs which are not resolved through agreement/ mediation shall be submitted to kebele rural land judicial committee which has first instance jurisdiction over most of the RLDs<sup>51</sup>; in other regional states, woreda courts have first instance jurisdictions over RLDs which have not been resolved through agreement among the parties and/ through mediation by local elders. Accordingly, while woreda courts in Tigray NRS have appellate jurisdictions over most of the RLDs which are first decided by the kebele rural land judicial committee; woreda courts in other regions have first instance jurisdictions over RLDs.

However, not all rural land disputes fall under the jurisdiction of regular courts as there are some types of RLDs legally required to be dealt with by administrative organs. For instance, under the recently enacted Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019, regional states and the Addis Ababa and Dire Dawa City Administrations are charged to establish Complaint Hearing Body and Appeal Hearing Council which shall have jurisdiction to entertain grievances arising from

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<sup>49</sup> Article 12 of Southern Nation Nationality and Peoples Land Administration and Use proclamation No. 110/2007; article 17 of Tigray National Regional State Kebele Rural Land Judicial Committee Establishment Proclamation No.240/2014; article 16 of Proclamation to amend the proclamation No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration proclamation No. 130/2007; Article 52 of The Revised Rural Land Administration and Use Determination Proclamation of the Amhara National Regional State, Proc. No. 252/2017; article 34 of the Benishangul Gumuz Regional State Rural Land Administration and Use Proclamation No.85/2010; and article 15 of Afar National Regional State Rural Land Administration and Use Proclamation No.49/2009.

<sup>50</sup> Article 16 of Oromia NRS Rural land proclamation No. 130/2007 and article 12 of SNNPRS Rural land proclamation No.110/2007.

<sup>51</sup> Tigray NRS Kebele Rural Land Judicial Committee Establishment Proclamation No.240/2014, article 17

decisions under the proclamation.<sup>52</sup> While the Complaint Hearing Body is empowered to decide against on complaints submitted to it concerning the removal, replacement, compensation and other relate matters; the Appeal Hearing Council have a power to review, enforce, modify, or overturn the decisions of the Complaint Hearing Body.<sup>53</sup>

### **3.2. Major Problems Faced by Rural Land Disputes Settlement System in Ethiopia**

The existing RLDSS in Ethiopia in general and SNNPRS in particular is said to have facing problems. The major problems identified in relation to the existing RLDSS in Ethiopia includes: 1) inaccessibility of judicial services to the majority of the rural communities. Owing to absence of judicial organs dealing with RLDs at kebele level, peasants are forced to take their cases to the woreda courts which are inconvenient, time consuming and costly to the average peasants as woreda courts are located too far away from their locality.<sup>54</sup> Besides, poor operational efficiency, high cost of litigation, undue length of proceedings and bureaucratic nature of courts proceedings are identified as barriers to effective access to justice in Ethiopia.<sup>55</sup> 2) Absence of special expertise in the adjudication of RLDs and 3) absence of special treatment of RLDs with sufficient consideration in light of their utmost importance to the majority of the rural community and the volume of RLDs in the regular courts. Studies conducted at different times indicated that land related cases cover the majority of cases brought before regular courts. For instance, it was reported that land related disputes were claiming more than 70% of civil litigations in the Amhara Region courts in the year 2013-2014.<sup>56</sup> Even though the size of land cases varies from region to region, the trend is said to have been similar in the other regions. The

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<sup>52</sup> Expropriation of Land Holding for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019 Article 18

<sup>53</sup> Expropriation and Valuation, Compensation and Resettlement Council of Ministers Regulation No.472/2020, article 42&43

<sup>54</sup> Desalegn Rahmato, *supra note* 6, p.302

<sup>55</sup> Kokebe Jemaneh(2014), "Reconsidering Access To Justice In Ethiopia: Towards A Human Rights Based Approach" in Thomas F. Geraghty, Pietro S. Toggia, Kokebe W. Jemaneh (eds) "Access to Justice in Ethiopia: Towards an Inventory of Issues", Addis Ababa University Center for Human Rights, p.38

<sup>56</sup> Hailu, Zerfu, (2016). Land Governance Assessment Framework Implementation in Ethiopia. World Bank, Washington. DC. P.40

above mentioned problems on existing rural land disputes settlement system evidence, in one way or another, the failure of the system.

### **3.3. Chapter Summary**

This chapter presented a brief overview of the existing RLDSS in Ethiopia in general and SNNPRS in particular. The RLLs of almost all of the regional states of Ethiopia requires efforts to be made to resolve rural land disputes first through agreements among the disputants and/ through mediation of local elders to be elected by the parties. With the exception of the kebele rural land judicial committee in Tigray NRS which has first instance jurisdiction over most of the RLDs; no formal judicial organs are available at kebele level in other regional states of Ethiopia with respect to the adjudication of RLDs. With the exception of some of administratively handled RLDs such as disputes that may arise in relation to expropriation and payment of compensation, RLDs mostly falls within the jurisdictions of regular courts.

The existing rural RLDSS in Ethiopia is said to have facing problems such as inaccessibility of formal judicial organs dealing with RLDs at kebele level to the majority of the rural communities; poor operational efficiency, high cost of litigation, undue length of proceedings and bureaucratic nature of courts proceedings; absence of special expertise in the adjudication of RLDs and 3) absence of special treatment of RLDs with sufficient consideration in light of their utmost importance to the majority of the rural community and the volume of rural land cases in regular courts. The next chapter proposes the introduction of LTs and land benches dealing with RLDs in SNNPRS as a solution for problems identified in this chapter and others to be identified through empirical investigation.

## **Chapter Four: The Need for Land Tribunals in Ethiopia: A Case Study of SNNPRS**

The preceding two chapters of this work have presented the experiences of some selected jurisdictions which have introduced land tribunals, the rationales behind the introduction thereof and their common characteristics. The same chapters have also identified major problems faced by the current RLDSS in Ethiopia in general and SNNPRS in particular. The present chapter proposes the establishment of LTs dealing with RLDs both at kebele and woreda level and land benches in high courts and Supreme Court of SNNPRS as a solution for problems faced by the current RLDSS.

In the first part of this chapter the major problems faced by the current RLDSS in SNNPRS are identified on the basis of previously conducted researches, the analysis of the RLLs of the region and the analysis of qualitative data collected from the research sites. The second part of this chapter argues for the introduction of LTs dealing with RLDs at kebele and woreda levels and land benches in high courts and Supreme Court of SNNPRS by showing how the introduction of land tribunals and land benches will resolve the problems identified in first part of the chapter. Lessons that can be learned from the experiences of states which have introduced land tribunals and the analysis of the empirical data collected in the research sites are presented in support of the proposed LTs. Finally, some of the criticisms that may possibly be raised against the proposed LTs are addressed.

### **4.1. Problems Faced by the Current Rural Land Disputes Settlement System in SNNPRS**

#### **a. Inaccessibility of Judicial Services**

As mentioned in the previous chapter, one of the problems surrounding the current RLDSS in Ethiopia in general and SNNPRS in particular is physical inaccessibility of the disputes resolution system to the majority of the rural communities. Physical inaccessibility of RLDSS is in part attributable to absence of institutions that can adjudicate rural land cases at kebele level. Kebele land administration committees are not a decision making bodies; rather they have facilitative roles in an effort to negotiate and arrive at an agreement among parties to the disputes through elders elected by the latter.

However, sometimes they resemble decision making bodies as they try to impose on one of the parties their judgment which they arrive at through investigating the matter.<sup>57</sup> There are legal requirement that RLDs should at first be tried to be resolved through agreement and negotiation among parties; the assistance of the kebele land administration committees have its own rationales and merits. But such legal requirements sometimes hinder parties from accessing justice from judicial institutions. This happens especially where members of the kebele land administration committee have an interest in the disputes sought to be resolved as they might not be willing to put their signature and issue a letter attesting the failure of the negotiation process to the party who does not want to negotiate or accept the terms of negotiation proposed by the elders and wishing to file his/her case in a woreda court.<sup>58</sup> As presenting a letter from kebele land administration committee showing the failure of the negotiation process is a pre-requisite to filing rural land cases in a woreda court, the formers sometimes abuse their power to issue the letter and thereby become a setback to parties' right to access to justice. In the research sites studied in this work, in most cases, elders elected by parties are testifying for the party choosing them rather than serving as a mediator among parties to the disputes and thereby resembling decision making bodies.<sup>59</sup> Even if the report of kebele land administration committee is supposed to show the failure of agreement/ and mediation at kebele level as a pre-requisite for filing rural land cases in a woreda court; the report in most cases incorporates findings by the elders and take the form of decision and ultimately influence the outcome the case in court.<sup>60</sup>

