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RURAL LAND DISPUTES RESOLUTION MECHANISMS IN OROMIA REGIONAL STATE: A CASE STUDY OF DUGDA WOREDA COURT IN EASTERN SHOA ZONE

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Declaration

I, Desalegn Berhanu, hereby declare that the Thesis entitled "**Rural Land Disputes Resolution Mechanisms in Oromia Regional State: A Case Study of Dugda Woreda Court in Eastern Shoa Zone**", submitted by me for the award of the Degree of Masters of Law in Business law to the School of Law at Addis Ababa University, is original work. It has not been presented for the award of any other degree, diploma, fellowship or other similar titles of any other university or institution.

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Acronyms

FDRE	**Federal Democratic Republic of Ethiopia**
PA	**Peasant Association**
RLCL	**Rural Land Contract Law**
BJS	**Barangay Justice System**
ADR	**Alternative Dispute Resolution Mechanism**
JDR	**Judicial Dispute Resolution Mechanism**
KP	**Katarungang Pambarangay**
RLAEPO	**Rural Land Administration and Environmental Protection Office**

Abstract

This Thesis examines the laws governing rural land dispute resolution mechanism in the Oromia Regional State through identifying gaps in the law, exploring the causes of rural land disputes and investigating the compliance of land tenure practice in the study area (Dugda Woreda) with the land laws of the Region. To this end, the Thesis has built on literature review of selected country studies, land laws of three regional states and interviews, focus group discussion, questionnaires and court cases.

The Thesis came up with findings that show gaps and lack of clarity in the laws. It further generally revealed the major types and causes of rural land disputes, Woreda people's perception and preference of ADR or court, the level of attention given by government in practically administering rural land and the problems of ethics. On top of these, it identified factors that contribute to effectiveness and the level of effectiveness of the mechanisms put in place by rural land laws of the Region.

These findings, obviously, have bearings on tenure security and hinder the farmers from optimally exercising their holding rights as guaranteed by the constitutions and rural land laws of Oromia. And these, in turn, stifle economic development.

To rectify these problems and improve resolution of rural land disputes in a way that is more participatory and re-establish harmony between parties, this Thesis calls for express recognition of Oromo customary dispute resolution mechanism, strict compliance with existing land laws, legal and institutional reforms and public awareness creation.

CHAPTER ONE

1. INTRODUCTION

1.1. Background of the Research

Land is a critical asset, especially for the rural poor, because it provides a means of livelihood through the production and sale of crops and other products.[1] Currently, in Ethiopia, it is both an economic and a political/social question.[2] The Constitution of the FDRE states that the right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and in the Peoples of Ethiopia.[3] Even when property rights in land are assigned to a group, as the case in Ethiopia, the rights and duties of individuals within this group, and the way in which these rights can be modified and will be enforced, have to be clear.[4] This clarity of the laws is not a sufficient condition, as it will be of little value if, in case of violation of this right, access to the courts is difficult and the courts' orders in relation to a specific piece of land cannot be enforced. These rights need to be administered and enforced by institutions that are accessible and accountable and have both legal backing and social legitimacy.[5] These have become the requirements that should be fulfilled for the property rights to contribute significantly for economic development.[6]

Clearly defined property rights stimulate private investment by encouraging property rights holders to invest on their property, using their own resources or seeking credit through collateralization or transferring it to a more efficient user.[7] This means that when the subject, object and width of property rights are made clear by law and enforced accordingly, the holders feel that they are secure and this stimulate them to invest labour and other resources in land, to transfer and to seek credit. By investing, alienating and taking a credit, the holders

[1] Ruth Meinzen-Dick, Property Rights for Poverty Reduction?, (DESA Working Paper No. 91, December 2009), p.1.
[2] Samuel Gebreselassie, Land, Land Policy and Smallholder Agriculture in Ethiopia: Options and Scenarios, (Paper prepared for the Future Agricultures Consortium meeting at the Institute of Development Studies, 2006), p.4.
[3] Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art.40(2), Proclamation No.1, Neg. Gaz., year 1, no.1
[4] Cited above at note 2, P.6-7.
[5] Ibid.
[6] Elin Henrysson and Sandra F. Joireman, Property Rights Adjudication in Kisii, Kenya, Wheaton College Dept of Politics and International Relations Wheaton , IL, P.2. Available at: http://citation.allacademic.com (Accessed on August 14/2017).
[7] Murado Abdo, "Legislative Protection of property rights in Ethiopia: Overview," Mizan Law Rev., Vol.7(2013), p.167.

participate in the market and these all acts generate higher economic growth. Hence, this is said to have positive correlation with economic development.

It is also argued that clearly defined property rights may not necessarily stimulate investment and positively impact economic growth. In this regard, researches conducted especially on rural Kenyans' household indicate that even in the absence of title or certificate high value cash crops may be acquired.[8] It also revealed that the registration of title has even weakened the rights of access to land for women and tenants and it did not resolve disputes over land rights.[9] Furthermore, it is shown that evidence does not support the view that titled rural African households gain access to credit more regularly or easily than other households which suggests a limited use of the collateralisation effects that formal title potentially confers.[10] In the same vein, secure land tenure, which is defined as the certainty that a person's or a group's right to land will be recognized by others and protected in cases of challenge, is important for social and economic prosperity and stability in all societies.[11]

Conversely, insecure and poorly defined property rights stifle economic development. In identifying the channels through which this negative relationship occur, De Soto said that insecure property rights weaken the incentives for owners to make long-term capital investments and hinder the ability of owners to use their property as collateral to secure loans to finance capital investment.[12] And without access to credit and investments in the future, capital formation and economic growth are hindered.[13] Similarly, if property rights are insecure (that is, not well defined or easily enforced), individuals and families will be obliged to spend time and resources defending their land.[14] They will be reluctant to invest too much time, money, or materials into something over which they have no security.[15]

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[8] Martin Adams, Ben Cousins and Siyabulela Manona, Land Tenure and Economic Development in Rural South Africa: Constraints and Opportunities, (Working Paper No.125, Overseas Development Institute, 1999), p.11.
[9] Ibid.
[10] Secure Property Rights and Development: Economic Growth and Household Welfare, 2014. Available at: http://www.gov.uk (Accessed on October 1/2017).
[11] Reconciling customary land and development in the Pacific, The Report prepared by the Australian Agency for the Commonwealth of Australia, Vol.1 (2008), p.10. Available at http://www.ausaid.gov.au/publications. (Accessed on July, 29/2017).
[12] Claudia R. Williamson, The Two Sides of de Soto: Property Rights, Land Titling, and Development, The Annual Proceedings of the Wealth and Well-Being of Nations, p.95.
[13] Ibid.
[14] Land Tenure and Property Rights, USAID From American People, Volume 1: Frame Work, 2007, P.8. Available at: http://www.usaidltpr.com (Accessed on July, 29/2017).
[15] Ibid.

On top of these, if land is insecure it can be a source of disputes and, in reverse, disputes can undermine tenure security.[16] These land disputes have far reaching negative effects. For the land management to be sustainable, land disputes settlement must be effective and efficient, and this has a bearing on economic growth and enhances national unity.[17] This being the reason why I have chosen to focus on the problems of the laws and practices in relation to rural land dispute resolution mechanisms, next before dealing with the specific theme of the Thesis I better discuss the overview of principles and laws in relation to rural land.

As it is mentioned above, it is provided under Art 40 (3) of the Ethiopian Constitution that "The right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and in the Peoples of Ethiopia. Land is a common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange" Sub Art. 4 of the same article also states that "Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession." The Constitution further provides under article 51 that the Federal Government shall enact laws for the utilization and conservation of land and other natural resources. Article 52 also states that regional governments have the duty to administer land and other natural resources according to federal laws. Accordingly, the Federal Government, for the first time, enacted "Rural Land Administration Proclamation, No. 89/1997, which is, in fact, repealed by the Federal Rural Land Administration and Use Proclamation, proc.No.456/2005". This proclamation, together with the Constitution, has decentralized the power of administration of land to the regions. This proclamation, under its article 17, states that each regional council shall enact rural land administration and land use law, which consists of detailed provisions necessary to implement this Proclamation. It also defines "rural land administration" as a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural land holders are resolved and the rights and obligations of any rural land holder are enforced, and information on farm plots and grazing land holders are gathered analyzed and supplied to users".[18]

[16] Id., P.13.
[17] Geoffrey Nyamasege, Muhammad Swazuri & Tom Chavangi, Alternative Dispute Resolution as a Viable Tool in Land Conflicts: A Kenyan Perspective, (Annual World Bank Conference on Land and Poverty, Washington DC, 2017), P. 4.
[18] Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, 2005, Art.2(2), Proclamation No. 456, Neg. Gaz., year 11, no.44.

The issues of rural land disputes and the mechanism of resolution, as part of land administration are also governed by this proclamation. This proclamation states that "where dispute arises over rural land holding right, effort shall be made to resolve the dispute through discussion and agreement of the concerned parties. It further states that where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region"[19].

Coming back to the laws of the region under discussion it is better to start with a short historical development of the land laws in the region.

Obviously, during the Dergue regime, at the Peasant Association level, it is the 'The Village (PA) Social Affairs Court' (which is used to be called Fird Shango*)* that dealt with land disputes cases and these disputes never appeared before these conventional judicial structures.[20]

After the downfall of Dergue regime in 1991 and before the enactment of the 2002 Oromia Rural Land Use and Administration Proclamation, the prevailing practice revealed that kebele as well as woreda administrations were the core institutions for resolving rural land disputes.[21] During this period, rural land dispute settlement mechanism was not effective as the decisions given by these organs were not effectively enforced.[22] Because of this, the Region enacted the 2002 Oromia Rural Land Use and Administration Proclamation which entitled right holders to take their claims to regular courts at least in the form of an appeal from the first instance jurisdiction of social courts.[23] It also granted a wide discretionary right for potential claimants that they may resolve their land related possession claims through mutual agreement or filing their complaints to the concerned administrative bodies[24].

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[19] Id., Art.12.
[20] Mamo Hebo, Land Disputes Settlement in a Plural 'Institutional' Setting: The Case of Arsii Oromo of Kokossa District, Southern Ethiopia, (Graduate School of Asian and African Area Studies, Kyoto University, Unpublished, 2005), p.130.
[21] Gudeta Seifu "Rural Land Tenure Security in the Oromian National Regional State, "in Muradu .Abdo, (ed) Eth.buisiness Law Series, vol.III. (2009), P.117.
[22] Teferi Bekele, The Practical Problems in Resolving Oromia Rural Land Disputes: The Law and the Practice, (Research conducted in Oromia Justice Sector Training and Research Institute in Afan Oromo Language, Unpublished, 2010), p. 18.
[23] Oromia Rural Land Use and Administration Proclamation, 2000, Art.25, Proclamation No.56, Mag.Oro., Year 9, No.2.
[24] Id., Art.25(4).

These Kebele Social courts have also become not effective, as a result of lack of legal knowledge and competence of the judges working in the court; the judges working in the courts entertained land matters which were not under their jurisdiction such as inheritance of land, they also decided without hearing evidence, they were not able to identify the criminal matters from the civil matters and etc.[25] These factors became causes for the enactment of the 2007 Rural Land Administration and Use Proclamation, Proclamation No.130/2007, the proclamation which is now subjected to analysis.[26] This Rural Land Administration and Use Proclamation, Proclamation No.130/2007 (*hereinafter* called the Proclamation), has provisions that deal with rural land dispute resolution mechanism. It is only article 16 of this proclamation that governs the issue.

The Regulation which is enacted to implement the Oromia Rural Land Administration and Use Proclamation No.130/2007, Regulation No.151/2013 (*hereinafter* called the Regulation), has also, under its article 18, provisions that deal with rural land dispute settlement mechanism.[27]

It is basically the idea and content of these provisions (article 16 of the Proclamation and 18 of the Regulation) that become the subject matter of my Thesis.

It is when I was required to undertake a term paper on "Rural Land Dispute Settlement Mechanisms in Oromia Regional State" that I was first motivated to conduct a research on the area. In addition, as I am currently working as a Supreme Court Judge, I am very familiar with the problems related to the Oromia Rural land dispute settlement mechanism. Generally, the literature I have read together with the problems I have identified while preparing the term paper are the matters that stimulated me to do a research on the title I have framed.

Obviously, the related literature is also worthy of discussion under this sub-title. The literature includes the related researches, the laws of other region in this country and the foreign experiences. With respect to the title on which I am going to undertake a Thesis, so far, no specific and detail research has been conducted. But there is a research which is conducted by the Oromia Justice Sector Professionals Training and Research Institute, in the Oromo language, on the title "The practical Problems Observed in Resolving Rural Land

[25] Cited above at note 22, p. 28.
[26] Inferred from the preamble of Oromia Rural Land Use and Administration Proclamation, 2007, Proclamation No.130, Mag.Oro., Year 15, No.12.
[27] Oromia Regional State Rural Land Administration and Land Use Regulation, 2013, Art.18, Regulation No.151.

Disputes in Oromia Region: The Law and the Practice".[28] This research is too general and has not specifically analyzed the realities of a specific Woreda Court. It is conducted in the year 2009; thus, it undoubtedly does not demonstrate the current realities of the Woreda Court on which I am going to emphasize. The Thesis has also not considered the Regulation which is actually issued after the time of the Thesis. Hence, my Thesis is very different from this.

Birhanu Beyene has also written an article with the title "The Oromia Rural Land Dispute Settlement Scheme, So ambiguous and expectedly Not Working"[29]. He, in this article, raised and discussed that article 16 of the Proclamation, which discusses about rural land dispute settlement scheme, is not clear and identified specifically that the status with which the elders play their role, the value or status of the finding and the objective of the scheme are not clear. He said that, according to the proclamation, the local elders play neither the role of the conciliators or arbitrators and he said the law is not clear in this regard. Like the above research, this article talks only about the proclamation and discusses only very limited ambiguities in the law. The Thesis I am going to conduct differs from this article in that; 1)-Unlike this article I am going to analyze the land laws going to the extent of the Regulation, 2)-Unlike the aforementioned article I examine the compliance of the practice with the law, 3)- I investigate the types and causes of Rural Land Disputes.

Similarly, Haftom Tesfay has conducted a research captioned "Rural Land Dispute Settlement Mechanisms in Tigray: The Case of Humera".[30] This research is related in a sense that it is a single specific research conducted in the area in English. It is different from the one on which I am going to undertake in that it is based on the laws of Tigray Region (which as a matter of law could be different) and analyzed the practice in the Region. So, undoubtedly, my research will contribute to a sum of knowledge in the field.

Furthermore, in order to come up with a quality recommendation this research will analyze foreign experiences especially the rural land law of China as it is the country that prohibits

[28] Teferi Bekele, The Practical Problems in Resolving Oromia Rural Land Disputes: The Law and the Practice, (Research conducted in Oromia Justice Sector Training and Research Institute in Afan Oromo Language, Unpublished, 2010).
[29] Birhanu Beyene, "The Oromia Rural Land Dispute Settlement Scheme, So Ambiguous and Expectedly Not Working", (Jimma University Journal of Law, Vol.4, No.1).
[30] Haftom Tesfay, Rural Land Dispute Settlement Mechanisms in Tigray: The case of Humera, A Thesis Submitted in Partial Fulfillment for The Requirements of Masters of Degree of Laws (2011, unpublished, library, Addis Ababa University School of Law).

private ownership of land like Ethiopia. In China, the Rural Land Contract Law (RLCL) which has brought changes to land tenure of China, has come up with variety of mechanisms for dispute resolution, including consultation, mediation, and arbitration by a specialized body (with a right to appeal to the People's Court), and direct recourse to the People's Court.[31] So, in China if negotiations fail, the next step is to apply to the "rural land contract arbitration commission" or to file a lawsuit in the people's court. Alternative dispute resolution mechanism, obviously, complements court reform when case backlog and complex procedures impair court effectiveness, when the poor and illiterate cannot afford the courts and when courts are not easily accessible.[32] On the other hand, it is not an effective means where the dispute arises between parties who possess greatly different levels of power or authority and the parties who cannot or who refuse to participate in the process.[33] Concurring with this, the 2003 RLCL of China has amended the provisions regarding dispute settlement mechanisms because of the fact that this mechanism is found to be ineffective in a dispute between persons of unequal power (when there is power imbalance between individual household and organizations) and due to the farmer's lack of information and understanding of their land use right.[34]

The experience of Kenya is also necessary as the importance of ADR is given great attention and even provided in its constitution. Article 159 of the 2010 Kenyan Constitution enjoins courts and tribunals in the exercise of judicial authority, to promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.[35] Recognition of ADR and traditional dispute resolution mechanism processes in the Constitution is meant to enhance access to justice as guaranteed in Article 48 thereof.[36] Mere recognition of informal justice system without active state promotion and involvement in advocating for their use cannot contribute to enhanced access to justice to their users.[37] Access to justice refers to a fair and equitable legal framework that protects

[31] Klaus Deininger, Implementing China's New Land Law: Evidence and Policy Lessons, (World Bank Washington DC, 2014), p.6.
[32] Alternative Dispute Resolution, Practitioners Guide, P. 9. Available at: http://www.usaid.gov (Accessed on August 2/2017).
[33] Id., P. 21.
[34] J.D. Ping Li, Rural Land Tenure Reforms in China: Issues, Regulations and Prospects for additional Reform, (Land Reform 2003 special Edition), P. 66.
[35] Kariuki Muigua and Kariuki Francis, ADR, Access to Justice and Development in Kenya, P.5. Available at: www.strathmore.edu (Accessed on July 5/2017).
[36] Ibid.
[37] Kariuki Francis, Community, Customary and Traditional Justice Systems in Kenya: Reflecting on and Exploring the Appropriate Terminology, p.4-5.

human rights and ensures delivery of justice.[38] In Kenya, ADR mechanisms are in use in all categories of land (public, private and community) and the mechanisms help resolve disputes related to: boundary, succession, multiple sales, un honoured sales,...etc.[39]

Similarly, in Philippines land disputes are resolved by a community based mechanism for dispute resolution (which is called Barangay Justice System (BJS)).[40] This Barangay Justice System is operated by the Barangay (one of the smallest local government unit) and it is overseen by the Barangay Chairman.[41] Undergoing through this mechanism is mandatory and a certification from the Lupon Tagapamayapa (Peace Council) that the case has been heard at the Barangay Justice System is necessary for the court to receive application.[42] From the experiences of these three countries, one can take a lesson that ADR mechanism is not used in disputes between organization and private persons, that it can be used in all categories of land, land disputes in relation to succession can be settled through ADR mechanism and that also for Philippines court to receive file or application, a certification that a case has been heard before BJS has to be presented.

Moreover, in doing this research, the land laws of Amhara, Tigray and the Southern Nations, Nationalities and People's regions will also be investigated. The Rural Land Use and Administration Proclamation of each region is based on the framework and principles laid down by the Federal Rural Land Use and Administration Proclamation, Proc.No. 456/2005. Congruent with this, currently, the Amhara Regional State has issued 'The Revised Amhara National Regional State Rural Land Administration and Use Proclamation, Proclamation No.133/2006 (as revised by Proc.No.148/2007)[43], and the Regulation No.51/2007. The Tigray Region has also enacted 'The Tigray National Regional State Rural Land Administration and Use Proclamation, Proc.No.136/2007 and the Regulation No.48/2008. Similarly, the Southern Region has issued 'The Southern Nation, Nationalities and Peoples

[38] Cited above at note 35, P.7. Access to Justice could also include the use of informal dispute resolution mechanisms such as ADR and traditional dispute resolution mechanisms, to bring justice closer to the people and make it more affordable.
[39] Alternative Dispute Resolution (ADR) Mechanisms for Land Disputes, ADR Policy, Institutions of Surveyors of Kenya, p.2. Available at: Website: www.isk.or.ke (Accessed on September 2/2017).
[40] Floradema C. Eleazar, Brian Garcia, Ernie Guiang, Annabelle Herrera, Lina D. Isorena, Roel Ravanera and Ernesto Serote, Improving Land Sector Governance in the Philippines, (report on Implementation of Land Governance Assessment Framework (LGAF) which was coordinated by LETS in consultation with various stakeholders led by DENR and with support from the World Bank, 2013), p.107.
[41] Id., p.36.
[42] Id., p.107.
[43] The Revised Amhara National Regional State Rural Land Administration and Use Determination Amendment Proclamation, 2007, Proclamation No.148.

Regional state has enacted Rural Land Administration and Use Proclamation No. 110/2007. The Revised Amhara Proclamation No.133/2006 (as revised by Proc.No.148/2007)[44] and the Regulation No.51/2007 have provisions that state Kebele Land Administration and Use Committee shall establish tribunals of elders that are elected popularly; it has also provision that shows us all civil disputes emanating from or relating to land possession and use right undergone through the ADR mechanism, the provision that makes the agreement reached between the disputants final and binding, and allowing customary rules to be applied provided that the rules do not contravene with the constitution. The Revised Tigray Region Proc.No.136/2007 and the Regulation No.48/2008 have also limited the time within which the appeal is taken to the Woreda Court to 15 days and the time within which the court should decide the case to 30 days. These laws have also required 'every dispute in relation to rural land use' to be entertained by the administrative tribunal, the tribunal empowered to first receive these disputes. The Proclamation No.110/2007 of the Southern Nation, Nationalities and Peoples Regional State has in slightly different way empowered the elders to give decision on rural land dispute that arises from holding rights. The aforementioned proclamations of the three regions have governed rural land dispute settlement mechanisms under article 29, 28 and 12 respectively. They have special provisions, as pointed out, that (if introduced) can enrich the land laws of Oromia.

Thus, this study is going to scrutinize every element of the abovementioned provisions (especially clarity and lacunas) and investigate practically the causes of rural disputes, the types of rural land disputes and the effectiveness of rural land disputes settlement mechanisms in Dugda Woreda.

1.2. Statement of the Problem

In Ethiopia, conflicts which are related to land use rights are not a new phenomenon; the disputes have been a predominant problem.[45] These conflicts or disputes are continuously

[44] Ibid.
[45] Situation Assessment on Land Dispute Resolution in Four Regional States of Ethiopia (Amhara, Tigray, Oromia, and SNNPR), (A Consultancy Report under the defunct USAID-supported project Ethiopia - Strengthening Land Tenure and Administration Program (ELTAP), 2012), p. iv.

multiplying in this country.[46] Similarly, research conducted in the area in Oromia Region has revealed that Oromia courts are overcrowded with rural land disputes.[47] It has become a matter of common knowledge that these disputes turn into violent confrontations, threat and even blood shedding. So, it is necessary to devise a mechanism that works toward reducing these disputes.

Currently in this country, the legal frameworks which embrace the mechanism of rural land dispute resolution are the laws which are enacted at the Federal and Regional levels. Now, specifically, as I have mentioned above, it is the legal and practical problems which are associated with article 16 of the Proclamation and article 18 of the Regulation that are subjected to scrutiny.

Rural land disputes are oftentimes attributed to the loose, unclear laws and practices.[48] Research conducted[49] and article written[50] on the land dispute resolution mechanism in Oromia revealed that some provisions that guide dispute resolution are ambiguous. The research and article have not, in fact, wholly listed them out. In addition, the research identified inheritance related land dispute as the leading source of disputes in Oromia.[51] But the type of rural land dispute which is leading in the Dugda Woreda and the causes of disputes in the Dugda Woreda are not identified. On top of this, the extent of effectiveness of the dispute resolution mechanism laid down by law is not investigated into. Hence, this research works toward identifying some of the provisions which are not clear, the extent of effectiveness of the mechanism, the leading types of land dispute and the causes of rural land disputes in the Woreda.

As I mentioned above, the legal problems which still needs to be scrutinized are; the obscurity of the law as to what kind of alternative dispute resolution it wants to employ in resolving disputes, whether the objective of the type of ADR employed is clear, whether the

[46] Id., p. iii.

[47] Cited above at note 22, P.10.
[48] Cited above at note 46.
[49] Cited above at note 22, P.10.
[50] Cited above at note 29.
[51] Cited above at note 22. See also A Consultancy Report on "Situation Assessment on Land Dispute Resolution in Four Regional States of Ethiopia (Amhara, Tigray, Oromia, and SNNPR)" under the defunct USAID-supported project Ethiopia - Strengthening Land Tenure and Administration Program (ELTAP), 2012, p. 7. Laws that are ambiguous and unclear complicate the dispute resolution processes.

law has clearly accommodated or recognized the Oromo customary dispute resolution mechanism, the clarity of the law on the types of rural land disputes that undergo ADR mechanism that is controlled by Kebele Administration and the requirements that should be fulfilled for the eligibility to be elders.

Similarly, there are legal problems associated with the regulation. Article 18(12) of the regulation, which states in case governmental and private organizations are involved in rural land disputes as respondent, summon should be sent to them twice (*translation mine*), this implies the partiality of the procedure. The same article indicates that the ADR procedure is applicable even when the Government organization or the Kebele Administrator is a party to the dispute. This will also be analyzed in light of the developed literature and other country's experience.

In addition, articles 2 and 3 of the regulation provide when the respondent refuses to appear or unable to appear, the Kebele administration shall itself elect the elders on behalf of the absentee respondent and the case shall proceed in his/her absence. This provision, on the one hand, has empowered Kebele Administrator to elect elders, which seems it is against the proclamation and on the other hand, required the default procedure or ex-parte to be applied on the procedure of ADR. This latter idea of the regulation will also be examined taking into consideration the existing literature. It has also, under article 18(14), provided for liability of the Kebele Administration in case it has failed to carry out the responsibilities entrusted to it within a limited time. This provision is also not clear, as it has not succinctly laid down the remedy available (whether action for damages or mandatory injunction) for the party aggrieved. It is also not clear on the organ (the court or higher administrative organ) which has the power to hold it answerable.

The above being about the legal gaps and ambiguities, next the problems associated with the practices are also discussed. The first basic practical problem is the problem of the effectiveness of the rural land dispute settlement mechanism. The mechanism requires the application as to the rural land dispute to start from the Kebele Administration. As to why this procedure is prescribed, as I mentioned above, is to be investigated. If the aim of this procedure is to reduce the overcrowding of cases before the regular court, whether it has achieved that objective or the extent to which it has achieved this objective is to be studied. Other set of issues to be considered is: whether the Dugda Woreda Court is currently overcrowded with the rural land disputes; whether the court is accessible to the people;

whether the court has major challenges; whether a long and repetitive adjournment is given to the disputants; whether the decision of the court in relation to rural land is clear and predictable.

Furthermore, as the contents of the findings of the local elders differ practically from one village to others, this will also be scrutinized. The research also identifies the mechanism which, according to the perception of the people, best protects their interest. Generally, this research investigates the problems related to the gaps and obscurity of laws, the types of rural land disputes which should go through the channel laid down by law, the mechanism which is preferred by people, the extent of effectiveness and accessibility, and the overcrowding of cases (case congestion) related to rural land disputes in the Dugda Woreda Court.

1.3. Research Questions

This research has, in order to achieve the objectives framed, formulated the following research questions:

1.3.1. General Research Questions;

- Are the laws dealing with rural land dispute resolution mechanism clear and adequate?, What are the problems associated with rural land disputes settlement mechanisms in the Dugda Woreda?

1.3.2. Specific Research Questions;

- What are the causes of rural land disputes in the Woreda? Which cause stands first in rank?
- What are the lacunas and obscurities in the land laws of Oromia Region?
- What practical problems are observed in resolution of rural land disputes through ADR mechanism and in the Woreda Court?
- To what extent is the Dugda Woreda Court and conciliation before the Kebele Administration effective?
- What lessons can be drawn from the rural land administration and use laws of other regions and foreign experiences?

1.4. Objectives of the Research

1.4.1. General Objectives

The general objective of this research is to examine the laws governing the rural land dispute resolution mechanism and investigate the compliance of the practice in the Dugda Woreda Court with the land laws of the region. The research is generally, by investigating the problems and giving recommendations to the problems identified, aimed at ensuring the optimal exercise of peasants' holding rights as guaranteed by the Constitution and other land laws.

1.4.2. Specific Objectives

The specific objectives of this research are to:-

- Find out the causes of rural land disputes in the Woreda and the cause which stands first in rank.
- Scrutinize the lacunas and obscurities in the land laws of Oromia Region.
- Identify the practical problems observed in resolution of rural land disputes through ADR and in the court.
- Examine the extent to which the Dugda Woreda Court and conciliation before the Kebele Administration is effective.
- Identify the lessons that can be drawn from the rural land administration and use laws of other regions and foreign experiences.
- Make possible recommendations for the problems which could be revealed as research findings.