Even though circuit benches were operationalized with a view to making available justice at the local level, the majority of the rural communities in the study area have not benefited from such benches as the latter are available only in few selected sites. For instance, in one of the research sites (Damote Gale Woreda of Wolaita Zone) while there are 33 rural kebeles, the woreda courts have circuit bench only in 3 of them.<sup>61</sup> In another research site, Gumer Woreda of Gurage Zone, three circuit benches of the woreda court are available for the whole woreda comprising of 20

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<sup>57</sup> An interview with Kebede Kassa, Gumer Woreda court president, Nov.11, 2020

<sup>58</sup> An interview with Yeneneh Haile, a practicing lawyer in courts of SNNPRS regional state, Nov.13,2020

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> An interview with Zewditua Adane, Damote Gale Woreda Court president, Nov.15, 2020

rural kebeles.<sup>62</sup> Even in those rural kebeles where circuit benches are available, persons involved in land disputes are required to file their cases in the registrar of the woreda courts which takes more time, energy and costs. In addition, since the circuit benches entertain all types of cases and apply ordinary courts procedures, delays in the disposition of cases still exist.<sup>63</sup>

#### **b. Delays in the Adjudication of Rural Land Disputes**

Delay in the disposition of rural land cases in a court is the other manifestation of the current RLDSS in SNNPRS. Delays in the court may be caused by different factors such as case congestion, rigid court procedures and complexity of the matters. One of the causes for delay in the resolution of cases in general and rural land cases in particular is congestion of courts. As courts of the Region entertain almost all types of cases including rural land cases under their competence; they are burdened with large volume of cases (see table 1 below). Since courts have to allocate their limited time, resources and personnel to those large numbers of cases, delays in the disposition of cases is an inevitable consequence. Court officials interviewed by this author said that according to the Business Process Re-engineering service delivery model, courts are supposed to dispose of almost all types of cases within two months from the institution of the cases in a court.<sup>64</sup> However, decisions are not being rendered in this time frame for courts are congested with cases (see table 1 below). For instance, in the two woreda courts examined in this study, it was reported that the disposition of rural land cases takes on average 4-5 months.<sup>65</sup> However, in some cases it may take up to two years or more depending on the nature of the cases especially where a petition for opposing the judgment of the court is filed and accepted by the court which results in rehearing of the cases anew and where the decision of the woreda courts are varied or reversed by the appellate courts and remanded for rehearing.<sup>66</sup>

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<sup>62</sup> Interview with Kebede Kassa, *supra* note 57

<sup>63</sup> An interview with Shume Musema, a civil bench judge at Gurage zone high court, Nov.18, 2020

<sup>64</sup> Interview with Kebede Kasaa *supra* note 57; interview with Zewditua Adane, *supra* note 61

<sup>65</sup> Ibid.

<sup>66</sup> Interview with Yeneneh Haile, *supra* note 58

Table. 1<sup>67</sup> No. of cases filed in Gumer Woreda Court and Damotgale Woreda Court in terms of cases type, estimated share of rural land cases and the average duration of time it takes to dispose of rural land cases.

| Name of woreda courts   | Total No. of cases filed annually on average in the past years | Total No. of cases filed in the court in year 2012 EC | Types of cases |          | Number of judges in court | Estimated share of rural land disputes in totality of cases (in %) | The average length of time it takes to dispose of rural land cases( in Month) |
|-------------------------|----------------------------------------------------------------|-------------------------------------------------------|----------------|----------|---------------------------|--------------------------------------------------------------------|-------------------------------------------------------------------------------|
|                         |                                                                |                                                       | Civil          | Criminal |                           |                                                                    |                                                                               |
| Gumer Woreda Court      | 500-600                                                        | 365                                                   | 199            | 166      | 5                         | 40-50%                                                             | 3-4                                                                           |
| Damotegale Woreda Court | 800-900                                                        | 675                                                   | 473            | 272      | 5                         | >60%                                                               | 4-6                                                                           |

The other cause of delay in court with respect to the resolution of RLDs is the nature of land disputes itself. Owing to their nature, land cases take more time than other types of cases. This is particularly true in cases of boundary disputes and disputes over holding rights where evidences from other institutions such as land administration institutions or field observation is needed for

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<sup>67</sup> The total number of cases indicated in this table represents only those cases filed in those courts until the outbreak of Covid-19 pandemic. Then after courts have been precluded from receiving new files with the exception of very limited types of cases such cases on violation of the provisions of state of emergency laws and rape cases.

decision making and which ultimately takes more time. Courts seek the assistance of land administration institutions in determining the right of holder of a parcel of land in dispute. In most cases courts order the latter to present evidence showing the right holder on disputed land which in turn requires site observations, measuring the said land and verifying in whose name the land in dispute is registered.<sup>68</sup> Accordingly, courts are forced to adjourn the hearing until such time that all the necessary evidence from the land administration institutions is presented which takes more time and thereby results in delay.

At this juncture, it is proper to ask why boundary disputes are still prevailing in the face of first and second level rural land holding registration aiming at reducing boundary disputes. Despite the first and second level rural land holding registration which aimed at, among other things, reducing boundary disputes; boundary issues are still one of the major causes of disputes. Boundary related disputes arises mainly from cases such as the issuance of more than one land holding certificates on the same parcel of land, measurement and registration of land in the name of a person other than right holder and measurement of rural land holding in the absence of neighboring land holders which later becomes a source of disputes among neighbors.<sup>69</sup> Post-certification land disputes are said to have been mushroomed in the countryside owing to variable and imprecise land measurement systems used, the program's individualistic underpinning and due to the haste with which the program was carried out.<sup>70</sup>

### **c. Higher Costs of Litigation**

A high cost of litigation with respect to rural land cases is also a problem faced by the current RLDSS in Ethiopia in general and SNNPRS in particular. Several factors account for high costs of litigation with respect to rural land cases. One of the factors that make litigation over rural land costly is the physical inaccessibility of courts. The high costs of litigation over rural land start from accessing the courts. As stated earlier in this work, woreda courts are the closest judicial institutions available to peasants for the resolution of rural land cases. Litigants over

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<sup>68</sup> Interview with Yohannse Chinesho, Damotgale Woreda land administration professional, Nov.17,2020; and Zermechi Shumbeje, Gumer Woreda Agriculture and Natural Resource Development Office, land administration team leader, Nov. 11,2020

<sup>69</sup> Interview with Zewditua Adane, *supra note* 61; and interview with Kebede Kassa, *supra note* 57

<sup>70</sup> Muradu Abdo (2014), "State Policy and Laws in Relation to Land Alienation in Ethiopia", (a Thesis Submitted for the Degree of PHD: Warwick University, School of Law) p.267

rural land in woreda court whom this author has interviewed said that as residents of rural kebele, they are supposed to travel several kilometers from their home to woreda courts in order to file their cases and at the later stage of the hearing, to present their witnesses to the woreda courts.<sup>71</sup> The long distance the litigants are expected to travel to access the courts accompanied by several adjournments of the hearing process exposes peasants to a higher cost of litigation. Advocate fees at least for the preparation of court pleadings; transport and other costs for taking witnesses to the court; and additional costs especially where an appeal is preferred on the decision of the lower courts are the causes for higher costs of litigation with respect to rural land.<sup>72</sup> To sum up, the absence of judicial institutions at the local level on the one hand and delays and costs associated therewith in the regular courts on the other hand are the causes for higher costs of litigation over rural land.

#### **d. Lack of Special Treatment of Rural Land Disputes**

Though RLDSS has been treated differently under the existing RLLs, it is by no means sufficient as compared to the utmost importance of land to the majority of the rural communities. Under the existing RLLs of SNNPRS, rural land disputes are being treated somewhat differently than other types of cases. RLDs have been treated differently in two situations. The first one is before the submission of RLDs to the regular courts. Disputes over rural land holding right are required to be submitted first to the kebele land administration committee and the latter is mandated to let the dispute be resolved through elders to be elected by the disputants.<sup>73</sup> In contrast to other types of disputes which can be directly submitted to the court having jurisdiction thereon; disputes over rural land holding right are required to be submitted first to the kebele land administration committee with a view to promote the resolution of RLDs amicably in a manner that saves costs and time. The resolution of RLDs at kebele level has also the advantage of relieving woreda courts from case load. However, the effectiveness of such legal requirements is questionable as the existing realities show the otherwise of the envisioned benefits of the latter.