1.5. Significance of the Research

This research generally explores problems in the law that govern rural land disputes settlement mechanism, the types of rural land disputes and the causes of rural land disputes. It, in detail, scrutinizes the objective of mandatory conciliation, the effectiveness of the channel that currently exists and the law's knowledge of the public. After identifying the problems associated with the lacunas and ambiguities of the law, I shall show to the law makers and recommend them to clarify and fill the gaps. With regard to lack of legal knowledge of the public, I specifically recommend the Justice Bureau and Kebele Administration (the organ empowered as per the regulation) to create awareness. Court cases will also be analysed to identify the problems in the decision of the court, the types of disputes that are prevalent and I will finally recommend the court to correct the problems. Furthermore, after analyzing data which will be collected from the Kebele Administrations, I

will recommend them the way they have to adjust themselves and deal with such resolution of land disputes.

Generally, therefore, it is believed that this research will benefit the farmers (the ultimate beneficiary), the law makers, the Oromia Courts, the Justice Bureau and Kebele Administrations. This research will also be a base for future researchers who want to conduct further studies on the issue.

1.6. Limitations of the Research

In conducting this research, I faced the following difficulties:-

i. Some respondents were reluctant in providing me with information at the right time and I contacted them out of their work time.
ii. I encountered time and budget constraints, but resolved through efficiently managing them.
iii. Some relevant persons were transferred from the Woreda and I followed them and contacted for interview.

1.7. Research Methodology

In this research mainly qualitative legal research approach was employed. Quantitative legal research approach was also used. Qualitative legal research approach was used to identify the way people interpret and make sense of the problems observed in the process of resolving disputes, the types of rural land disputes that undergo the procedure of mandatory conciliation, the people's knowledge of the procedure, the people's preference of the mechanism, the requirements to be local elders, the basic challenges and accessibility of Dugda Woreda Court. It was also used to explore the causes of disputes and the effects of issuance of certificate on reduction of disputes.

The other reason why we have employed qualitative legal research methodology is to analyze the law and help one to understand the provisions regulating the mechanism to resolve disputes as they stand now. On the other hand, quantitative legal research methodology was employed to investigate the extent of effectiveness of the mechanism, the degree of accessibility, the level of congestion and the type and causes of rural land dispute that stands

first in rank (whether lower, medium or higher level). The case study method was used to investigate the practices on the ground.

This research is geographically limited to Dugda Woreda Court and it assesses the practice in the Woreda. Dugda Woreda is one of the Woredas in the Eastern Shoa Zone of Oromia Region of Ethiopia. The Woreda is bordered on the southeast by Lake Ziway, on the south by Adami Tullu and Jiddo Kombolcha, on the west by the Southern Nations, Nationalities and Peoples Region, on the northwest by the Debub Mirab, on the north by the Awash River, on the Northeast by Koka Reservior, and on the east by the Arsi zone. The total population size of the Woreda is 144,910. Dugda Woreda Court is selected simply because of the reasons that; rural land disputes are rife and there are temporarily established local elders in the District[52]. In addition, the Woreda is known for high production of fruits and vegetables. The Eastern Shoa Zone, the zone in which the Woreda is located, is also the zone in which many farming and development activities are underway. In conducting this research as it is hardly possible, mainly because of lack of resource and time, to go through the whole Kebeles of the Woreda, the sampling method was used to amass data.

In order to arrive at reliable findings, the researcher has administered questionnaires to 34 respondents (Two Judges of the Eastern Shoa Zone High Court, Five Judges of Dugda Woreda Court, Four land experts at Oromia Bureau of Rural land Administration and Environmental Protection, One land expert at Zone level, Two land experts at Woreda Level, Four rural land Disputants, Two Lawyers, Two Woreda Prosecutors, One expert at Woreda Women and Youth affairs, Nine Kebele Administrators, Two members of Woreda Saglan Gadaa Council). The researcher also conducted an interview with 22 informants (those informants are from Dugda Woreda Court, Rural Land Disputants, Woreda Saglan Gadaa Council, High Court, Kebele Administrators, Experts of land at different levels of Rural Land Administration and Environmental Protection Offices). The researcher further conducted focus group discussions with the judges of Dugda Woreda Court and Experts of Rural Land Administration and Environmental Protection Bureau.

The Constitution of the country, Land laws (proclamation of the Federal Government, Proc.No.456/2005, proclamation and regulation of the Oromia Region, Proc.No.130/2005,

[52] Interview with Ato Kabbada Angasa, the Ex-President of Dugda Woreda Court, held on September 1, 2017.

Regulation No.151/2013, and the land Proclamations of different Regions in Our Country and the laws of relevant foreign countries (China, Kenya and Philippines) were also studied. On top of these, relevant books, articles, reports and online sources were explored. 58 Dugda Woreda Court cases were roughly observed. One decision of the Kebele elders which is examined by appellate courts was also analysed.

1.8. Scope of the Research

This research aims at identifying the problems associated with the laws that govern rural land dispute settlement mechanism in Oromia Regional State. It also investigates the effectiveness of the mechanisms of rural land dispute settlement and causes of rural land dispute limiting it geographically to the Dugda Woreda Court. This research further limits the rural land disputes subjected to analysis to the disputes that have been presented in the last five years. It excludes the disputes that arise between pastoralists on the possession of land.

1.9. Organization of the Research

The Thesis has five chapters. The **first chapter** of the Thesis describes the background of the Thesis, statement of the problem, research objectives, research questions, significance and the research methodology.

The **second chapter** discusses the Overview of Relevant Literature Regarding Rural Land Administration and Tenure Security. Covered under this chapter are; the definition of Administration of Land, the parameters for effective land administration, the definition of land tenure security, the conditions for tenure security, the land tenure security in Oromia Regional State and the impacts of tenure security on Poverty and Development. The arguments as to the definition of tenure security and the arguments as to whether tenure security in land contributes to economic growth or not will also discussed.

The **third chapter** deals with Rural Land Dispute Resolution Mechanisms In General. Under this chapter, definition of rural land disputes, the approaches to rural land disputes settlement mechanisms, experiences of China, Kenya and Philippines in relation to the rural land disputes resolution mechanisms shall be discussed. Similarly, the land laws of Amhara,

Tigray and Southern Nations, Nationalities and People's regions were also compared. Furthermore, the approach which is adopted by the land laws of Oromia, the issue as to whether the land laws of Oromia has recognized Oromo customary methods of land dispute resolution and the history of rural land dispute settlement mechanisms in Oromia are discussed.

Chapter four discusses the Laws and Practices of Rural Land Dispute Resolution Mechanisms in Oromia Regional State. Specifically, the Legal Problems Associated with Proclamation No.130/2007 and Regulation No.151/2017 are examined. Under this chapter, the Types and Causes of Rural Land Disputes in Dugda Woreda of Eastern Shoa Zone will also be investigated. Generally, the effectiveness of the mechanism put in place by law and specifically, the Extent of Achievement of the ADR's Objective of Reducing Court's Case Load will further be analysed. The means of Dugda Woreda Court's Examination of Rural Land Dispute cases will also be investigated. In addition, Predictability and Accessibility of the Dugda Woreda Court were pointed out. On top of these, the Perception of the People at the Grass Root on the Mechanism will be explored. Accordingly, in this chapter the data amassed are summarized, analysed and interpreted.

Chapter five presents findings, conclusions and recommendations.

CHAPTER TWO

2. Overview of Literature Regarding Rural Land Administration and Tenure Security

This chapter reviews the laws related to rural land administration and tenure security. In doing so, it defines the phrase 'land administration' which consists of the mechanisms of resolving rural land disputes and shows how far the land laws of Oromia has guaranteed land tenure security. It also digs out whether land tenure insecurity is a cause for land disputes and further shows splits as to whether clearly defined rights have correlation with economic development. It further explains that land disputes increase costs, slow down investment, can result in the loss of property for a party in conflict and reduce income tax.

2.1. Administration of Rural Land

The phrase "Land Administration" does not have a single definition. Different legal sources define it differently. For example, Kenya defines land administration as the process of determining, recording and disseminating information about ownership, value and use of land.[53] Cambodia describes land administration in terms of its objectives and it says the objective of land administration policy is to clarify and record ownership and other rights to and the location of all properties (public and private) in order to strengthen land tenure security, improve the efficiency and reliability of land markets, and protect social harmony by preventing or resolving disputes.[54] The United Nations Economic Commission for Europe (UN-ECE) land administration guideline also defines 'land administration' as 'the process of determining, recording and disseminating information on ownership, use and value of land, when implementing land management policies'.[55] It is also usually stated that the principal components of land administration are: Ascertainment and registration of land rights, Allocation and management of public land, Facilitation of efficient transactions in land, Maintenance of efficient and accurate land information system, Mechanism for assessment of

[53] Paul Van der Molen Eugene H. Silayo and Arbind M. Tuladhar, A Comparative Study to Land Policy in 9 Countries in Africa and Asia, (Integrating Generations FIG Working Week, 2008), P. 34.
[54] Ibid.
[55] Daniel Steudler, Abbas Rajabifard and Ian P Williamson, Evaluation of Land Administration Systems,(Submitted to the Journal for land Use Policy, Unpublished, 2004), p. 4. UN/ECE/WPLA, 1996, Land Administration Guidelines, New York, Geneva), p.91. Available at: http://www.unece.org/hlm/wpla/publications/laguidelines.html (Accessed on October 1/2017.

land resources for fiscal development and revenue collection, and Efficient and accessible mechanism for resolving land disputes.[56]

Land administration laws of some countries, like China's land administration law, does not embrace the definition of the abovementioned phrase. The experiences of these all countries, when analysed especially in light of UN-ECE land administration guideline, show that some countries define it broadly, some define it narrowly and some others do not define it at all for their own unknown reasons.

Coming back to our laws, the Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation (herein after called the Federal Proclamation), Proc.No.456/2005 defines "Rural Land Administration" as a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural land holders are resolved and the rights and obligations of any rural land holder are enforced, and information on farm plots and grazing Land holders are gathered analyzed and supplied to users".[57] Article 2(11) of the Oromia Rural Land Administration and Use Proclamation, Proclamation No.130/2007, defines it similarly. According to these laws, the basic elements or issues embodied in the definition are;

a) The issue of securing rural land holding,
b) The issue of implementation of land use planning,
c) The issue of resolution of disputes between rural land holders,
d) The issue of enforcement of the rights and obligations of any rural land holder,
e) The issue of gathering, analysing and supplying of information on farm plots and grazing Land holders to users

Clearly, these laws embody the issue of mechanisms for resolving land disputes as part of 'Rural Land Administration". So, the mechanism for resolution of rural land dispute is discussed in this thesis as the basic element of rural land administration. In addition, as the mechanism is levelling the means to provide remedies when landholding right is violated, it is very important to have the definition of 'land holding rights' here. Pursuant to the Federal Proclamation, holding right is described as the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes

[56] Cited above at note 53, P. 34.
[57] Cited above at note 18, Art.2(2).

the right to acquire "property produced on his Land thereon by his labour or capital and to sale, exchange and bequeath same.[58] The Oromia Rural Land Administration and Use Proclamation, which is expected to comply with this proclamation, on the other hand, does not employ such term as 'holding rights'. It, instead, used the term 'Possession' and defined it similarly as 'the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire "property produced on his Land thereon by his labour or capital and to sale, exchange and bequeath same.[59] Be it called holding rights or possession, the Ethiopian Constitution has exclusively vested the right to ownership of land in the State and in the peoples of Ethiopia[60] and, enshrined further that, the land is not subjected to sale and that Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession.[61] Hence, from this provision of the constitution, it is discerned that peasants do have possession right, i'e, the ownership right minus sale right.

The objective of land administration is to provide tenure security by accurately defining and protecting people's rights in land.[62] Effective land administration is crucial for land tenure security, as it implements land policy and the rules of tenure.[63] It contributes to social and economic stability and wellbeing.[64] Similarly, an efficient land administration system guarantees land titles and tenure security, guides land transactions and supports the process of land taxation.[65] Recording information of land rights in cadastre and enforcing these rights to land are essential to effective land administration.[66] In a formal legal setting, information on rights, whether held by individuals, families, communities, the state, or commercial or other organization, is often recorded in some form of land registration and cadastre system.[67]

[58] Id., Art.2(4).
[59] Oromia Rural Land Use and Administration Proclamation, 2007, Proclamation No.130, Art.2(7), Mag.Oro., Year 15, No.12.
[60] Cited above at note 3, Art.40(3).
[61] Id., Art.40(4).
[62] Cited above at note 11, P.100.
[63] Id., P.10.
[64] Ibid.
[65] Cited above at note 53, P. 34
[66] Land Tenure and Rural Development, Economic and Social Development Department. Available at: www.fao.org (Accessed on September 17/2017).
[67] Ibid.

In customary (informal) tenure environment, information may be held, unwritten, within a community through collective memory and the use of witnesses.[68]Despite the weakness of informal tenure security as to the weak form of recording evidences, it is suggested that as it might be costly to implement only formal land administration mechanisms, it is necessary to use, acknowledge, and work with customary institutions that, of course, can effectively provide tenure security and help to minimise costs and prevent duplication of effort.[69]

As to the power of administration of land, basically, it is provided under Art 40 (3) of the Ethiopian Constitution[70] that "The right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and in the Peoples of Ethiopia. Land is a common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange". Sub Art. 4 of the same article also states that "Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession."

In addition, it is embodied under article 51(5) of the FDRE constitution that the Federal Government has the power to enact laws for the utilization and conservation of land and other natural resources. It is further provided under article 52(2)(d) of the Constitution that the Regional Governments have the power to administer land and other natural resources in accordance with Federal laws. This shows that responsibility for land administration has been delegated to regional governments and it has been decentralized.

Although it is not the case in Ethiopia, literature tells us that this kind of decentralized land administration function provides a solid foundation for strengthening valuation and instituting value-based land taxation at the local level.[71] Generally, it is analysed that the above provisions along with article 39 (right and autonomy of the people) and 91 (the duty to promote culture and tradition) of the constitution show that diverse forms of land rights and land administration institutions are recognized by the constitution.[72]

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[68] Ibid.
[69] Cited above at note 11, p.10.
[70] Cited above at note 3, Art.40(3).
[71]Regional Study on Land Administration, Land Markets, and Collateralized Lending, Rural Development and Natural Resources East Asia and Pacific Region, 2004, p.23. Available at: http://siteresource.worldbank.org (Accessed on July 10/2017).
[72] Muradu Abdo, State Policy and Law in Relation to Land Alienation in Ethiopia, A Thesis Submitted in Partial Fulfillment of the Requirements of the Degree of Doctor of Philosophy in Law, (2014, unpublished, University of Warwick, School of Law), p. 11.