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<sup>71</sup> Interview with Asrar Ahmed, litigant over rural in Gumer Woreda Court, Nov. 24, 2020; Kutere Kussa and Hussien Kebicho, litigants over rural in Damote Gale Woreda court, Nov. 17, 2020

<sup>72</sup> Interview with Shume Musema, a civil bench judge at Gurage Zone High Court, Nov. 19, 2020

<sup>73</sup> SNNPRS Rural Land Administration and Land Use Proclamation No.110/2007, Article 12

In the two woreda courts examined in this study, rural land disputes are estimated to cover 50-70% of the total number of cases being considered in those courts.<sup>74</sup> It has been also discussed in chapter 3 of this study that studies conducted at different times indicated that land related cases cover the majority of cases brought before regular courts. For instance, it was reported that land related disputes were claiming more than 70% of civil litigations in the Amhara Region courts in the year 2013-2014.<sup>75</sup> Even though the size of land cases varies from region to region, the trend is said to have been similar in the other regions.<sup>76</sup>

The accumulation of large volume of rural land cases in a woreda court could mean the land disputes system installed at the lower level of state administration is ineffective. That is why RLDs are flowing to woreda courts at an alarming rate. Furthermore, making negotiation and/mediation a mandatory requirement for the institution of rural land cases in a woreda court is futile on the face of the prevailing customary disputes resolution system in each locality and parties' right to compromise on the issue before and/after the institution of cases in a court. In effect, the RLLs of SNNPRS has not brought about anything new in providing negotiation and/mediation as mandatory requirement for the institution of rural cases in a woreda court for such mechanisms are already available under the laws of Ethiopia.<sup>77</sup>

Second, land disputes are treated differently after the institution of the cases in a court. Unlike in other types of cases where only one appeal lies on a decision made by the lower courts unless the appellate court has varied or reversed the decision of the latter; the RLLs of SNNPRS provide for second appeal with respect to decisions on rural lands. The Rural Land Administration and Use Proclamation of SNNPRS provides for the second right of appeal i.e., decisions made by the woreda courts in relation to rural lands are appealable to high court and the decisions of the latter are still appealable to supreme court of the region even though the higher court has confirmed the decisions of the woreda courts.<sup>78</sup> The decision of the supreme court of the region is final.<sup>79</sup> The second appeal provided under the rural land proclamation of the region is not only a right but

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<sup>74</sup> Damotegale Woreda Court and Gumer Woreda Court

<sup>75</sup> Hailu, Zerfu, *supra note* 56, p. 40

<sup>76</sup> Ibid.

<sup>77</sup> Arts.3307-3346 of the Civil Code of Ethiopia, 1960; and Art 274-280; and 315-319 of the Civil Procedure Code of Ethiopia, 1965

<sup>78</sup> SNNPRS Rural Land Administration and Land Use Proclamation No.110/2007, Article 12

<sup>79</sup> Ibid

also a requirement if a party wishes to file a cassation petition on the ground that the decisions of the lower courts have basic error of law. The Federal Supreme Court Cassation Bench has rendered a binding decision on this issue stating that party to rural land dispute wishing to file a cassation petition to the supreme court of SNNPRS has to first exhaust the appeal mechanisms (including second appeal) available under the RLLs of SNNPRS.<sup>80</sup>

Second appeal recognized under the RLLs of SNNPRS can be taken as a special treatment of rural land cases as compared to other types of cases where a party dissatisfied by the decision of the lower court has only one appeal right to the higher court unless the latter has modified or reversed the decision of the former. While the recognition of second appeal with respect to rural land cases has its own advantages; there is a concern that it might be one of the causes for delays in the resolution of rural land cases as it is a pre- requisite for a party wishing to file cassation petition to the supreme court of the region on the ground that the decision of the lower court has a basic error of law.<sup>81</sup>

Besides, the above mentioned two cases, land disputes have not been given special treatment they deserve. Compared to their utmost importance to the majority of the rural community and the bigger volume they represent in the totality of cases being adjudicated in the courts, land cases have not been given sufficient attention. As mentioned in Section 4.1(d) of this chapter, rural land cases cover great majority of total cases adjudicated by courts. Besides, inaccessibility of judicial bodies at the local level dealing with RLDs, delays and the resulting costs and its ultimate effects on the life of the rural masses and national economy have to do, in one way or another, with the absence of special treatment of rural land cases. Land disputes have neither been given special treatment in courts nor in the form of special procedures designed to fit the needs of RLDs or through the assignment of experts dealing exclusively with RLDs. The absence of special treatment of rural land cases through the adoption of procedures that fits in to the nature of land disputes and personnel having expertise in rural land cases have contributed for most of the problems faced by the current RLDSS in the region.<sup>82</sup>

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<sup>80</sup> *Banku Erus et al v. Samson Gebre Yohannse* (Federal Supreme Court File No. 114670) Federal Supreme Court Cassation Decisions, vol.21 (Addis Ababa, Federal Supreme Court, June 2016) p. 163ff.

<sup>81</sup> Interview with Yeneneh Haile, *supra* note 58

<sup>82</sup> Interview with Abebaw Abebe, land law expert and, Land Administration Team Leader in Rural Land Administration and Use Directorate at MOA, Nov.25, 2020

## 4.2. The Need for Land Tribunals and Land Benches

The current section argues for the introduction of Lts in SNNPRS exclusively dealing with RLDs both at kebele and woreda levels and land benches (divisions) with in a high courts and Supreme Court of the region entertaining RLDs on appeal. The arguments are based on the findings from field study and the experiences of states discussed in chapter two. Since the introduction of Lts is proposed as a solution for problems identified in relation to rural land disputes resolution; the arguments are presented in such a way that shows how the introduction of Lts could solve such problems. Furthermore, the current sub-section discusses the nature of the proposed Lts and land benches such as their composition; manner of establishment and their relationship with regular courts.

### a. Improving access to justice

The establishment of Lts both at kebele and woreda levels can resolve the problems of inaccessibility of the RLDSS in SNNPRS. One of the problems identified in this study in relation to the existing RLDSS in SNNPRS is inaccessibility (both physical and financial) of the system to the majority of the rural community in the region.<sup>83</sup> This is attributable to absence of judicial bodies dealing with RLDs at kebele level. As discussed earlier in this chapter, social courts are no longer an appropriate avenue for rural land cases for they are banned from entertaining such cases. Accordingly, the closest judicial institutions available for peasants to take their rural land cases are woreda courts. Peasants, therefore, are forced to travel long distance in order to take their rural land cases to woreda courts where there is case congestion, delay in the disposition of cases and the resulting costs.

The establishment of Lts exclusively dealing with RLDs at kebele level can resolve the current problem of inaccessibility of justice at the local level. It goes without saying that having LTs at the kebele level would enable peasants to have access to justice in their vicinity. The establishment of LTs dealing with RLDs at kebele level can resolve the existing problems on access to justice in several ways. First, by cutting the long distances peasants are supposed to

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<sup>83</sup> Technical and linguistic inaccessibility of the rules in land laws of SNNPRS are also barriers to the accessibility of rural land disputes resolution system by the majority of rural community. Land laws like other laws of SNNPRS are not made accessible in local languages and are not also offered in simple and understandable manner and that have become a setback to access to justice in general and accessibility of rural land disputes system by the rural communities in SNNPRS particular. Since the examination of technical and linguistic inaccessibility of land laws are beyond the scope of this study, they are not discussed in greater length.

travel to access woreda courts and all the costs associated therewith, it would enable them to have an access to justice in their locality with the least costs. Second, it would enable peasants to have their cases being decided timely. Since LTs would not be required to follow strict procedural rules in the adjudication of cases unlike that of regular courts and they would only entertain rural land cases; they can avoid repeated adjournments and thereby can provide justice in a timely manner.

Depending on the manner of its composition, the establishment of LTs at kebele level is believed to help not only in making accessible justice to the rural communities physically but also of providing a good quality justice by improving the quality of decisions. Most of the interviewees have a belief that the establishment of a LTs having as its members individuals from the local community would help provide a quality justice as the latter will have better understanding of the matters in their community.<sup>84</sup> Since the rural communities have strong connections with each other and have an opportunity to know almost every aspects of the land in dispute from the beginning; the inclusion of members of the community at kebele level in the judicial tribunals would help provide a better quality of decision.<sup>85</sup> The establishment of a LTs comprising of individuals from among the community can create a good feeling for peasants about the adjudication process unlike that of courts where they feel unease of the system.<sup>86</sup> Furthermore, the introduction of LTs with members legally accountable at kebele level dealing with RLDs is believed to enable making accessible justice at the local level in a better way by avoiding the existing corrupt practices of members of kebele land administration committees which are not accountable to anybody nor do their members are paid for their tasks.<sup>87</sup>

This can be done either through the introduction of new LTs at kebele level or by reforming the existing kebele rural land administration committee. In either cases, what is necessary is that there should be a legal framework: that makes accountable members of the LTs; prescribing the manner of appointment and/election of members of the LTs and the procedures to be followed

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<sup>84</sup> Interview with Shume Musema, *supra* note 72

<sup>85</sup> Interview with Merdokyos Deo, the president of Wolaita Zone High Court, Nov.17,2020

<sup>86</sup> Interview with Yasin Heyredin, chairman of Burda-Denber Kebele Rural Land Administration and Use Committee, Nov. 11,2020

<sup>87</sup> Yeneneh haile, *supra* note, 58

thereby; vesting judicial power on the tribunals and ensuring the availability of expertise needed in the adjudication of RLDs at kebele level.