In congruent with the aforementioned provisions of the constitution, the Federal Government has enacted the Federal Proclamation and this proclamation has governed the issues of rural land dispute settlement under its article twelve. The Federal Rural Land Administration Proclamation, Proclamation No.89/1997, which was enacted, for the first time, by the Federal Government to govern rural land, empowered Regional States to enact their own laws to administer rural lands within the framework of the general principles provided in the federal law.[73] It further obliges regions to observe the federal environmental laws in the event of making their own land use laws.[74] Similarly, but in a modified way, the Federal Proclamation empowers the regional councils to enact rural land administration and Land use law, which consists of detailed provisions necessary to implement this federal Proclamation.[75]

Based on this proclamation, regions have also enacted their own laws. Specifically, Oromia Regional State has enacted a Proclamation for Rural Land Administration and Use proclamation, Proc.No.130/2007 and this proclamation has dwelt on the issues of conflict or dispute resolution under its article 16. The Region has further issued regulation No.151/2013 to generally implement the proclamation and in detail dealt with the process of land dispute settlement.

On top of these, Oromia Regional State has established land administration office to implement the Federal and Regional land laws. In this region, it was originally the Bureau of Agriculture and Rural Development that was empowered to implement rural land administration laws of the Federal and Regional Government.[76] Then, in the year 2001, Bureau of Land and Environmental Protection (which is separate from Agriculture Bureau) has taken over the power to administer the land resources of the region.[77] This organ is, in collaboration with concerned organs, empowered to resolve or cause to be resolved conflicts or disputes arising on land.[78]

[73] Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, 1997, Art.5 and 6, Proclamation No. 89, Neg. Gaz., year 3, no.54.
[74] Id., Art.5(3).
[75] Cited above at note 18, Art.17(1).
[76] A Proclamation to provide for the Reorganization and Redefinition of the Powers and Duties of the Executive organs of the Oromia Regional State, 2004, Art.17(19), Proclamation No.87, Mag.Oro.,Year 13, No.1.
[77] A Proclamation to Provide for the Establishment of Oromia Bureau of Land and Environmental Protection, 2009, Art.5(2), Proclamation No.147, article 5(2), Mag.Oro.Year 17, No.5.
[78] Id., Art.5(2).

2.2. Rural Land Tenure Security and its Impact on Poverty and Development

2.2.1. Definition of Tenure Security

Before defining what tenure security is, it is necessary to define 'land tenure'. Land tenure is, generally, defined as "the institutional (political, economic, social, and legal) structure that determines (1) how individuals and groups secure access to land and associated resources, including trees, minerals, pasture, and water and (2) who can hold and use these resources—for how long and under what conditions".[79]

Regarding security, a property right is secure when the right holder perceives it to be stable and predictable over a reasonable period of time and protected from expropriation or arbitrary change, with claims that are backed up by some type of authority.[80] In the same vein, tenure security is defined as the perception of having secure rights to land and property on a continual basis, free from unreasonable interference from outsiders, as well as the ability to reap the benefits of labour and capital invested, either in use or when leased or rented to another.[81] The level of security does not depend on who the owner is; it depends on the cumulative recognition by others of a person's or a group's rights to the land.[82]

Broadly, tenure security depends on the clarity with which rights and obligations are defined; the quality and validity of property rights records and whether or not the state guarantees them; the precision with which boundaries are demarcated; the likelihood that rights will be violated; and the ability to obtain redress by an authoritative institution in such cases, along with the reassurance that whatever measures that institution decides are deemed appropriate and can be enforced effectively.[83] Realizing these require considerable investment in both technical infrastructure, such as boundary demarcation and generation and maintenance of

[79] Cited above at note 14.

[80] Anna Locke, Property Rights and Development Briefing: Property Rights and Economic Growth, odi.org, 2013, P. 7. Available at: http://www.refworld.org/pdfid/523ab6dc4.pdf (Accessed on October 2/2017).

[81] Land Tenure, Property Rights and Food Security, USAID Issue Brief, Emerging Implications for USG Policies and Programming, Property Rights and Resource Governance Briefing Paper No.1, U.S. Agency for International Development, P. 2.

[82] Cited above at note 11, P.100.

[83] Property Rights in Land, Land Policies for Growth and Poverty Reduction, Chapter Two, P. 36. Available at: http://books.google.com (Accessed on September 29/2017).

maps and land records, and social infrastructure, such as courts and conflict resolution mechanisms.[84]

Deficiencies in any of these areas, or a mismatch between different components of the property rights system, can seriously undermine tenure security, thereby increasing the potential for conflict and undermining incentives for investment and exchange.[85] In addition, if land disputes are not solved timely or if court cases are drawn-out for extremely long periods, this, together with the groups that benefit from the legal insecurity, contributes to continued insecurity.[86]

2.2.2. Rural Land Tenure Security in Oromia Regional State

Literature shows us that tenure insecurity is measured depending on perceived or actual duration of tenure, transferability of land, and willingness to pay for attaining certainty in land rights.[87] If the rules governing access (exclusion), use and transfer are ambiguous, unbounded and weakly enforceable it is also said that these have a bearing on tenure security.[88] Despite this, other literature revealed that the duration of rights, the assurance of rights[89] and the robustness[90] of rights are the basic conditions that affect security of tenure. [91] These parameters are used to analyse the land laws of Oromia below. But prior to that let me briefly discuss the history of tenure security in short.

In Ethiopia, the history of tenure security shows us that before 1975, where the Dergue had come into power and made land reform, people living in the northern parts of Ethiopia had accessed rights to land by virtue of their blood ties to the founding fathers and there was tenure security.[92] In the southern part, there were different kinds of complicated tenure system (private, state, church) and these had contributed to endless land litigation and tenure

[84] Id., P. 25.
[85] Id.,P. 36.
[86] Id., P. 35-36.
[87] Tesfaye Teklu, Rural Land Rights and Security in Cultivated Highland Ethiopia: Incremental Reform but Persistent Uncertainty, (International Journal of African Development Vol.2. No.1.,2014), P. 103.
[88] Ibid.
[89] This protects arbitrary infringement of the right.
[90] It is related to the freedom to use, dispose of or transfer the land.
[91] Dessalegn Rahmato, Searching For Tenure Security?, (The Land System and New Policy Initiatives in Ethiopia, FSS Discussion Paper No.12, Forum For Social Studies, Addis Ababa, 2004), P. 35.
[92] Hussein Jemma, The Politics of Land Tenure in Ethiopian History: Experience from the South, (Paper Prepared for XI World Congress of Rural Sociology, Agricultural University of Norway, 2004), P. 3.

insecurity.[93] In 1975, the Dergue had enacted the proclamation to provide for public ownership of rural lands, Proc.No.31/1975 which eradicated private tenure and replaced it with public ownership.[94] This had abolished landlordism and terminated land based litigation which, in turn, contributed to peasants' tenure security.[95] Currently, the EPRDF-led government has retained public ownership of land. Research has also indicated that, at least until 2004, tenure insecurity remained to be the overriding problem of the land system in this country.[96] Dessalegn Rahmato has analysed that tenure insecurity has been aggravated by the increasing rural poverty and the fact that farm life is becoming unviable, growing population pressure and increasing land scarcity, interventionist measures by government officials in the field leading to extra-legal decisions affecting land matters, the lack of knowledge on the part of rights holders of their rights and their inability to defend their rights and the lack of a proper and accessible juridical body responsible for land disputes.[97] Similarly, in this country, tenure security is one of the controversial issues particularly in relation to the extent of rights of farmers over their landholding in general and the adequacy and fairness of the amount of compensation paid during rural land expropriation that may emanate partly from state ownership of land in the country.[98] Ethiopia has taken measures like slowing redistribution of land, certification of use rights, recognition of right to compensation in case of land expropriation for public use, and reform in land adjudication systems to improve tenure security.[99]

Now, it is necessary to narrow down the issue of tenure security to Oromia Regional State and analyse in light of the above three basic parameters. In doing so, measures taken by the land laws to make land use right secure are discussed.

i. Robustness of the Holding Rights

Robustness refers to the number and strength of the bundle of rights an individual possess.[100] It is provided under the Federal and Oromia Constitutions that Ethiopian peasants have right

[93] Id., P. 6.
[94] Id.,P. 9.
[95] Id., P. 10.
[96] Cited above at note 91.
[97] Ibid.
[98] Cited above at note 31. P.5.
[99] Cited above at note 87, p.103.
[100] Damodaran Kuppusamy, "Property Rights and Technology Adoption in Agriculture," International Journal of Environment and Sustainable Development, Vol.6(2014), p. 29.

to obtain land without payment and the protection against eviction from their possession.[101] This clearly shows that every peasant is entitled to free access of rural land for farming.

The Federal Proclamation, Proclamation No. 456/2005, has provided for general principles or legal framework for the administration of rural land in Ethiopia. To show the width of the right granted by the constitution to the farmers, the proclamation employed and defined "holding right" under article 2(4)[102]. The rights embodied in this provision are the right to use, lease, bequeath, the right to acquire property produced on land and the right to sale the property produced on land.

Similarly, in Oromia Region a number of laws relevant to the administration and rural land use have been adopted since 2002. In 2002, the Region issued Proclamation No. 56/2002 of 'Oromia Rural land Use and Administration". As to this proclamation Desalegn Rahmato argued that the law of Oromia is better than the land laws of other regions.[103] He said this proclamation has separately declared for security of rights under article 1 as could be deduced from the title of the provision which reads "land user right security".

The next proclamation, rural land use and administration law in 2007, Proclamation No.130/2007, is a proclamation which has taken into account the problems encountered in the process of implementing the preceding proclamations and a need to handle disputes that may arise in relation to land tenure.[104] This proclamation was the proclamation which has repealed these former proclamations, Proclamation No.130/2007, stipulates, under article 5, that any adult resident of the region who is aged 18 or above and who wishes to base his livelihood primarily on agriculture is entitled to get rural land free of payment. This new proclamation under art.6 (1) stated that land use rights or possession of farmers include; the right to use ones holding without any time limit, the right to lease out, the right to transfer use right over one's parcel of land to one's family members through inheritance or donation, the right to acquire property produced thereon and the right to sell, exchange and transfer such property and the right to claim compensation up on the expropriation of the holding rights for public purposes.

[101] Cited above at note 3, Art.40(4).
[102] Cited above at note 18, Art.2(4).
[103] Cited above at note 91, p.2-8.
[104] Preamble of Oromia Rural Land Use and Administration Proclamation, 2007, Proclamation No.130, Mag.Oro., Year 15, No.12.

To show its commitment to strengthen tenure security, the proclamation has put the phrase 'improving tenure security' as one of the goals to be achieved by the proclamation. The Proclamation also provides that "Any peasant, pastoralist or semi pastoralist having the right to use rural land may get rural land from his family by donation, inheritance or from government." [105] It has, further, permitted transfer of use right in a restrictive way. Transferring land use rights through inheritance or donation of land is restricted as it is only family members whose livelihood depends on the income earned from the land in question or with no other means of income, or landless children of the holder that are entitled to acquire rural land for use through donation. [106] Governmental institutions, nongovernmental organizations, private investors and other social institutions are also entitled to get access to rural land. [107] The proclamation, further, basically deals with three types of tenure arrangements, i.e., individual holding, communal holding and state holding.[108]

With regard to the Women's right, the Federal and Oromia Constitutions, in a similar way, stated that 'Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property'[109]. Proclamation No.130/2007 has made significant improvement in terms of protecting women's right to land by providing for equal rights for men and women to access rural land [110], recognizing equal rights to obtain land titles and joint titling for spouses [111], presuming joint holding of family land and the right to share their landholdings equally upon divorce, [112] outlawing land rental agreements without consent of both spouses [113] and permitting women to use hired labour on their farm plots.[114]

Finally, with regard to redistribution of land, the Federal Proclamation has provisions indicating that there will be no further land redistribution, except under special

[105] Cited above at note 59, Art.5(5).
[106] Id., Art.9(5).
[107] Id., Art.5(3).
[108] Id., Art.5 and 15(1).
[109] Cited above at note 3, Art.35(7). See also Art.35(9) of the Constitution of Oromia.
[110] Cited above at note 59, Art.5(2).
[111] Id., Art.15(8).
[112] Id., Art.6(13).
[113] Id., Art.10(6).
[114] Id., Art.6(14).

circumstances.[115] In compliance with this, article 14 (1) of the Oromia Rural Land Administration and Use Proclamation, Proc.No.130/2007, states that redistribution shall not be carried out on the holdings of either peasants or pastoralists in the region except on irrigation land. In this way, Oromia Region has restricted redistribution to irrigable land. Pursuant to Articles 14 (2) and 10 (3) of this Proclamation, it is only unoccupied or vacant land and land with no heirs that is at the disposal of the state for future redistribution to landless poor or land deficit peasants. Generally, there is a source that indicates that since 1991 the frequency of land redistribution which is considered as cause of tenure insecurity is reduced.[116]

Dessalegn Rahmato, in this regard, said despite the existing policy and legal measures, land related problems such as tenure insecurity, restrictions on transfer and lack of adequate land administration system still prevail.[117] Melkamu and Shewakena have also expressed their view stating "given the scarcity of land, it is not clear how peasants' rights of free access to land can be assured in practice, and how much land peasants are entitled to. Particularly in the rural areas, scarcity and landlessness of young peasants, women and re-settlers characterize the country's land resource administration".[118]

ii. Assurance of the Rights

Assurance is related to an institutional framework capable of enforcing an individual's right to land.[119] In this regard, the Federal and Oromia Constitutions arguably provided that the farmers' holding rights are protected against infringement, i'e, against expropriation. In fact, the means of expropriation of rural land holding is more provided in detail by the Proclamation No.455/2005.