The LTs should be composed of members having at least the basic knowledge of law and land matters needed for the adjudication of RLDs. The involvement of respected elders in the community, religious leaders and representatives of women as members of the LTs can help create a good feeling on the part of the community toward the LTs and ensure the rights of women in this regard.<sup>88</sup> Members of the LTs especially those representing the community such as elders, religious leaders and women's representatives may be elected by the local community. As members of the LTs whose expertise is sought may not always be available within the local community, it would be better if those members being government appointees. Since the decisions of the LTs will have a binding power, the substantive rules to be followed by the LTs should be those rules of land laws and other pertinent laws. The procedural rules to be followed by the LTs should be prescribed by the constituting legislations and such rules should strike a balance between the procedural flexibility needed in the adjudication of RLDs by the LTs and ensuring party's right to be heard.

The establishment of LTs exclusively dealing with RLDs at woreda level can also improve the accessibility of justice to the majority of the rural communities. This can be achieved by removing barriers on the access to justice in the existing RLDSS such as delays and costs associated therewith and absence of special treatment of rural land cases (which will be further elaborated in subsequent sections of this chapter).

#### **b. Timely disposition of rural land and other cases**

The establishment of LTs exclusively dealing with RLDs both at kebele and woreda level can resolve delays in the existing RLDSS. As pointed out under sub-section 4.1(b) above, one of the problems faced by the existing RLDSS is delay in the resolution of RLDs in the regular courts. In courts examined in this study, it was reported that disposition of rural land cases takes on average 3-6 months and in some cases the time may extend to two years or more especially where a petition for opposition of the judgment given by the court is filed by a third party

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<sup>88</sup> Interview with Dawit Asha, Wolaita Zone Agriculture and Natural Resource Directory, Rural Land Administration and Use Team Leader, Nov.17, 2020

thereby resulting in a rehearing of the cases.<sup>89</sup> It is not uncommon to see that rural land cases first decided in a woreda court being returned back to the same court for various reasons even more than once after reaching Supreme Court Cassation Bench of SNNPRS.<sup>90</sup> Even though such types of cases may not well represent the majority of cases entertained by regular courts, they can tell something about the existing RLDSS in SNNPRS.

It has also been mentioned in the same sub-section that, among other things, case congestion and absence of special treatment of RLDs in the regular courts are the causes for such delays. Having LTs entirely devoted to dealing with RLDs can overcome delays in the resolution of RLDs.

Setting up LTs at kebele level would make timely resolution of RLDs more probable. Since the LTs would be dealing with only RLDs; they would not be overloaded by cases as that of regular courts and thereby can promptly decide cases before them. Unlike the regular courts which are required to observe rigid procedural rules; procedural flexibility built in to the nature of tribunals enables them to decide cases in a shortest period of time possible. LTs at kebele level would be able to render decisions as shortly as possible as witnesses can be easily accessed nearby and a field visit by the judges (which is a cause for several adjournments of court proceedings) can be easily conducted as the land in dispute is located nearby.<sup>91</sup>

The establishment of a LTs at woreda level would also be time saving in the resolution of RLDs as compared to woreda courts. Since the LTs would be dealing with only rural land cases, they would not be congested with cases as that of the regular courts which entertain almost all types of cases. By reducing the possibility of proceedings being adjourned owing to congestion in the regular courts, LTs exclusively dealing with RLDs would be in a better position to dispose of cases in a shorter period of time.<sup>92</sup> Procedural flexibility attributable to the very nature of LTs is

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<sup>89</sup> Interview with Kebede Kasaa *supra* note 57; Zewditua Adane, *supra* note 61

<sup>90</sup> Interview with Binyam Kebede, a defense lawyer at SNNPRS Supreme Court, Nov.27, 2020. The informant has told to this author that he knew a rural land case which has been brought to the cassation bench of the Supreme Court of SNNPRS two times after the case has been sent back to the woreda court which entertained the case initially.

<sup>91</sup> Judges either order the land administration officials to present evidences in the form of report after visiting the land in dispute or sometimes they visit the land in dispute especially in cases of boundary disputes. An interview held with Tajura Tekle, judge at Damotgale Woreda Court; and Yohannse Chinesho, land administration professional at Damotgale Woreda Agriculture and Natural Resource Development Office, Nov. 17,2020

<sup>92</sup> Interview with Merdokyos Deo, *supra* note 85

also the other case for timely resolution of RLDs by the latter as compared to regular courts which are required to adhere to rigorous procedural rules which in turn is one of the causes for delays in the disposition of cases. It should, however, be underscored that procedural flexibility here does not imply that the core elements of due process of law particularly the right to be heard should be compromised. It rather implies that the procedures to be followed by the proposed LTs should not be as stringent as procedural rules regular courts are required to adhere to as the latter are believed to have contributed for delays and costs associated therewith. LTs that have flexible procedures in the adjudication of RLDs could avoid delays in the resolution of RLDs by regular courts stemming from the rigid procedural rules the latter are supposed to stick to.<sup>93</sup>

### **c. Reducing costs of litigation**

The establishment of LTs both at kebele and woreda levels can also help reduce the higher costs of litigation under the existing RLDSS. One of the problems identified in this study in relation to the existing RLDSS is higher costs of litigations owing to the absence of judicial institutions dealing with RLDs at the local level and delays in the resolution of cases in regular courts. Setting up LTs at kebele level can reduce costs associated with absence of judicial institutions physically accessible to the rural masses. It can avoid and/reduce transport costs for both litigants and their witnesses from their locality to woreda courts. Costs of transport that may be incurred by litigants and their witnesses can even be much higher as the litigants have to appear before courts several times due to delays and repeated adjournments of proceedings in courts. The establishment of LTs exclusively dealing with RLDs at kebele level can effectively reduce such costs as peasants will have access to judicial services in their locality.<sup>94</sup>

Instituting LTs at woreda level exclusively dealing with RLDs can reduce costs of litigations under the existing RLDSS. The relatively lower costs of litigations can be achieved by shortening the length of time taken by courts in deciding cases in general and rural land cases in particular. The establishment of LTs at woreda level enables to resolve RLDs expeditiously in two ways. First, since the LTs would be dealing with only RLDs, they would not be congested with cases as that of woreda courts. Accordingly, they can handle cases as expeditiously as

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<sup>93</sup> Interview with Shume Musema, *supra* note 72

<sup>94</sup> Interview with Asrar Sheikh Ahmed, a litigant on rural land in Gumer Woreda Court, Nov.11,2020

possible by eliminating the possibility of proceedings being adjourned for the sake of time.<sup>95</sup> Secondly, as the LTs would follow procedures relatively flexible than that of regular courts', they can dispose of cases expeditiously by not being constrained by rigid procedural rules which are a cause for delays and costs resulting therefrom.<sup>96</sup> Procedural flexibility of the LTs can also result in reduction of costs of litigations by easing the procedures for filing of cases in the latter and by enabling parties to represent themselves in the proceedings of the LTs<sup>97</sup> and this in turn reduces costs of filing cases and advocates fees which might otherwise have been incurred in the regular courts.

As discussed in chapter two of this study in relation to the experiences of selected jurisdictions which have introduced land tribunals, one of the rationales behind the introduction of land tribunals in those jurisdictions was ensuring public access to cheaper justice.<sup>98</sup> Public access to cheaper justice may be related to the other aspects of the tribunals such as physical accessibility and simplified procedures of the tribunals and their ability to dispose of cases expeditiously which in turn help reduce costs of litigations.

#### **d. Providing special treatment to rural land disputes**

The other major reason that may be forwarded for the establishment of LTs exclusively dealing with RLDs is the need for special treatment of land disputes which is almost absent in the existing RLDSS. As it has already been noted in sub-section 4.1(d) of this chapter, RLDs have been treated differently by the RLLs of SNNPRS in two cases: one is the legal requirement that RLDs should be tried to be resolved through agreement and/mediation by elders to be elected by the disputants through the assistance of kebele land administration committee before filing those disputes in regular courts; and the other is the recognition of right to second appeal under the RLLs of SNNPRS regardless of the fact that the higher court to which the decision of the first instance court is appealed to has confirmed the decision of the latter. While these two cases can be taken as a form of special treatment of RLDs compared to other types of cases; they are by no

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<sup>95</sup> Interview with Abebaw Abebe, *supra note* 82

<sup>96</sup> interview with Daniel Mitiku, a practicing lawyer in courts of SNNPRS regional state, Nov.18, 2020

<sup>97</sup> Hazel Genn, *supra note* 36, p.399

<sup>98</sup> Uganda National Land Policy, *supra note*, p.6; Kenya Environment and Land Court Act, *supra note* 44; The United Republic of Tanzania National Land Policy, 1995, Para. 4.2.25 and 4.2.26

means sufficient seen in light of the decisive role of RLDs to the life of the majority of rural community.

In this study, special treatment of RLDs is referring to both the adoption of special procedures and employment of personnel with special expertise in the resolution of RLDs. The establishment of LTs exclusively dealing with RLDs is a way of providing special treatment to RLDs in terms of both the use of special procedures and personnel with special expertise in resolution of RLDs. The need for special treatment of RLDs can be substantiated on account of various grounds. The followings are the main the reasons.

*i. The Need for Special Expertise in the Adjudication of Rural Land Disputes*

One of the reasons that may be forwarded for special treatment of RLDs is that some sort of special expertise is needed in the adjudication of RLDs. The employment of judges with special knowledge and expertise in a particular subject matter would leads to improved quality of decisions and greater user satisfaction.<sup>99</sup> Land disputes in general and RLDs in particular have some technical aspects the effective resolution thereof needs some sort of special expertise of judges handling the matters. Judges handling RLDs should be able to, at least, read maps and in cases of boundary disputes should have knowledge of Geographical Information System (GIS).<sup>100</sup> The land registration system is updating itself on an ongoing basis and this has to be accompanied by the necessary expertise on the part of judges handling land disputes. Ato Terefe Teka<sup>101</sup>, a land administration official in SNNPRS Agriculture and Natural Resource Development Bureau said that as one of RLDs prevention mechanisms in relation to boundary disputes, the Bureau is issuing site plan to rural land holders as that of urban lands. Since the issuance of a site plan cannot avoid boundary disputes over rural land in its entirety, there is a possibility that boundary disputes being referred to courts for resolution. Accordingly, judges dealing with rural land cases involving boundary disputes needs to be equipped with the necessary technical expertise to be able to understand the technical elements of a site plan.

Even though judges in the courts of SNNPRS have a general legal expertise, they may not be able to handle expertly technical aspects of RLDs for they are not land law experts. Judges at

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<sup>99</sup> Heike Gramckow and Barry Walsh, *supra* note 4. P.6

<sup>100</sup> Interview with Abebaw Abebe, *supra* note 82

<sup>101</sup> Interview with Terefe Teka, land administration professional in Land Administration and Use Agency in SNNPRS regional state Agriculture and Natural Resource Development Bureau, Nov.27,2020

different levels of courts interviewed in this study said that where they encounter with technical matters in dealing with RLDs, they seek the assistance of land professionals of land administration institutions by requiring the latter either to produce a written evidences on the particular issue sought to be resolved or appearance of land professionals as an expert witness. As mentioned in the earlier sections of this chapter, courts' reliance on land administration officials to get resolved technical matters with respect to RLDs is one of the causes for delays in the resolution of cases. Judges as legal experts are not supposed to know every detail of technical matters of RLDs as in other types of cases. However, if judges' reliance on land administration institutions for those basic matters in the resolution of RLDs compromises the timely resolution of cases, it is imperative to reconsider the existing RLDSS. Accordingly, this study proposes setting up LTs composed of legal and land experts as a means to access the special expertise needed in the resolution of rural land cases.

The introduction of LTs with the necessary professionals such as legal and land professionals in all rural kebeles and woredas seems to be far from reaching and its feasibility may be questioned. This author argues that supplying the said professionals to the proposed LTs is not impossible if it is taken seriously. Other than SNNPRS, the other regional states of Ethiopia said to have land professionals at kebele level.<sup>102</sup> In SNNPRS, there is an ongoing process to employ land professionals in each rural kebele.<sup>103</sup> One way of supplying land professionals to the proposed LTs at kebele level may be incorporating those land professionals serving at kebele level in to the LTs. Legal members of the LTs at kebele level need not be qualified legal professionals as long as they have basic understanding of applicable land laws. Accordingly, legal members of the LTs may be fulfilled either by employing persons having basic understanding of land laws or by training some selected individuals on applicable land laws.

On the other hand, supplying land and legal professionals to the proposed LTs at woreda level is also within reach. Since the establishment of LTs at woreda level would help relieve woreda courts from case congestion by diverting RLDs, which represents a significant volume of cases, to the former; woreda courts will have excess human power. Accordingly, LTs at woreda level may be supplied with legal professionals by relocating some of legal professionals from regular

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

courts to the former. Land professionals can be supplied to the LTs by relocating some of the land professionals from land administration institutions at woreda level. Land administration institutions at various levels including woredas, as one of stakeholder institutions, are taking part in the resolution of RLDs. Since the establishment of LTs at woreda level would help reduce the burden of land administration institutions, relocating some of land professionals from the latter to LTs could be a mechanism for fulfilling land professionals needed for the LTs.

#### *ii. The Utmost Importance of Land Disputes to the Rural Community*

The other reason that can be forwarded for the special treatment of RLDs through the introduction of LTs and land benches exclusively dealing with RLDs is the importance of land disputes to the rural community. In addition to the reasons of special expertise, RLDs need to be treated differently in light of their importance to the rural community. Land is almost everything to the rural community. It is not only an economic asset but also a social and cultural asset to the rural communities of Ethiopia in general and SNNPRS in particular where more than eighty percent of the population is rural resident and dependent on land for livelihood. RLDs, therefore, are of the utmost importance to the rural community especially those depending on land for their livelihood. The way RLDs are to be determined, the time it takes to determine those disputes and the nature of the decisions to be arrived at have a major impacts on the life of the rural community. RLDs seem to be a dispute between only parties involved therein. However, behind the parties involved in a particular dispute, there are many others such as their families and dependents who have established their livelihood on such lands.<sup>104</sup> Land as a main resource the country has, handling disputes over land should be given special emphasis as the way land disputes are treated has far reaching implications on national economy.<sup>105</sup>

This study argues that RLDs have not been given the attention they deserve and the attention that shall be paid to RLDs should be reflected through the procedures to be followed and through the involvement of special expertise needed in the adjudication of RLDs. In the courts examined in this study, except the above mentioned two procedural matters- the requirement of effort to resolve RLDs through agreement and/mediation as a precondition for filing cases in a court and the right to second appeal, no separate procedures have been adopted in the adjudication RLDs. In the existing RLDSS no special expertise is required and no separate procedures are adopted in

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<sup>104</sup> Interview with Abebaw Abebe, *supra* note 82

<sup>105</sup> Interview with Merdokyos Deo, *supra* note 85

the adjudication of RLDs. In woreda courts<sup>106</sup> examined in this study neither separate benches nor separate procedures are available in the adjudication of RLDs. Judges in those courts handles all types of cases including criminal and civil matters without any form of specialization.

On the other hand, in higher courts examined in this study including the Supreme Court of SNNPRS, there are civil and criminal benches and RLDs are categorized as civil matters and dealt with accordingly. The absence of special treatment of RLDs in terms of both special procedures and personnel with special expertise in technical matters of RLDs has contributed for the problems identified in this chapter in relation to the resolution of RLDs such as delays, high costs of litigation and lowering the quality of decisions.

This study argues that establishment of LTs and land benches exclusively dealing with RLDs paves the way for special treatment of RLDs and thereby resolves the problems identified in this regard. Since the LTs would be composed of legal and land professionals, they could offer the special expertise needed in the adjudication of RLDs. The involvements of land professionals as adjudicators of RLDs not only offer the special expertise needed in the resolution of RLDs but also affects how RLDs are to be regarded and treated.<sup>107</sup> Professional background of persons adjudicating RLDs can affect the way such person's views of land disputes. Since land disputes are not purely legal matters, other dimensions of land disputes such as economic, social, cultural dimensions should also be taken in to account in the resolution of such disputes. The involvement of various professionals such as legal and land professionals can offer the different perspectives needed for effective handling of RLDs.<sup>108</sup> Since the LTs will have their own rules of procedures which reflect the special natures of RLDs; they can dispose of RLDs expeditiously.

### *iii. Volume of Rural Land Cases*

The volume of rural land cases in regular courts can also be presented as a reason in support of the argument that RLDs should be treated differently than other types of cases. Although there are variations among courts examined in this study and clear statistical data are not available,

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<sup>106</sup> Gumer Woreda Court and Damotgale Woreda Court

<sup>107</sup> Interview with Abebaw Abebe, *supra* note 82

<sup>108</sup> Depending on future legal recognition of customary land rights, it would be advisable to think of involving traditional elders skilled in customary land tenure rules, practices and institutions in the LTs proposed to be setup.