The Land Administration and Use Proclamation of Oromia Regional state, Proc.No.56/2002, provided that the use right of any holder cannot be terminated during the life of that very

[115] Cited above at note 18, Art.9.
[116] M.M. Ahmed, S.K. Ehui, Berhanu Gebremedhin, S. Benin and Amare Teklu, Evolution And Technical Efficiency Of Land Tenure Systems In Ethiopia, (International –ILRI- International Livutock Muarch Institute Socio-economic and Policy Research Working Paper 39, 2002), p. 10-11.
[117] Cited above at note 91, p.35.
[118] Melkamu Belachew and Shewakena Aytenfisu, Facing the Challenges in Building Sustainable Land Administration Capacity in Ethiopia, FIG Congress, 2010,P.4. Available at: https://www.fig.net/resources/proceedings/fig_proceedings/fig2010/papers/ts08a/ts08a_abab_moges_4051.pdf (Accessed on October 1/2017).
[119] Cited above at note 100, p.29.

holder unless and otherwise the land in question is required by the state for "more important public uses" after payment of prompt and adequate compensation for all investments and improvements on the land.[120] The state is required to pay compensation in advance to the peasants whose landholdings were expropriated and such compensation comprises the value of the property on that land and calculation of the benefits obtained there from as well as replacement of similar plot of land.[121] The Proclamation also provides that in case where replacement of land is not possible, the holder displaced from his parcel of land will be entitled to payment of compensation for rehabilitation.[122]

Moreover, sources arguably indicate that, the process of rural landholding certification has been causing conflicting claims and courts are said to be overloaded with a number of land disputes since 2004 when the land measurement and registration process began in the regional state. Despite this, the study conducted on the effects of the first level registration and certification programs in Oromia Region (and other Regions) revealed that the registration and certification has increased tenure security and reduced land related disputes.[123]

Similarly, to protect the interests of vulnerable groups, the law provides that agreements for sharecropping or hiring labour made with vulnerable groups such as women, disabled, orphans and aged persons must be approved and registered by the Agricultural and Rural Development Bureau of Oromia, if it is to extend for a period over six months.[124]

The new Rural Land Use and Administration Proclamation (Proc No.130/2007) provides for the compulsory registration system of all categories of rural land holdings. Accordingly, it states that all private, communal and state holdings shall be measured and information regarding their size, land use and fertility, shall be collected and registered in the data centres to be established.[125]

[120] Cited above at note 23, Art.6(4) and 5.
[121] Id., Art.6(11).
[122] Id., Art.6(12).
[123] Tigistu Gebremeskel Abza, Experience and Future Direction in Ethiopian Rural Land Administration, (Paper Presented at the Annual World Bank Conference on Land and Poverty, 2011), p. 8-9.
[124] Cited above at note 23, Art.6(14).
[125] Cited above at note 59, Art.15(1).

In order to make holding rights of farmers (including women's rights) effective, social infrastructures such as court and other ADR Mechanism are obviously required. Thus, in this regard also the proclamation No.130/2007 has laid down mechanism to resolve rural land disputes that arise from holding rights.

iii. Duration of the Rights

Duration refers to the temporal extent of one's right.[126] To have secure tenure, one must possess a sufficient time horizon to reap the benefits of one's investment.[127]

In the year 2002, the Oromia Regional State has issued Proclamation No. 56/2002 of Rural Land Use and Administration, which was amended by Proclamation No. 70/2003. The original rural land proclamation laid down the principles of landholding right of the State in light of the federal land use and administration law, i'e The Federal Proc.No.89/1997. It extends a lifelong use right of agricultural land and provides for expropriation of such land under the exigencies of a need to use the land for a more important public purpose.[128] In light of the objectives of strengthening tenure security set out in the preamble of the proclamation, Article 6 (1) of the new proclamation (Proc.No.130/2007) reaffirms that rights to holdings are for life and accordingly peasants and pastoralists have the right to use land under their possession during their life time and bequeath same to members of their family.[129] Farmers have the right to use the land indefinitely, lease it out temporarily to other farmers and transfer it to their children but cannot sell it permanently or mortgage it.

2.2.3. Impact of Land Tenure Security on Poverty Reduction

Property rights do play a fundamental role, not only in increasing economic productivity, but also in raising the social standing and dignity of those who have them.[130] However, millions of rural poor and the urban poor living in informal settlements lack access to land (Property rights in land).[131] This inaccessibility, obviously, leaves the poor unchanged and affects the rate of economic growth. So, strengthening the property rights of poor people can make

[126] Cited above at note 100, P.29.
[127] Ibid.
[128] Cited above at note 23, Art.4(6).
[129] The land holder is allowed to use his land 'without time bound'.
[130] Cited above at note 1, P.5.
[131] Id., P.1.

important contributions to poverty reduction.[132] But, even when the poor have access to land, unless their rights are formally or legally recognized, as they do not contribute to economic development, it is necessary to provide security through legislation and thereby reduce poverty.[133] Evidently, in many cases, land can be used as collateral for credit to invest in the land, or be exchanged for capital to start up another income-generating activity.[134] The landless are excluded from these opportunities; this is why they are often among the poorest.[135]

2.2.4. Impact of Tenure Security on the Growth of Agricultural Productivity

Secure land tenure is important for social and economic prosperity and stability in all Societies.[136] It gives sufficient incentives to the farmers to increase their efficiencies in terms of productivity and ensure environmental sustainability.[137] It is natural that without secured property rights farmers do not feel emotional attachment to the land they cultivate, do not invest in land development and will not use inputs efficiently.[138] Systematic land titling, as part of assuring security to land, also stimulates farmers to invest and tends to favour poor households that would not otherwise be likely to document their land rights.[139] Dessalegn Rahmato has also concluded that tenure security is the important factor, though not the only one, in improved agricultural performance and higher productivity.[140] It is also succinct that rural land disputes declines agricultural productivity.[141] Similarly, it is said that land ownership ('use right' in our case) conflicts have negative effects on individual households as well as on the nation's economy.[142] They increase costs, slow down investment, can result in the loss of property for a conflict party and reduce tax income (land tax, trade/commercial

[132] Id., P.5.
[133] Ibid.
[134] Ibid.
[135] Id., P.1.
[136] Cited above at note 11, p.100.
[137] Shimelles Tenaw K.M. Zahidul Islam & Tuulikki Parviainen, Effects of land tenure and property rights on agricultural productivity in Ethiopia, Namibia and Bangladesh, University of Helsinki Department of Economics and Management Discussion Papers , 2009, P. 5. Available at: http://www.fao.org/fileadmin/user_upload/fsn/docs/HLPE/Discussion_Paper_33.pdf (Accessed on September 30/2017).

[138] Ibid.
[139] Cited above at note 71, p.i.
[140] Cited above at note 91, P. 17.
[141] Berihu Asgele Siyum, Bihon Kassa, Betelhem Sisay and Mewcha Amha Gebremedhin, "Farm Land Conflict and its Socio-Economic Consequences in Tahtay Qoraro, Tigray, Ethiopia", International Journal of African and Asian Studies, Vol.9(2015), p. 52.
[142] Babette Wehrmann, A practical guide to dealing with land disputes, (2008, Deutsche Gesellschaft für), p. 31. Available on; https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2008-en-land-conflicts.pdf (accessed on 23/09/2016).

tax) for the state or municipality.[143] Conflicts over the use of land generally have a negative impact on the poor or on the natural or building environment.[144] Land conflicts also increase social and political instability.[145] It is also said that not only do they generally have a stronger impact on the livelihood of the poor than that of the rich, but they also impact differently on men and women, urban and rural populations, farmers and pastoralists etc., with groups such as squatters, ethnic minorities or orphans being extremely marginalised.[146]

In a similar fashion, clearly defined property rights have contribution in economic development in such a way that these rights stimulate private investment by encouraging property rights holders to invest on their property, using their own resources or seeking credit through collateralization or transferring it to a more efficient user.[147] This means that when the subject, object and width of property rights is made clear by law and enforced accordingly the holders feel that they are secure and this stimulate them to invest labour and other resources in land, to alienate and to seek credit. By investing, alienating and taking a credit, the holders participate in the market and these all generate higher economic growth. Hence, this is said to have positive correlation with economic development. Of course, researches conducted especially on rural Kenyans' households indicate that even in the absence of title or certificate high value cash crops may be acquired.[148] The registration of title has also weakened the rights of access to land for women and tenants and it did not resolve disputes over land rights.[149] Furthermore, evidence does not support the view that titled rural African households gain access to credit more regularly or easily than other households which suggests a limited use of the collateralisation effects that formal title potentially confers.[150]

On the other hand, insecure property rights hinder economic development. As it is discussed above, in identifying the channels through which this negative relationship occurs, De Soto said that insecure property rights weaken the incentives for owners to make long-term capital investments and hinder the ability of owners to use their property as collateral to secure loans to finance capital investment. Obviously, without access to credit and investments in the

[143] Ibid.
[144] Ibid.
[145] Ibid.
[146] Id., p. 32.
[147] Cited above at note 7, p.167.
[148] Cited above at note 8, p.11.
[149] Ibid.
[150] Secure Property Rights and Development: Economic Growth and Household Welfare, 2014. Available at: http://www.gov.uk (Accessed on October 1/2017).

future, capital formation and economic growth are hindered. In the same vein, if property rights are insecure (that is, not well defined or easily enforced), individuals and families will be obliged to spend time and resources defending their land.[151] They will be reluctant to invest too much time, money, or materials into something over which they have no security.[152]

2.3. Chapter Summary

Land administration encompasses the issue of rural land dispute settlement mechanism as a component. It provides tenure security by accurately defining and protecting people's rights in land. In this country, the responsibility to administer land has been decentralized and delegated to regional governments. Accordingly, Oromia Region has enacted Proclamation No.130/2007 and Regulation No.151/2013 which govern the use and administration of rural land. These Proclamation and Regulation defined the rights and obligations of landholders, the process of registration and in case these rights are violated, the mechanism of resolution of rural land disputes. The clarity with which rights and obligations are defined, the place the proclamation and regulation have for registration and remedies have all bearings on tenure security. Deficiency in any of these components undermines tenure security and this in turn increase the potential for conflict and undermines incentives for investment and exchange.

The land tenure security as guaranteed by land laws of Oromia are also mentioned and discussed in terms of duration of rights, the assurance of rights and the robustness of rights. Tenure security has a general impact on reducing poverty and increasing agricultural production. By increasing tenure security of the poor (allowing the poor to access land and strengthening the property rights of poor), it is possible to raise their contributions in poverty reduction. In addition, clearly defined property rights can stimulate investment and positively impact economic growth. Economists like Hernando De Soto, of course, argued that extralegal rights (informal rights) can also have such a positive impact if they are integrated with formal. This chapter is very basic and it guides the title of my research. Furthermore, it is a base for chapter three which investigates approaches to rural land dispute settlement mechanisms and experiences of different countries.

[151] Cited above at note 14, P.8.
[152] Ibid.

CHAPTER THREE

3. Rural Land Dispute Resolution Mechanisms in General

This chapter deals with the definition of rural land disputes. It also examines different approaches to the machineries that resolve rural land disputes and the experiences of some foreign jurisdictions. It further compares the land laws of some of the Regional Governments in Ethiopia. It investigates the mechanism that is being currently in practice. It scrutinizes whether the Oromo traditional land dispute resolution is clearly recognized by land laws or not. It also discusses the nature of ADR (whether it is more formal or less formal). It, in addition, points out the lessons that the Oromia Region can draw from the experiences of other regions in Ethiopia and other countries. On top of these, the history of rural land dispute settlement mechanism in Oromia is talked about under this chapter.

3.1. Definition of Rural Land Disputes

A dispute or a conflict is a disagreement between persons about their rights or their legal obligations to one another.[153] Similarly, another source defines it as 'a social fact in which at least two parties are involved and whose origins are differences either in interests or in the social position of the parties'.[154] Particularly, land dispute is defined as 'a social fact in which at least two parties are involved, the roots of which are different interests over the property rights on land, the right to use land, to manage land, to exclude others from the land, to transfer it and to have the right to compensation'.[155] These disputes are common in virtually all societies.

3.2. Approaches to Rural Land Disputes Resolution Mechanisms

To resolve disputes in relation to land, different countries employ different mechanisms. These mechanisms are broadly classified as formal, informal and mixed. Each of this mechanism is discussed here in below.

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[153] Daniel Oran J.D., Oran's Dictionary of the law, (3rd ed, 2000).
[154] Cited above at note 142, p.9.
[155] Gertrude Sackey, Investigating Justice Systems in Land Conflict Resolution: A case study of Kinondoni Municipality, Tanzania, (Thesis submitted to the faculty of Geo-Information Science and Earth Observation, University of Twente in Partial fulfilment of the requirements for the Degree of Master of Science in Geo-Information Science and Earth information, specialization, 2010), P-7.

3.2.1. Formal Approach to Rural Land Disputes Resolution Mechanism

This approach considers the regular court and special administrative tribunal as the organs that resolve rural land disputes.[156] This kind of formal mechanism is described as structures and associated rules that represent the state at various levels.[157] It is related to those that are established by legislation.[158] These definitions indicate that formal mechanism can represent both the organs with judicial powers and other mechanisms given recognition by law. The judicial organs mentioned above are presumed to have professionals or intellects possessing the necessary wisdom and ability in the protection of right of parties to the dispute.[159] They are criticized for not disposing cases without delay and for not being participatory as other alternative resolution mechanisms.[160] Usually, inaccessibility (long distances) and costly forms of transport deter disputants from pursuing their claims in formal institutions.[161]

One source has revealed the problems with the African's formal mechanism as:

> "... Formal courts in Africa today are only partially effective in urban and rural areas. There is much evidence of this situation, primarily because most rural litigants cannot afford the high cost of formal justice, are unable to travel long distances for court procedures, do not understand the foreign language of the courts, and value African customs above foreign legal rules, and so they frequently rely on informal forms of justice."[162]

In Ethiopia, at the Federal level, the Federal land law has not provided for specific organ which should entertain land disputes cases. However, the Rural Land Use and Administration Proclamation of Oromia[163] states that the District (Woreda) Court is the lowest level of civil court which hears rural land disputes. Of course, rural land disputes are not directly brought before this court; the procedures laid down by law have to be first exhausted.[164] There are detailed provisions which basically govern the Procedure of ADR before the Kebele

[156] Cited above at note 30, p.25.
[157] Cited above at note 20, p.125.
[158] Cited above at note 155, P.i.
[159] Cited above at note 30, p.25.
[160] Id., p. 26.
[161] Cited above at note 11, p.59.
[162] Adenike Aiyedun and Ada Ordor, "Integrating the Traditional with the Contemporary in Dispute Resolution in Africa", Law, Democracy and Development, Vol.20(2016), P. 160-161. Available at: http://dx.doi.org/10.4314/ldd.v20i1.8 (Accessed on October 2/2017).
[163] Cited above at note 59.
[164] Id., Art.16.