RLDs are reported to cover more than 50% of the total number of cases entertained by those courts.<sup>109</sup> Since RLDs taking the form of inheritance and division of communal property in cases of divorce are not mostly reported as RLDs, there is a possibility that the volume of RLDs may be more than what it is reported to be.<sup>110</sup>

The establishment of LTs exclusively dealing with RLDs can be substantiated on account of the larger volume RLDs represent in the totality of cases being adjudicated by the regular courts. The establishment of separate LTs would help reduce the burden on regular courts by diverting RLDs to separate judicial tribunals.<sup>111</sup> Separate treatment of RLDs can result in efficient system of judicial processes both in regular courts and the LTs. As the LTs would be dealing with only RLDs and therefore have time to concentrate on such cases, they would be able to dispose of those cases as expeditiously as possible. On the other hand, since regular courts would not be congested with cases as before, they would be in a position to efficiently adjudicate the rest of cases in their competence.

The current size of RLDs in the regular courts suggests that the proposed LTs will have a supply of sizable amount of rural land cases on continuous basis if they will be established. Furthermore, in light of the higher rate of population growth and ensuing shortage of rural lands, there is the possibility that RLDs will increase in the future. Accordingly, the proposed LTs if established will have a continuous source of rural land cases.

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<sup>109</sup> For instance, while rural land disputes said to cover up to 50% of total cases dealt by Gumer Woreda Court; rural land disputes reported to constitute 50-70% of all cases dealt by the Damotgale Woreda Court. Based on interviews held with judges and court officials from Gurage Zone and Wolaita Zone High courts, this researcher has learned that rural land disputes covers up to 50% of the total cases being considered by those courts. Interview with Merdokyos Deo, *supra note* 85; interview with Shume Musema, *supra note* 72.

<sup>110</sup> Since inheritance and division of communal property involving rural lands are mostly presented to courts together with other types of properties, there is a trend in courts examined in this study that such cases are categorized in most cases to either succession or family cases than reporting them as rural land cases.

<sup>111</sup> Email from Dessalegn Rahmato, a land tenure expert, to the author of this work (Nov.19,2020)

### **4.3. Possible Criticisms that May be Raised against the Proposed Land Tribunals**

Despite the advantages the proposed LTs dealing with RLDs may have over the existing RLDSS and its role in resolving the problems faced by the latter, there are some concerns that shall be considered in relation to the proposed LTs. In this sub-section an attempt is made to raise and respond to major criticisms which may be raised against the proposed LTs.

One of the concerns in this regard is the constitutionality of the proposed LTs based on the views that it might erode the powers of regular courts. As per Article 79 of the FDRE Constitution, judicial powers both at the federal and regional levels are vested in courts. Article 78(4) of the same constitution also provides that special or ad hoc courts that takes judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established. On other hand Article 37 of the same constitution, a provision on access to justice, envisages the possibility of having a ‘competent body with judicial power’ other than regular courts before which a justiciable matters may be brought and decisions or judgments may be obtained. The LTs proposed in this study are of the nature of a permanent institutions having judicial power with legally prescribed procedures and their decisions are ultimately appealable to regular courts on a point of law. Accordingly, the establishment of the proposed LTs is possible even in the existing constitutional setup except that subordinate enabling legislations are required for their establishment.

The other issue that may possibly be raised in relation to the proposed LTs is the latter’s relationship with regular courts and the manner of ensuring their independence. Making the decisions of the LTs appealable to regular courts on a point of law is the best way of keeping the tribunals in close connection with regular courts as well as ensuring the independence of the tribunals from any possible interference by administrative organs that may affect the decisions of the tribunals. This can be supported by the experiences of other states which have introduced land tribunals and even Ethiopia’s experiences with respect to other types of tribunals such as Civil Servants Administrative Tribunal and Tax Appeal Commission whose decisions are finally appealable to the regular courts on point of laws.<sup>112</sup> The appointment of members of the tribunals in consultation with body responsible for administration of judicial affairs is also the other

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<sup>112</sup> Federal Civil Servants Proclamation No.1064/2017, Article 81(5); Federal Tax Administration Proclamation No. 983/2016, Article 57(4)

mechanisms of ensuring the independence of the tribunals as it reduces interventions by administrative agencies under the guise of appointment.<sup>113</sup>

The other issue having central importance in relation to the whole idea of this study is that why LTs are proposed rather than land benches, particularly at woreda level, as a solution for problems on the existing RLDSS? Consequently, it would be vital to consider merits and demerits of setting up LTs and land benches and why the former is preferred over the latter. Both the establishment of separate LTs and land benches within courts has their own merits and demerits. The establishment of LTs can help access both the special expertise and procedural flexibility needed in the adjudication of RLDs. Since LTs will have a separate existence independently of regular courts; they can adopt procedural rules which may best reflect the special nature of RLDs and can have their own personnel equipped with the necessary expertise. Accordingly, setting up LTs paves the way for special treatment of RLDs in terms of both special procedures and special expertise needed in the adjudication of RLDs. The disadvantage of having LTs as compared to land benches is that it requires more costs than the latter. Since the LTs need to have their own staffs, offices and other facilities necessary to conduct their businesses; it will require more costs than forming land benches within a court which can utilize courts' resources such as staffs and other facilities.

On the other hand, formation of land benches within a court may not be as costly as the establishment of separate LTs as the former mostly utilizes the resources of the same courts such as both human and material resources. The other advantage of introducing land benches compared to LTs is that it can be setup easily without the need to go for enactment of new laws to this effect as the existing courts establishment proclamations permits setting up of benches (divisions) as required by the functions of courts.<sup>114</sup> However, land benches may not provide special expertise and special procedures needed for the adjudication of RLDs as that of LTs. Since land benches would be part of the regular courts, they are mostly bound to apply those stringent procedural rules applicable to the courts and personnel that may be assigned to land

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<sup>113</sup> For instance, under the Land Act of Uganda, members of the District Land Tribunals are required to be appointed by the Chief Justice on the advice of the Judicial Service Commission. The Uganda Land Act, *supra note* 40, section 74(4).

<sup>114</sup> Federal Courts Proclamation Re-amendment Proclamation No. 454/2005, Article 2(3); Revised SNNPRS court proclamation No.43/2002, Article 15(1)

benches would be among courts' personnel who may not necessarily be experts on land matters. Accordingly, the formation of land benches within a court may not provide the necessary special expertise and procedural flexibility in the adjudication of RLDs. This study strongly argues for separate treatment of RLDs in terms of both the expertise needed and procedures to be followed in the resolution of RLDs and that can be best attained through the establishment of LTs.

Finally, it may be inquired whether it is desirable to establish LTs in all rural kebeles and woredas of SNNPRS. Even though there are variations among rural kebeles of SNNPRS in terms of the volume of RLDs<sup>115</sup>, it is still advisable to establish LTs in all rural kebeles. As stated in sub-section 4.1. (a) of this chapter, one of the problems identified in this study in relation to the existing RLDSS is physical inaccessibility of the judicial services to peasants. Despite the volume of RLDs that may arise in a particular area, peasants should always have access to the judicial services in their locality. In rural kebeles where RLDs are infrequent, adjustments may be made to the composition and time of sitting of the tribunals.

On the other hand, it may not be advisable to establish LTs in all rural woredas of SNNPRS. The volume of land cases being entertained by woreda courts and efficiency of disposition thereof varies from one woreda court to another. Accordingly, it would be better if LTs would be established in those woredas where woreda courts are highly congested and their efficiency in the disposition of RLDs is lower. Even in those woredas, where it is not be desirable to establish LTs due to woreda courts' lessor caseload and higher efficiency in disposing rural land cases, land disputes should be treated differently at least through the establishment of land benches by assigning personnel only handling land disputes in those courts. This can help those personnel to develop expertise in land matters in the long run. It is also desirable to establish land benches in all high courts and the Supreme Court of SNNPRS which entertains RLDs on appeal as the latter are expected to flow in to such courts on appeal.

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<sup>115</sup> The volume of rural land disputes are said to be lower in south western parts of SNNPRS such as South Omo and Benchi Maji Zones where there is no shortage of agricultural lands. In contrary, rural land disputes are said to be rampant in central and eastern parts of SNNPRS where there is shortage agricultural lands. Interview with Terefe Teka, *supra note* 101

#### 4.4. Chapter Summary

In this chapter, attempts have been made to identify problems faced by the existing RLDSS in SNNPRS and to demonstrate how the establishment of LTs exclusively dealing with RLDs at kebele and woreda level and land benches in high courts and Supreme Court of SNNPRS can resolve those problems. Interviews held with informants such as judges from different levels of courts in SNNPRS, land administration officials starting from kebele to regional Bureau and Ministry of Agriculture (MOA), land researchers, practicing lawyers and litigants on rural lands have been used to identify major problems faced by the existing RLDSS in the region. Accordingly, inaccessibility of services at kebele level with respect to the resolution of RLDs and the resulting costs (such as transport costs for both litigants and their witness); case congestion, delays and higher costs of litigations associated therewith, absence of separate treatment of RLDs in terms of procedures and special expertise needed are identified as problems faced by the existing RLDSS in SNNPRS.