Administration. It seems the Proclamation and the Regulation intended to more formalize the ADR mechanism by giving recognition to it and through enacting detailed provisions. The High Courts and the Supreme Court are also empowered to hear rural land cases in their appellate jurisdiction. The Cassation Division of the Oromia and Federal Supreme Courts are also receiving application brought to them provided that the application shows the existence of fundamental error of law in the judgements of the lower courts.

3.2.2. Informal Approach to Rural Land Disputes Resolution Mechanism

As to the meaning of 'informal approach', there is no agreement in the academic discourse. There is a literature[165] which discusses informal approach as if it comprises ADR while others discuss it as if it excludes ADR.[166] For the purpose of this research, ADR and CDR will be treated as informal approach and discussed under this section.

Informal institutions refer to institutions (with associated norms) that can be grouped under such generic terms as indigenous, customary or local.[167] These institutions are those local institutions that are recognized by the local communities but are not supported by legislations.[168] The institutions are similarly defined as those rules that shape human behaviour but are outside of government and are not part of a written legal framework.[169]

The ADR, which is mentioned as one of the informal mechanism, is defined as "a term generally used to refer to informal dispute resolution processes in which parties meet with a professional third party who helps them to resolve their dispute in a way that is less formal and often more consensual than is done in the courts."[170] The goals of ADR have been described among others as relieving court congestion, reducing undue cost and delays, enhancing community involvement in the dispute resolution process, facilitating access to justice and providing a more effective resolution of dispute.[171] This mechanism is more

[165] Daniel W/Gebriel and Melkamu Belachewu, Land Law, (Teaching Material Prepared under the Sponsorship of the Justice and Legal System Research Institute, un published, 2009), p. 218.
[166] Cited above at note 30, p. 29.
[167] Cited above at note 20, p.125.
[168] Cited above at note 155, p.i.
[169] Claudia R. Williamson, Securing Private Property: Formal versus Informal Institutions, Development Research Institute Department of Economics New York University, P. 12. Available at: https://nyudri.files.wordpress.com (Accessed on October 2/2017).
[170] .Cited above at note 155, P.16.
[171] Ibid.

accessible form of justice for ordinary citizens, especially the rural poor.[172] There are different types of ADR; these are arbitration, negotiation, conciliation and mediation.

It is said that the traditional African justice systems were concerned with resolving disputes with the aim of bringing about unity and harmony within the community, which also tended to promote a sense of fairness, because these values were in keeping with the accountability of the traditional leader to the people. [173] This system seeks a consensual outcome, operating on the principles of "community participation, consultation, consensus and an acceptable level of transparency through the village council or open, consultative meetings".[174]

Similarly, Ethiopia has for centuries been using traditional methods of dispute resolution.[175] The institutions of Gadaa among the Oromo, the Shimagelle by the Amhara, and the other ethnic groups have been used.[176] Disputes regarding claims on the use or ownership of individual or communal land, water, cattle, grazing area, local custom, religious matters etc…were often resolved through these institutions.[177] Here in, the Gadaa system of conflict resolution is one that deserves attention. This institution is well respected by the Oromo society at large in the country.[178] If this indigenous knowledge can be harnessed, then it is thought that it can be a means through which sustainable development can be achieved.[179]

According to Gadaa, those people who have entered the Luba grade (individuals in the expected age range of 40-48) are considered to be elders.[180] These elders settle disputes among groups and individuals and apply the laws dealing with the distribution of resources, criminal fines and punishment, protection of property, theft, etc.[181] Apart from their political significance, the Gadaa leaders play important roles in natural resources management.[182]

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[172] Ibid.
[173] Cited above at note 162, p.160-161.
[174] Ibid.
[175] Shipi M., Alternative Dispute Resolution in Ethiopia: A legal Framework, 2013, p.265. Available at: http://www.ajol.info/index.php/afrrev/article/download/41054/8478 (Accessed on 15/09/2016).
[176] Ibid.
[177] Yohannes woldegebriel, Alternative Dispute Resolution Mechanisms, Director of Arbitration Institute, Addis Ababa Chamber of Commerce and Sectoral Associations, p.1
[178] Desalegn Chemeda Edossa, Mukand Singh Babel, Ashim Das Gupta and Seleshi Bekele Awulachew , Indigenous systems of conflict resolution in Oromia, Ethiopia, International workshop on 'African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa', (2005, unpublished, Johannesburg, South Africa), p.29-2.
[179] Ibid.
[180] Ibid.
[181] Id.p.29-5.
[182] Id., p.29-8.

While the rules and regulations laid down by the Gadaa tradition must be respected by all councils of elders, any problem regarding resources use which could not be solved by these elders would be handled by the higher Gadaa leaders.[183] There is a loose collaboration, if any, between this customary institution and the government in dealing with conflict resolution between individuals and communities.[184] In the same vein, 'Jarsumma'[185] is an indigenous conflict resolution mechanism that is currently practiced in Oromia especially in areas where the Gada system handicapped to resolve conflict.[186] It is the process of handling conflict by "jaarsa biyya" which literally mean elders. Elders who are reputed for having deeper understanding of social values, rules and customary law of the society are requested to see a case when conflict takes place within the society.[187] The elders are not a fixed group of people, as they can be composed of any member of the community and they are not necessarily of old age.[188] Land disputes can also be dealt with by these elders.[189] In this regard, the Constitution of FDRE [190] and the Constitution of Oromia [191] stipulate that 'Government shall have the duty to support, on the bases of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideas, and the provisions of the constitution.' This provision is very important, despite the question that can be raised as to how far the governments have acted as expected, as it obligated state to promote the cultures or traditions. In addition, unlike the Amhara's land law, the Oromia's Rural Land Use and Administration Proclamation is criticized for not clearly recognizing the traditional rural land dispute resolution mechanism.

Land, obviously, represents home, binds together past, present and future and constitutes people's spiritual base.[192] Land being such a complex issue for people, disputes regarding it has to be settled in a more comprehensive manner and customary conflict resolution is therefore especially appropriate for dealing with these land disputes, as long as the conflicts

[183] Ibid.
[184] Id., p.29-11.
[185] It refers to a mechanism in which local elders try to resolve conflicts amicably.
[186] Endalkachew Birhan, "Challenges and Opportunities of Indigenous Conflict Resolution Mechanism in Oromia Regional State: The Case of Rayitu Woreda, Bale Zone", European Academic Research, Vol. IV,Issue 6(2016),. p.5487.
[187] Ibid.
[188] Cited above at note 20, P.131.
[189] Ibid.
[190] Cited above at note 3, Art.91(1).
[191] See Art.106(1) of the Constitution of the Oromia Regional State.
[192] Cited above at note 142, P.9.

are within its jurisdiction.[193] It is also said that local customary institutions must be involved because they have the knowledge of custom, and the causes and effects of the disputes.[194] They are also more accessible, resolve issues faster and are less expensive than government institutions.[195] However, this system is criticized for it sometimes contradicts with universal standards of human rights and democracy, and it may not put an end to violence in the long term.[196] The limited power of mediator (the absence of lack of power to enforce) is also usually mentioned as the weakness of ADR.[197]

3.2.3. Mixed Approach to Rural Land Disputes Resolution Mechanism

This approach mixes the formal and the informal approach. Democracy functions as a system in which formal and informal institutions serve the purpose of translating social preferences into public policies. [198] Dispute resolution mechanisms are among these informal institutions.[199]Few countries have developed systems for resolving land disputes that combine customary institutions and their formal institutions.[200] The court or other administrative organ intervenes only when the informal ADR or CDR (customary dispute resolution) mechanism fails. [201] This hybrid nature helps many gain access to justice since it makes up for an underdeveloped formal system while offering a system that is both faster and more flexible than a purely state system.[202] This approach has achieved considerable achievements in East Timor. [203] For the poor to secure their land rights, access to courts and other dispute settlement institutions are essential.[204]

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[193] Ibid.
[194] Cited above at note 11, p.58. Strengthening customary mechanisms through legal recognition and support helps to harness their benefits in terms of ready access, low cost and knowledge of customs.
[195] Ibid.
[196] Cited above at note 155, P. 28.
[197] Amari Okama, ADR Mechanism and Resolution of Land Disputes in Nigeria, Ebony State University, p.20. Available at: www.amariomaka.blogspot.com (Accessed on September 23/2017).
[198] Edgardo Buscaglia and Paul B.Stephen, An Empirical Assessment of the Impact of Formal Versus Informal Dispute Resolution on Poverty: A Governance-based Approach, International Review of Law and Economics, 2005, p-90.
[199] Ibid.
[200] Cited above at note 30, p.56.
[201] Id., p. 25.
[202] Noah Coburn, Hybrid Forms of Dispute Resolution and Access to Justice in Afghanistan: Conceptual Challenges, Opportunities and Concerns, Hamida Barmaki Organization for the Rule of Law Working Paper No.2015/03, p. 1.
[203] Cited above at note 30, p. 25.
[204] Cotula L., Toulmin C. and Quan J., Better Land Access for the Rural Poor, Lessons from Experience and Challenges ahead (IIED, FAO, 2006), p.23.

As part of the mixed approach, it is very necessary to discuss a provision in the Civil Procedure Code of Ethiopia. Article 275 of this Code permits judges to encourage the parties to resort to ADR processes. It provides that a compromise agreement may be made by parties at the hearing or out of the court of their own motion or up on the court attempting to reconcile them. This provision gives parties opportunities to resolve their disputes formally through the court and informally-out of the court through traditional mechanism.

Narrowing down the issue to Oromia Regional State, as it is discussed above, this region has enacted the Proclamation[205] and the Regulation[206] which govern rural land dispute settlement mechanism. These laws are succinct in providing for mandatory conciliation and in empowering local elders to first try to reconcile the disputants. The elders then report the findings (which have to be registered and sealed) to the Kebele Administrators within 15 days and the administration hand over a copy of elders' finding to the parties. It is the responsibility of the Kebele administration to make the elders observe this time limit. The laws have also obliged that unless the finding of the proposed solution is attached to the suit the Woreda Court should not receive the suit.[207] Although the law prescribes the procedures used in reconciling disputing parties as the law does not compel the elders to apply the substantive law (but customary law) in reconciliation, it can be concluded that the Oromia Regional State has employed the hybrid approach in dealing with the rural land disputes settlement mechanisms.

3.3. Rural Land Dispute Resolution Mechanisms under the Laws of Different Jurisdictions

Under this sub-section, the experiences of China, Kenya and Philippines will shortly be discussed. The countries have some important laws from which Ethiopia or Oromia can take lessons.

[205] Cited above at note 59.
[206] Cited above at note 27.
[207] Cited above at note 59, Art.16(g) and article 18 of the regulation cited above at note 25.

3.3.1. Rural Land Dispute Settlement Mechanism of China

China is a socialist country and all land in China belongs to Chinese citizens as a whole.[208] The Chinese Constitution upholds the Chinese land policy that reflects the traditional view of socialism-; land of the country must be owned by the country (State) or its agricultural Collectives.[209] In this country, although private ownership of land is not possible, land use rights become divisible from land ownership and these land use rights are privatized.[210]

In China, the State Land Administration Bureau is the regulatory authority responsible for overall administration of the State's land.[211] The Bureau registers, records all the land and issues a land registration certificate for entitlement of any specific use.[212] Tenure security has also been and continues to be a major challenge in this country, and is a major consideration for land protection efforts.[213] It has, actually, improved over the last several decades as the Central Government has extended the duration of use rights, started requiring written contracts, and developed enforcement mechanisms.[214]

In 1998, the Land Administration Law actually required the granting of 30-year use rights through written contracts.[215] The general legal framework (as provided by 1998 law) governing rural land dispute resolution was: first consultation between the two parties, followed by administrative review by a government unit of higher administrative level than the parties, followed by the right to bring the matter before the People's Court for judicial review.[216] The preference for consultation and administrative review prior to judicial review is consistent with both the Chinese legal system's preference for non judicial resolution of disputes and the lack of judicial resources in rural areas.[217] This law requires that administrative reviews have been exhausted before a complaint can be filed with the people's court. In fact, this approach has become practically ineffective means where the dispute arises

[208] Zhenhuan Yuan, "Land Use Rights in China", Cornell Real Estate Review, Article 6, Vol.3(2004), p. 73.
[209] See Art.10 of the 1982 Chinese Constitution.
[210] Cited above at note 208, p.73.
[211] Ibid.
[212] Ibid.
[213] Part 2: Land Tenure, P. 114. Available at: https://www.nature.org (Accessed on September 10/2017).
[214] Ibid.
[215] Id., P. 75.
[216] Cited above at note 34.
[217] Ibid.

between parties who possess greatly different levels of power or authority and when the parties cannot or refuse to participate in the process.[218]

This deficiency in the mechanism was one of the causes that triggered the enactment of the 2003 Rural Land Contracting law. This law, which further delineated and broadened farmers' rights and the contents for written contracts, has also dealt with dispute resolution procedures.[219] It has brought changes to Chinese land tenure security and explicitly gives farmers a choice between consultation, mediation, arbitration and suing in people's court.[220] Alternative dispute resolution mechanism is found to be necessary as it complements court reform when case backlog and complex procedures impair court effectiveness, when the poor and illiterate cannot afford the courts and when courts are not easily accessible.[221]

In 2008, the "new" rural reform policy reiterated the principles laid out in the 2002 law, though it received much greater publicity.[222] In 2010, the Central Government put into effect the Law on the Mediation and Arbitration of Rural Land Contract Disputes.[223] This law similarly states that if negotiations fail, the next step is to apply to the "rural land contract arbitration commission" or to file a lawsuit in the people's court.[224]

3.3.2. Rural Land Dispute Settlement Mechanism of Kenya

Kenya having an agricultural based economy has majority of her people deriving their livelihood from various forms of agriculture.[225] It being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices.[226] There are three forms of land tenure; these are government land, trust land (currently called community land) and private land.[227] Kenya's policy is correctly seeing the effect of customary tenure