It has been argued that the establishment of LTs dealing with RLDs at kebele and woreda levels and land benches in high courts and Supreme Court of SNNPRS can resolve the above mentioned problems. The data collected through field study have been used to substantiate those arguments. The LTs at kebele level are believed to offer a judicial service to the majority of rural community within their locality with respect to RLDs and thereby reduce costs and other consequential problems. On the other hand, LTs at woreda level and land benches in high courts and Supreme Court level are believed to resolve most of the problems faced by regular courts in the adjudication of RLDs. Particularly, it can reduce case congestion in regular courts by diverting rural land cases to the LTs; bring about efficiency both at regular courts and the LTs in the adjudication of cases in their respective jurisdictions; avoid delays in the resolution of RLDs; and reduces costs of litigations resulting from delays. Moreover, the establishment of LTs at woreda level would help provide special treatment to RLDs in terms of both the special expertise and procedural rules needed in the adjudication of RLDs which are almost absent in the existing RLDSS.

It has been also argued that RLDs should be treated differently than other types of cases. The need for special expertise and special procedures in the adjudication of RLDs; the volume of RLDs and utmost importance of RLDs to the rural community are the reasons presented in

support of the argument for special treatment of RLDs. In the next chapter the findings and conclusions of the study will be presented and recommendations derived therefrom will be provided.

## Chapter Five: Findings, Conclusions and Recommendations

### 5.1. Findings

With a view to identify problems faced by the existing RLDSS in SNNPRS and to consider the advisability of the introduction of LTs and land benches, the study conducted the review of literature and relevant legislations; review of experiences of some selected jurisdictions which have introduced land tribunals; and analysis of the views of informants thereon and has found that:

- i. Inaccessibility (both physically and financially) of judicial services to the rural communities, delays, higher costs of litigation and absence of adequate treatment of RLDs are problems faced by the existing RLDSS in SNNPRS. Owing to absence of judicial institutions dealing with RLDs at kebele level, peasants are forced to travel long distance in order to take their cases to woreda courts. And this has resulted in higher costs of litigation as peasants have to incur costs such as transport costs for litigants and their witness and such other costs attributable to the long distance peasants have to travel to access judicial services in woreda courts.

Costs of litigation are high due to the absence of judicial services nearby and delays in regular courts in the resolution of RLDs. As mentioned above, peasants have to travel long distances to access judicial services from woreda courts which in turn gives rise to costs of transport for litigants and their witnesses and other costs resulted therefrom. Delays in the regular courts in the resolution of RLDs owing to different factors such as court congestion, the nature of RLDs and rigid court procedures are factors contributing to the higher costs of litigations.

RLDs have not been given the attention they deserve. In light of their utmost importance to the rural communities, their volume and the need for involvement of special expertise in the resolution of RLDs, it is found that RLDs have not been treated adequately. Legal measures taken in the SNNPRS to treat RLDs differently than other types of cases such as by requiring parties to the RLDs to try to resolve their disputes through agreement and negotiation first and by recognizing the right to second appeal in relation to rural land cases are inadequate. In courts examined in this study no special treatments, other than the above mentioned measures have been

- given to RLDs neither in terms of separate procedures nor through the assignment of personnel having special expertise in land matters.
- ii. RLDs need to be treated differently in terms of procedures to be followed and involvement of special expertise in the resolution of RLDs. Since RLDs have technical aspects which may not be expertly handled by judges of the regular courts; there is a need for RLDSS providing the necessary expertise and procedures in the adjudication of RLDs.
  - iii. The introduction of LTs both at kebele and woreda levels and land benches in high courts and Supreme Court of SNNPRS composed of members with appropriate professional backgrounds needed for the adjudication of RLDs and having procedures best fit to the nature of RLDs can resolve problems identified in this study in relation to RLDSS in SNNPRS. LTs can help resolve problems on current RLDSS in SNNPRS by: making accessible judicial services to the rural community, making available special expertise needed in the adjudication of RLDs, relieving the burden on regular courts entertaining a wide range of cases and thereby promoting timely disposition of rural land cases and reducing costs of litigation attributable to delays and absence of judicial services at the local level.

## **5.2. Conclusions**

Land has a central role in the life of the community in general and rural communities in Ethiopia in particular. Almost every aspects of the life of the rural communities in Ethiopia is connected to and affected by lands. Land is the major, if not the only, livelihood asset for most rural communities in Ethiopia. It has also a social, political, cultural and sentimental importance to the rural community. Putting in place effective land administration system in general and land disputes resolution mechanisms in particular, therefore, has a pivotal role in the life of the community especially those depending on the land for their livelihood. The way RLDs are handled, the time it takes and the procedures to be followed in determining those disputes and the nature of decisions to be arrived at and its costs have a significant impact on the life of the rural community.

Besides, a functioning RLDSS has an impact on agricultural productivity and development of a nation. An effective RLDSS which is time and cost saving and accessible to its users enhances agricultural productivity. An effective RLDSS promotes agricultural productivity: First, it helps

farmers to save their time and to invest it in their agricultural activities which would otherwise have been used for litigation over rural lands. Second, it avoids the possibility of agricultural lands being non-utilized or underutilized owing to prolonged court litigations over agricultural lands. Third, as the system creates a sense of security to the farmers, they will be encouraged to invest more on the land and to permanently improve the land. Accordingly, an effective RLDSS enhances agricultural productivity as it enables farmers to invest their resources such as time, energy and money in their agricultural activities that might otherwise have been wasted in court litigation. Agricultural productivity in turn help improves food security to the population of Ethiopia in general and farming communities in particular. For a predominantly agrarian economy like Ethiopia, it is so important that effective RLDSS is adopted as it determines how one of the building blocks of the national economy- land- is employed in the economy.

Agriculture being a source of income and employment for majority of the population and the major source of foreign currency to Ethiopia (representing more than 30% of national GDP), productivity of the agricultural sector undoubtedly has a huge impact on national development. Problems identified in this study in relation to RLDSS in SNNPRS such as inaccessibility of judicial services to the majority of rural communities, delays, higher costs of litigation and absence of adequate treatment of RLDs are impeding, in one way or another, agricultural productivity and development of the nation.

On the basis of the findings of this study, it can be concluded that the existing RLDSS in SNNPRS is ineffective in terms of accessibility (both physically and financially), the time it takes to dispose of RLDs, costs of litigation and availability of adequate treatment of RLDs. Therefore, there is a need for RLDSS that can best address the problems in the existing one. The introduction of LTs at kebele and woreda levels and land benches in high courts and the Supreme Court of SNNPRS can address the problems in the existing RLDSS in SNNPRS by: making accessible judicial services to the rural community at the local level, making available special expertise and procedural flexibility needed in the adjudication of RLDs, relieving the burden on regular courts entertaining a wide range of cases and thereby promoting timely disposition of rural land cases and reducing costs of litigation attributable to delays and absence of judicial services at the local level.

Ethiopia in general and SNNPRS in particular can take lessons from the experiences of states (discussed in chapter two) which have introduced land tribunals with a view to address problems

faced by such states in the resolution of land disputes. The problems intended to be addressed through the introduction of land tribunals in those states are more or less similar to those problems identified with respect to RLDSS in SNNPRS. SNNPRS can particularly take lessons from those states regarding the purposes for which the land tribunals were introduced, manner of composition of the land tribunals, the tribunals' relationship with regular courts and procedural rules adopted by land tribunals.