[218] Cited above at note 32, P. 21.
[219] Cited above at note 213, P. 75.
[220] See Art.51 and 52 of the RLCL.
[221] Alternative Dispute Resolution, Practitioners Guide, P. 21. Available at: http://www.usaid.gov (Accessed on August 2/2017). Cited above at note 65, P. 9.
[222] Cited above at note 213, p.114.
[223] Id., P. 118.
[224] Ibid.
[225] Chege Waiganjo and Paul E.N.Ngugi, The Effects of Existing Land Tenure Systems on Land use in Kenya Today, P.1. Available at: https://www.fig.net (Accessed on October 2/2017).
[226] Id., P.3.
[227] Sessional Paper No.3 of 2009 on National Land Policy, Ministry of Lands, Republic of Kenya, p. 13. Available at: http://www1.uneca.org (Accessed on August 28/2017).

individualization through formal registration on the customary tenure systems. [228] In this country, land has been registered and a research conducted in 1971 showed that registration has, in effect, reduced land litigation; this undoubtedly has saved a sum of money which would have been spent on court actions.[229]

Regarding land disputes, it is said that land disputes are long standing issue in Kenya.[230] Kenya's land dispute resolution mechanism is getting more complicated with time because the social nature of the Kenyan society is that property is equated to status, egoism, political and economic power of an individual and/or kinship lineage.[231]

Furthermore, the experience of Kenya is also necessary as the importance of ADR is given great attention and even provided in its constitution. Article 159 of the 2010 Kenyan Constitution enjoins courts and tribunals in the exercise of judicial authority, to promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.[232] Recognition of ADR and Traditional Dispute Resolution Mechanism processes in the Constitution is meant to enhance access to justice as guaranteed in Article 48 thereof.[233] Mere recognition of informal justice system without active State promotion and involvement in advocating for their use cannot contribute to enhanced access to justice to their users.[234] Access to Justice refers to a fair and equitable legal framework that protects human rights and ensures delivery of justice.[235]

Moreover, in this country, ADR mechanisms are in use in all categories of land (public, private and community).[236] They help resolve disputes related to: boundary, succession, multiple sales, un honoured sales,...etc.[237]

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[228] Paul Van Der Mollen, Eugene H. Silayo and Arbind M. Tuladhar, A Comparative Study to Land Policy in 9 Countries in Africa and Asia, P. 38. Available at: https://www.fig.net (Accessed on Sept.20/2017).
[229] R.J.A.Wilson, Land Tenure and Economic Development, (A Study of the Economic Consequences of Land Registration in Kenya's Smallholder Areas, 1971), p. 139.
[230] William Kalande, Kenyan Land Disputes in the context of Social Conflict Theories, (FIG Commission 7 Annual Meeting and Open Symposium on Environment and Land Administration 'Big Works for defence of the Territory, 2008), p. 2.

[231] Id., p. 12.

[232] Cited above at note 35, P.5.
[233] Ibid.
[234] Ibid.
[235] Cited above at note 178, P.7. Access to Justice could also include the use of informal dispute resolution mechanisms such as ADR and traditional dispute resolution mechanisms, to bring justice closer to the people and make it more affordable.
[236] Cited above at note 39, p.2.
[237] Ibid.

3.2.3. Rural Land Dispute Resolution Mechanism in Philippines

In Philippines, lands are classified in to two basic categories: alienable and disposable (A&D), which either is already privately owned or state owned or state owned but eligible for transfer to private lands, and protected areas (forested and mineral lands).[238] These protected areas are publicly owned lands and it is only A&D lands that can be privately owned.[239] Privately owned lands (which include agricultural lands and reclassified lands) may also be based on State grants or laws passed since colonization.[240] These lands are subject to: 1) Purchase which vests ownership; or 2) lease which vests only the right to occupy and use for the period agreed upon. In 2003, 64.8% of lands classified as alienable and disposable were privately owned and customary ownership rights over ancestral lands are recognized.[241]

In this country, much of the public land management responsibilities, including land administration functions were retained by the national government.[242] Information about ownership, boundaries, location, land uses and land values cannot be provided in a systematic way in many local governments.[243] Thus fraud occurs in land titling and conflicts over land ownership can take years to be resolved.[244]

Dispute resolution machinery already existed in the earliest communities in the Philippines even before the advent of the Spanish and American Colonization. This early mechanism had gradually become more and more adversarial like western-style judicial system but without losing the values and traditions that are the hearts of the traditional mechanism.[245]

In 1978, a Katarungang Pambarangay (Barangay Justice System(BJS), community based dispute resolution mechanism, was issued. This law provided for the compulsory use in the barangay, one of the smallest local government units, of mediation[246], conciliation and

[238] Alberto Vargas, The Philippines Country Brief: Property Rights and Land Markets, (Land Tenure Center, University of Wisconsin-Madison, Financed by U.S.Agency for International Development), p.2.
[239] Cited above at note 40, p.41.
[240] Ibid.
[241] Ibid.
[242] Id., p.36-37.
[243] Cited above at note 238, P.9.
[244] Ibid.
[245] Domingo P.Disini, Jr. & et al, Dispute Resolution Mechanisms in the Philippines, (Institute of Developing Economies, IDE Asian Law Series No.18, 2002), p.15.
[246] In Philippines, the terms 'mediation' and 'conciliation' are used interchangeably.

arbitration in certain types of disputes.[247] The goal of this law is (1) to obtain a just, speedy and inexpensive settlement of disputes at barangay level; (2) to preserve Filipino culture and tradition concerning amicably settling disputes; and (3) to help unclog court dockets.[248] The court system is also one of the main forums for resolving disputes. However, due to lack of resources to respond to the increasing number of cases filed, court dockets are clogged, making court processes protracted and expensive.[249]

The BJS is operated by the Barangay and overseen by the Barangay chairman, the highest elected officials of the Barangay.[250] The Lupon, a group of volunteers, who take an oath and tasked to undertake the process of dispute resolution, has jurisdiction over disputes involving real properties. It cannot entertain when the government is a party to the dispute.[251] The resolution process of any disputes within the KP's jurisdiction is begun by an oral or written complaint given to the Barangay Chairman. This mechanism addresses inequalities in access to justice and it allows even illiterates to gain access to the justice system of the local government.[252] The Lupon is appointed by the chairman and nominated by residents.[253]

In the BJS, there are two stages: the first is the negotiating act of the chairman and the second is a conciliation conducted by panel of persons called pangkat.[254] This conciliation panel (Pangkat) has three members and they are selected by parties from members of Lupon. If the parties do not agree, the Barangay Captain directs them. The three members shall elect from among themselves the chairman and secretary of pangktan. The secretary shall keep minutes of the proceedings attested by chairman. The primary role of the system is not to decide disputes and impose a solution on the parties but to assist the parties in discussing the possible amicable settlement of their disputes.[255] Before cases are accepted by the Courts or agencies, a certification from the Lupon Tagapamayapa (Peace Council) that the case has been heard at the BJS is required. [256] When an amicable settlement is reached, it becomes

[247] Cited above at note 245, p.16.
[248] Id., p.18.
[249] Id., p.16.
[250] Cited above at note 40, p.107.
[251] Cited above at note 40, p.18.
[252] Ibid.
[253] Ibid.
[254] Id., p.19.
[255] Cited above at note 39, p.107.
[256] Ibid.

final in ten days and has the force and effect of court judgement.[257] This settlement may, of course, be repudiated up on the proof that the consent is vitiated.[258]

Generally, from the experiences of these three countries, Ethiopia in general and Oromia in particular, can take lessons that the use of ADR mechanism can be a choice or mandatory, that ADR is not used in disputes between organization and private persons, that it is also not employed in case one of disputants refuse to appear, that it can be used in all categories of land, land disputes in relation to succession can be settled through ADR mechanism and that also specifically for Philippine's court to receive file or application, a certification that a case has been heard before BJS has to be presented.

3.4. Rural Land Dispute Settlement Mechanisms under the Land Laws of Three Regions in Ethiopia

3.4.1. The Rural Land Dispute Settlement Mechanism in Amhara Region

In the Amhara Regional State, the latest Proclamation that deals with Rural Land Dispute Settlement Mechanism is "The Revised Amhara National Regional State Rural Land Administration and Use Proclamation, Proclamation No.133/2006". Specifically, it is Article 29 of the Proclamation that deals with the resolution of disputes relating to rural land. In the Region, no civil dispute arising from, or connected with, the holding or use of rural land may be submitted to a regular court before it is submitted to custom–based arbitration and the result of such arbitration is known. Regarding article 29, one can see the inconsistency between the two versions, i'e, the Amharic version of this article provides for reconciliation whereas the English version provides for arbitration. The composition of arbitral tribunals, especially the selection of arbitrators, shall be with the consent and agreement of the disputing parties and in accordance with customary rules and norms of each surrounding.

Article 35(1) of the Regulation No.51/2007, a regulation which is issued for the proper implementation of the aforementioned proclamation, provides that all civil disputes emanating from or relating to land possession and use right shall primarily be resolved amicably between the parties. It also provides that in order to realize amicable resolution of

[257] Cited above at note 40, p.19.
[258] Ibid.

land disputes arising between land-holders and users; the Kebele Land Administration and Use Committee shall establish tribunals of elders elected popularly in every community or surrounding. Sub-article (3) of the same article makes the agreements reached through elders final and binding. It is further provided under article 37 that, in case the customary norms do not contravene with the state laws, it is possible for people of the locality to discuss and decide on rural land disputes on the basis of customary rules. Of course, the proclamation is revised by "The Revised Amhara National Regional State Rural Land Administration and Use Determination Amendment Proclamation, Proc.No.148/2007". This latter proclamation solved the problems related to dispute resolution mechanism and specifically transferred land dispute cases that have been entertained by social courts to regular courts.

Generally, these laws require all civil disputes emanating from or relating to land possession and use right to undergo the ADR mechanism and stipulate that agreement reached between the disputants are final and binding, and allow customary rules to be applied provided that the rules do not contravene the constitution.

3.4.2. The Rural Land Dispute Settlement Mechanism in Tigray Region

In Tigray Region, the current land law that deals with mechanism of rural land dispute resolution is Proclamation No.136/2007. Article 28 (1) of this proclamation states that "when disputes arise in relation to rural land use, first there shall have to be made endeavours to have the parties resolve them amicably. Where endeavours to have the dispute resolved amicably fails, they shall have to be resolved through elders or reconciliation." The next sub article states that in case the disputants do not agree on the elders' proposal, the Kebele Rural Land Administration Committee shall be the first to receive and decide on the complaint, and then by way of appeal the case goes to the woreda courts within 15 days and the Court shall decide the case in 30 days. In case the Woreda Court confirms the decision of the Committee, its decision shall be final. Sub article 3 also provides that dispute settled through conciliation or via elders or a decision rendered by the *committee* shall be executed as a decision handed down by a regular court. A decision rendered by the *committee* shall be executed within 30 days unless a stay of execution is obtained in the appeal proceeding.

The Region has issued, Regulation No. 48/2008, a regulation issued for the proper implementation of Proclamation No.136/2007. Articles 48-52 of the regulation are fully

devoted to the means of resolution of rural land related disputes. However, the grassroots institutions are not practically structured and made operational as intended by regulation until 2012, when the material used as a source is written.[259] Article 52 of the regulation further provides for remuneration that may be made to members of Kebele Land Adjudication Committees. These land laws are very important in that they provide for the limit within which disputes are settled and in that they establish special tribunal that first receives and entertains rural land disputes.

3.4.3. The Rural Land Dispute Settlement Mechanism in the Southern Nations, Nationalities and People's Region

The Southern Nations, Nationalities and Peoples' Regional State has enacted Rural Land Administration and Use Proclamation No. 110/2007 and the proclamation has provision that deals with mechanisms of rural land dispute resolution. It is provided under article 12(1) that "when dispute arises over rural land holding right, the case shall be brought to Kebele Land Administration Committee. The *Committee* shall let the dispute be resolved by negotiation and arbitration through local elders set by the choice of the two parties." In case where one of the parties is dissatisfied with a decision rendered by elders s/he has a right to appeal to woreda court and after that to the higher court. A party who is not satisfied by the decision of high court can bring appeal to the Supreme Court and this court's decision is final. The intention to be achieved by article 12(2) of the proclamation is not clear. This is because the English version seems to resolve the dispute through arbitration while the corresponding Amharic version seems to employ mediation/conciliation method. In this Region, the local elders are not there to reconcile the disputants but they are empowered to give decisions.

3.5. The History of Rural Land Dispute Resolution Mechanism in Ethiopia Prior to 1991 and in Oromia Region since 1991

Generally, in Ethiopia, during the Haile Sillase's regime land disputes were entertained by regular courts.[260] After the downfall of this regime, the Dergue regime came in-to being in 1975 and this regime had automatically enacted "The Public Ownership of Rural Lands Proclamation No. 31/1975". This proclamation has established the peasant associations at different levels. It is also provided under this proclamation that peasant associations shall

[259] Cited above at note 45, p. 26.
[260] Civil Procedure Code of Ethiopia, 1965, Art.13,14 and 15, Proclamation No.52, Neg. Gaz., Year 25, No.3.

establish judicial tribunals to hear land disputes arising within the area.[261] It is the 'the Village (PA) Social Affairs Court' (it used to be called 'Fird shangoo'*)* that dealt with land disputes cases and these disputes had never appeared before these conventional judicial structures.[262] Since this Dergue regime lost power in 1991, this country started following the federal system of government.

The Federal Democratic Republic, which is established by the constitution, consists of different member states and these states are empowered to administer land.[263] This does not mean that the Federal Government has no power in administration as it can involve in it by enacting laws for the utilization of land.[264] The Oromia Regional State, as one of the member states, has been enacting different land laws that deal with rural land dispute settlement mechanism. This region had not enacted specific land law that regulates dispute settlement mechanism in the year between 1991 and 2002. In fact, in 1997, the Federal Government had enacted specific proclamation that had simply put the general framework and allowed the regional governments to issue laws that govern the mechanism of rural land dispute resolution.[265]

Prior to the enactment of the 2002 Oromia Rural Land Use and Administration Proclamation, the prevailing practice was that Kebele as well as woreda administrations were the core institutions for resolving rural land disputes.[266] During this period, rural land dispute settlement mechanism was not effective as the decisions given by these organs were not effectively enforced.[267] Because of this, the Region enacted the 2002 Oromia Rural Land Use and Administration Proclamation[268] which entitles rights holders to take their claims to regular courts at least in the form of an appeal from the first instance jurisdiction of social courts.[269]

[261] The Public Ownership of Rural Lands Proclamation, 1975, Art.10(4), Proclamation No.31.
[262] Cited above at note 20, p.130.
[263] Cited above at note 3, Art.52(2)(d).
[264] Id., Art.51(5).
[265] Federal Rural Land Administration Proclamation, 1997, Art.6(11), Proclamation No.89, Addis Ababa, Year 3, No. 54.
[266] Cited above at note 21, P.117.
[267] Cited above at note 22, p. 28.
[268]Cited above at note 23.
[269]Id., Art.25.