### **5.3. Recommendations**

On the basis of the findings of this study presented above, the researcher recommends for:

- i. The introduction of LTs exclusively dealing with RLDs at kebele and woreda levels accountable to land administration institutions and land benches (divisions) in high courts and Supreme Court of SNNPRS. And the rural land administration committees at kebele level should be replaced by the proposed rural land tribunals.
- ii. The provisions of the rural land laws of SNNPRS which requires rural land disputes to be first tried to be resolved through discussion or agreement or mandatory mediation should be repealed and the choice to resolve their disputes through alternative disputes resolution mechanisms should be left to the parties. Further, the second appeal under the rural land laws of SNNPRS as a pre-requisite for filing cassation petition to the cassation bench of SNNPRS' Supreme Court on the ground that decisions of the lower courts have basic error of law should be revoked as it is one of the causes for delays in the adjudication of rural land disputes.
- iii. In order to make accessible judicial services to peasants, LTs should be established in all rural kebeles of SNNPRS. In areas where RLDs are few, necessary adjustments should be made to match the volume of cases with the composition and the time of sitting of the LTs.
- iv. The establishment of LTs at woreda level may be made dependent on the woreda courts' efficiency in the disposition of rural land cases and the volume of cases entertained by the latter. In those woredas where woreda courts are not efficient in disposing RLDs and the volume of cases entertained by the latter are higher, separate LTs should be established. On the other hand, in those woredas where woreda courts are efficient and the volume of

cases entertained by the latter are relatively small, the establishment of land benches in those courts may be enough as it enables somehow to treat land disputes separately.

- v. Land benches which entertain rural land cases on appeal should be established in all high courts and the Supreme Court of SNNPRS. This can help provide special treatment to RLDs from bottom to top in a consistent manner.
- vi. The LTs should be composed of in such a way that it offers the special expertise needed in the adjudication of RLDs. Since one of the major problems identified in this study in relation to the existing RLDSS in SNNPRS is the absence of special expertise needed in the resolution of RLDs, the establishment of LTs composed of legal and land professionals can provide the expertise lacked. Land benches that may be established in woreda courts, high courts and Supreme Court of SNNPRS should be composed of professionals specialized in land laws so that both legal and land expertise needed in the resolution of RLDs can be attained with the least costs.
- vii. The procedures to be followed by the LTs should be as flexible as possible while upholding party's right to be heard. Rigid court procedures are one of the factors identified in this study contributing to delays and costs associated therewith in the resolution of RLDs. Accordingly, the procedures to be followed by the LTs should be more flexible in order to overcome constraints attributable to rigid procedural rules of regular courts. However, procedural flexibility in the LTs should not undermine party's right to be heard.
- viii. Laws necessary for the establishment of the LTs should be enacted. Such laws should provide for: bestowal of judicial powers on the LTs; the qualifications for membership to the tribunals taking in to account the special expertise needed and women's participation; manner of appointment and/election of members of the tribunals; the procedures to be followed in the adjudication of RLDs; the right to appeal and tribunals' power to execute their decisions; and the relationship between kebele and woreda LTs and land benches on the one hand and the relationship between LTs with regular courts. Since courts' establishment laws of the federal government and SNNPRS empowers the respective Supreme Court to setup benches where the situations demands; land benches may be setup even without the need to go for enactment of new laws.

- ix. Legal professionals should be trained extensively in the areas of land laws such as land administration, land use and land registration and cadastral survey as this can help produce professionals having both legal and land expertise which in turn enables to supply such professionals to the LTs and land benches and even to land administration institutions. Courts' working together with land administration institutions and higher education institutions which provides such training could make such efforts more successful.

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## **Annexes**

### **Annex 1: Lists of Informants**

Abebaw Abebe- land law expert and, Land Administration Team Leader in Rural Land Administration and Use Directorate at Ministry of Agriculture, Nov.25, 2020

Ahmed Abdurahman- litigant on rural land case, Nov.17, 2020

Askale Dessie – Gumer Woreda Agriculture and Natural Resource Development Office land use and administration department head, Nov.11, 2020

Asrar Sheikh Ahmed- litigant on rural land in Gumer Woreda Court, Nov.24, 2020

Binyam Kebede- defense attorney at SNNPRS Supreme Court, Nov.27, 2020

Daniel Mitiku - practicing lawyer in courts of SNNPRS, Nov.18, 2020

Dawit Asha – rural land administration and use team leader at Rural Land Administration and Use Directorate of Wolaita Zone Agriculture and Natural Resource Directory, Nov.17, 2020

Dessalegn Rahmato- independent researcher and land tenure expert, No.19, 2020

Gezahegn Gebete - judge at SNNPRS Supreme Court, Nov.26, 2020

Gizework Alemu - land administration expert at Rural Land Administration and Use Directorate of Gurage Zone Agriculture and Natural Resource Directory, 12, 2020

Habtamu Hoyeso- land registration expert at Land Administration and Use Agency of SNNPRS  
Agriculture and Natural Resource Development Bureau, Nov.27, 2020

Hussen Kebcho- litigant on rural land case, Nov.17, 2020

Jemal Kebcho - litigant on rural land case, Nov.17, 2020

Kebede Sahle – president of Gumer Woreda Court, Nov.11, 2020

Kutere Kussa - litigant on rural land case, 17, 2020

Merdokyos Deo – president of high court of Wolaita Zone, Nov. 17, 2020

Mukute Musa - chairman of Shashagale kebele land administration committee, Nov.17, 2020

Nigusse Denbi- land measurement and registration expert at Rural Land Administration and Use  
Directorate of Gurage Zone Agriculture and Natural Resource Directory, Nov.12, 2020

Shume Musema- A civil bench judge at Gurage Zone High Court, Nov.19, 2020

Tajura Tekle – judge at Damotegale Woreda Court, Nov.17, 2020

Terefe Teka- land administration expert at Land Administration and Use Agency of SNNPRS  
Agriculture and Natural Resource Development Bureau, Nov.27, 2020

Yasin Heyredin – chairman of Burda-Denber kebele land administration committee, Nov.11,  
2020

Yeneneh Haile- practicing lawyer in courts of SNNPRS, Nov.14, 2020

Yohannse Chinesho – land administration expert at Damotgale Woreda Agriculture and Natural  
Resource Development Office, Nov.17, 2020

Zermechi Shumbeje- Gumer Woreda Agriculture and Natural Resource Development Office –  
land administration work unit coordinator, Nov.11, 2020

Zewditua Adane – president of Damotgale Woreda Court, Nov.17, 2020

## **Annex 2: Interview Questions**

### **Questions to judges of woreda courts, high courts and Supreme Court**

1. What types of rural land disputes are subjected to the jurisdictions of the woreda courts?
2. What are the requirements to institute rural land cases in woreda courts?
3. How long does it take to decide a rural land cases on average in your court?
4. What is the proportion of rural land related cases in the total numbers of cases before woreda courts?
5. What are the reasons for case congestion in the court you are working in?

6. Is there any separate treatment of rural land disputes in your court? Why?
7. What are the common problems you face in the adjudicating of rural land disputes?
8. Do you have any technical expertise on land related matters? Or have you got any training on technical aspects of rural land disputes resolution?
9. Do you think that the training is enough to understand and handle the technical aspects of rural land disputes?
10. Do you think that rural land disputes have any technical elements in them which cannot be expertly handled by judges of the woreda courts?
11. How do you get resolved technical matters you face in the course of handling rural land disputes?
12. Would it be better for the effective resolution of technical aspects of rural land disputes if judges of the woreda courts being land experts?
13. Do you think that woreda courts' judge lack of technical expertise on rural land, if that is the case, has any effect on the timely disposition of cases involving rural land disputes and the quality of decisions?
14. What do you think is the solutions for problems faced in the resolution of rural land disputes?
15. What is your opinion on the proposed introduction of land tribunals dealing with rural land disputes?
16. What should the composition of, manner of appointment of members, the procedures to be followed by the proposed land tribunals look like?
17. At what levels, village, kebele or woreda levels should the land tribunals established?
18. What should the land tribunals' relationship with regular courts look like?

#### **Questions to practicing lawyers and litigants of rural land cases**

1. Where did you take your case first? Why?
2. Why can't you resolve your case at kebele level through negotiation/ arbitration?
3. How long did it take till now from the time when you filed the case in woreda court?
4. How far is the woreda court from your area of residence?
5. What procedures/formalities you were/are required to fulfill during the institution of the suit and in the course of court proceedings?

6. Do you believe that judges of the woreda courts are competent enough to handle rural land cases expertly? Why?
7. What problems did you faced/ facing in the courses of the court proceedings?

**Questions to Woreda, Zonal and Regional land administration officials**

1. What are the mandates of land administration in the resolution of rural land disputes?
2. On what types of issues courts seeks the help of your office in the resolution of rural land disputes? Why?
3. What are the problems faced by current rural land disputes resolution mechanisms at woreda, zone and regional levels?
4. Do you think that rural land disputes involve any technical element that cannot be expertly handled by judges of the regular courts?
5. Is there any reason for separate treatment of rural land disputes outside the regular court?
6. What is your opinion on the proposed land tribunals exclusively dealing with rural land disputes?
7. What should the composition of, manner of appointment of members, the procedures to be followed by the proposed land tribunals look like?
8. At what levels, village, kebele or woreda levels should the land tribunals established?
9. What should the land tribunals' relationship with regular courts look like?
10. What form of land tribunals best address the problems faced by the current land disputes system in Ethiopia?