This Proclamation[270] enshrines that first instance jurisdiction to entertain and adjudicate land disputes is entrusted to social courts at Kebele level and an appeal can be taken to a woreda court if the parties are not satisfied with the decisions of the social court; if the district court affirms the decision of the social court, there shall lie no appeal right from the district court's decision except going for a cassation petition to the Cassation Division of the State Supreme Court. It is only when the district court varies or reverses the decision of the social court that an appeal there from lies to a high court; the decision rendered by high court in such instance would be final.

It has also granted a wide discretionary right for potential claimants that they may resolve their land related possession claims through mutual agreement or filing their complaints to the concerned administrative bodies[271]. These Kebele Social courts have also become not effective, as a result of lack of legal knowledge and competence of the judges working in the court; the judges working in the courts have entertained land matters which are not under their jurisdiction such as inheritance of land, they also decided without hearing evidence, they were not able to identify the criminal matters from the civil matters and etc.[272] This has also become a cause for the enactment of the 2007 Rural Land Administration and Use Proclamation, Proclamation No.130/2007, the proclamation which is now subjected to analysis.

3.6. Chapter Summary

To recap the major issues raised under this chapter, the first issue discussed under this chapter is the issue as to the approach employed by the land laws of Oromia. It is concluded that although the provisions laid down for ADR make the ADR procedure more formal, the general approach recognized by the land laws is hybrid approach. It is also mentioned that the land laws of Oromia has not clearly recognized the Oromo's traditional land dispute resolution mechanism. In addition, the experiences of other regions in Ethiopia and other countries were analysed and lessons like the types of rural land disputes that should undergo the ADR mechanism, the forms or certificate of findings that should be attached to application that is brought to court and methods of resolving rural land disputes are drawn.

[270] Id., Art.25
[271] Id., Art.25(4).
[272] Cited above at note 22, p. 28.

Furthermore, it can be summarized that in Amhara Region the tribunals of elders elected popularly, in Tigray Region the Kebele Rural Land Adjudication Committee and in SNNP Region council of elders are empowered to decide on rural land disputes. The history of rural land dispute settlement mechanism in Oromia is also discussed. On top of these, this chapter is considered as a foundation on which the legal and practical problems to be discussed in the next chapter are based.

CHAPTER FOUR

4. The Problems with the Rural Land Laws of Oromia Regional State Regarding Rural Land Dispute Resolution Mechanism and the Practical Problems in Dugda Woreda

This chapter examines the mechanism used in Oromia Region in light of the general approaches and the experiences of foreign countries which are already discussed under Chapter 3. Specifically, under this chapter, the legal problems; the issue as to whether the mechanism which is employed by the land laws of Oromia Region is conciliation or arbitration?, the issue as to what constitutes family members?, which type of rural land disputes should undergo the ADR mechanism?, the question as to whether the objective of the scheme laid down by the land law is clear or not, the issue as to whether there is power overlap in between different organs that administer land?, and the question as to the effect of skipping the mandatory procedure of bringing application before the Kebele Administration are analysed.

Furthermore, under this chapter, the awareness of the Dugda Woreda People on the land laws, the peoples' preference of ADR or court, the level of attention given to administration of rural land, the contribution of first level certificate in lessening rural land disputes, the level of rural land disputes in the Woreda, the leading cause of rural land disputes in the Woreda, the type of rural land disputes that is prevalent in the Woreda and the level of effectiveness of the mechanism put in place are identified through focus group discussion, case analysis, interview and administering questionnaires.

4.1. The Legal Problems Associated with Proclamation No.130/2007 and Regulation No.151/2017

With respect to the legal problems associated with the land laws of Oromia Region, the discussion is better started with identifying the type of alternative dispute resolution (ADR) employed in resolving rural land disputes. In this regard, Berhanu Beyene, in his article, argued that the local elders who are elected by the disputants play neither the role of the conciliators nor arbitrators. He, despite a clear employment of the term 'arbitration' in the law's English version, said it is not arbitration as the elders do not render award. He further

said that while the conciliation is not binding there is a possibility to be bound by the agreements[273], while conciliation does not necessarily results in finding Art. 16(g) of the Proclamation requires it, there is no memorandum of non-conciliation as provided under article 3321(3) of the Ethiopian Civil Code and the findings are not kept confidential. The two terms in the provision, i'e, 'result' and 'arbitration' are vague. I concur with the argument that the elders are not playing the role expected of arbitrators. However, I argue that the role being played by the elders is that of conciliators'. This is, primarily, because in conciliation, the conciliator, not the parties, often develops and proposes the terms of settlement.[274] The parties come to the conciliator seeking guidance and the parties make decisions about proposals made by conciliators.[275] This role is supposed to be played by the elders as it is clearly indicated in article 18(10) of the Regulation. The Regulation is also succinct in stating if a mutually agreed solution is reached between the parties on the terms of settlements proposed by elders, the Kebele Administration is there to register and enforce the agreement within fifteen days.

It is also provided under article 16(1)(f) of the proclamation that a party who does not agree with the proposal of the elders can initiate a proceeding over the dispute in a Woreda court within 30 days of the registration of the proposal in the Kebele Administration. The question one can raise here is what if a party does not bring a suit within 30 days?, The effect is not clear. If the parties accept the proposal, it means they have agreed (do not have a complaint), the proposal becomes agreement and it will be binding. If a party does not accept the proposal, it will remain a mere proposal and cannot be turned to agreement which is binding. As the proposal may be in favour of the applicant or respondent and since the proposal by elders may in no case be binding unless it is accepted by both parties, it is not right to conclude that article 16(1)(f) of the Proclamation may imply binding nature of the proposal.

Finally, the Regulation states that in case the proposal of the elders is not accepted by the parties (which means unable to reconcile), the elders report the fact that the parties have not agreed to the Kebele Administration, which controls the process, in writing and the

[273] Substantiating with Oromia Regional State Rural Land Use and Administration Proclamation, 2007, Art.16(1)(f), Proclamation No.130, Mag.Oro., Year 15, No.12.
[274] Alessandra Sgubini, Mara Prieditis & Andrea Marighetto, Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective, 2004, P. 5.
[275] Ibid.

administration shall send it to Woreda court[276]. This provision is also not requiring the mentioning of the terms of agreement in the elders proposal. It simply requires showing the fact that the parties have not mutually agreed (memorandum of non-conciliation) and no where you can find the terms; this means that the terms in the proposal is kept confidential. So, as to me despite the bad drafting technique of the laws, the type of ADR employed by the laws is conciliation.

The other issue which is worthy of discussion here is the objective of the mechanism that is used by the proclamation. This is neither indicated in the preamble nor under article 16 of the Proclamation. It is required to be clearly expressed as unless it is made clear, you cannot understand toward which goal you are working and this, by itself, will have a bearing on the implementation of the scheme. This being the defect of the law, it can be analyzed from literature and list the probable objectives of the scheme. To mention some of the probable objectives; the scheme is employed to decongest cases in court, to speed up the resolution of disputes, to promote traditional methods, to save costs and time.

In addition, the Proclamation and Regulation are not clear on the types of rural land disputes that should start by application that is brought to Kebele Administration and should undergo the ADR mechanism. According to article 16 of the Proclamation, it is 'any conflict or disputes arising on land' that should undergo the scheme that is laid down. The Regulation has also under article 18(1) provided that it is a dispute over boundary or use right regarding farming land, rural house, grazing land, irrigation land, well or ground water land and...etc, that undergo ADR procedure. From this provision, it can contrarily be inferred that a dispute regarding inheritance of rural land, a dispute that is leading in the Region, need not undergo the ADR procedure. However, the experience of Tigray Region and Kenya show us that every dispute in relation to rural land, including inheritance of rural land, is required to go through ADR mechanism. Generally, as the inheritance of property is in its very nature required to be liquidated and as the process of liquidation is not something that is carried out in court, it is very important to undertake the liquidation and partition of rural land using the ADR process before the Kebele administration.

[276] Cited above at note 27, Art.18(11).

There are other legal problems associated with the Regulation. The Regulation provides that in case governmental and private organizations are involved in rural land disputes as respondent, summon should be sent to them twice and if the respondent does not appear within fifteen days of the receipt of first summon, Kebele administration shall direct the applicant to bring his case before court[277]. This provision seems to discriminate against natural persons in relation to the number of times summon is required to be sent. This shows partiality of the procedure.

The same article indicates that ADR procedure is applicable even when the Government organization or the Kebele Administrator is a party to the dispute. However, in analysing this in light of the general jurisprudence regarding the use of ADR and experience of Philippines, it is not advisable to employ ADR procedure in disputes where a government is party. In addition, the Regulation provides when the respondent refuses to appear or unable to appear, the Kebele administration shall itself elect the elders on behalf of the absentee respondent and the case shall proceed in his/her absence.[278] This provision is also defective as it, on the one hand, empowers Kebele Administrator to elect elders, which seems to be against the Proclamation and, on the other hand, it requires the default procedure or ex-parte to be applied on the procedure of ADR. Literature in this regard also prohibits the use of ADR when one party does not or cannot appear.

On top of these, the regulation under its article 18(10) states that once the elders selected gather information as to the rural land dispute, they deliberate on the issue and if they all agree and have the same position, they should disclose this agreed idea to the parties and encourage or push them to agree on it. If the agreement is reached the Kebele Administration should execute the agreement within 15 days. In this regard, one informant said that this provision cannot be translated into practice as Kebele Administrations do not have necessary police powers that enable them to execute the agreement.[279] Enforcement of the agreement largely depends on the willingness of parties to abide by the agreement arrived at, at the end of the process.

It is also provided under article 28 of the Regulation that the Kebele Rural Land Administration and Use Committee, which has five members, elected by the residents of each

[277] Id., Art.18(12).
[278] Id., Art.18(2) and (3).
[279] Interview with Henok Mamuye, the President of Dugda Woreda Court, held on July 12, 2018.

Kebele and works for a term of four years is established. The Committee has office, supported and supervised by Kebele Administration. It is accountable to Kebele Administration. The regulation has reduced the role of this committee in dispute settlement to just creating awareness.

The Regulation also provides for liability of the Kebele Administration in case it has failed to carry out the responsibilities entrusted to it within a limited time.[280] This provision is also not clear, as it has not succinctly laid down the remedy available (whether action for damages or mandatory injunction) for the party aggrieved. It is also not clear on the organ (the court or higher administrative organ) which has the power to hold it answerable.

The other issue which is worth mentioning in relation to the land laws of Oromia is the issue of power overlapping. Obviously, the potential for multiple organs to be involved makes it challenging to know who has ultimate responsibility to resolve or enforce rural land disputes. This problem is visible in the land laws of Oromia. For example, it is provided under the Regulation that both Kebele[281] and Woreda[282] administrations have the power to supervise and follow every disputes arising from land use right and boundary to be resolved according to the land administration and use law timely. The Woreda Administration is further empowered to take measures when rural land disputes arise. Similarly, the Oromia Bureau of Land and Environmental Protection has power to, in collaboration with concerned organs, resolve or cause to be resolved any conflicts or disputes arising on land[283]. On the other hand, it is enshrined under the Proclamation[284] that every rural land dispute is started by the application made before the Kebele Administration and if the issue is not resolved there, it is to be taken to the Woreda Court for resolution.

Similarly, here, the issue related to article 16 (1) (g) of the Proclamation should be discussed. It is embodied in the Proclamation that Woreda Court should not receive the suit if the result given by the arbitration (sic) is not attached to it.[285] This provision is a mandatory provision that compels the court. However, here, the question that can be raised is what would be the effect when this procedure is skipped and the case reached an appellate court? Currently, the practice in the Region shows that, simply for the reason that this mandatory procedure is not

[280] Cited above at note 27, Art.18(14).
[281] Id., Art.28(6).
[282] Id., Art.27(6).
[283] Cited above at note 77, Art.5(8).
[284] Cited above at note 59, Art .16.
[285] Id., Art.16(1)(g).

complied with, appellate courts quash the judgement and order for retrial. Even, the Oromia Supreme Court Cassation Division is repeatedly quashing the judgements of the lower courts justifying that not complying with this procedure is committing fundamental error of law.[286] Note, here, economically analysing, this second trial has the effect of doubling the expenses which should be incurred for trial. And this hinders the achievement of the general objectives of civil procedure; which is, ensuring that disputes are handled by an impartial legal tribunal in a fair and orderly manner and as expeditiously and economically as possible.

In addition, the issue must be analysed in light of the doctrine of 'harmless error analyses'. Harmless error rules are, essentially, proxies for the level of assurance that an appellate court must have before it is permitted to set aside the judgement below. It is best viewed as a quest to determine whether the trial resulted in a judgement that is manifestly just; if the judgement is deemed just, the error is deemed harmless, and the judgement will stand. [287] In this regard, the rules of procedure[288] in USA states that,

> "no error in either the admission or exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgement or order, unless refusal to take such action appears to the court in consistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

In Ethiopia, the Civil Procedure Code provision that is related and applicable to the issue is the basic principle that is incorporated under Article 207.

Furthermore, one can analyse the issue from the perspective of the objective that is intended to be achieved by the provision. The objective of incorporating article 16 in the Proclamation (the idea of compelling the disputants to start from the Kebele administration) is basically, as explained in the earlier chapter, to enable the disputants to resolve their cases amicably at the village level and thereby enable them to get decision within short period of time and with reduced costs. The success of this mechanism is still based on the willingness of both parties

[286] Interview with Berhanu Beyene, a judge currently working in the Oromia Supreme Court Cassation Bench, held on July 9, 2018.
[287] Robert M.Filiatrault and Elizabet PriceFoley, The Riddle of Harmless Error in Michigan, 2000, Digital Commons Michigan State University College of Law, The Wayne Law Review, Vol.46(2000), p. 425.
[288] The Federal Rules of Procedure of USA, Art.61.

and if one of them refuses to undergo the ADR procedure, it means it becomes unsuccessful and it makes the order of appellate courts meaningless. So, generally, once this step is skipped, it would be unwise and uneconomical to quash and send for retrial (if it, of course, equals retrial).

4.2. The Types and Causes of Rural Land Disputes in Dugda Woreda of Eastern Shoa Zone

Under this sub-section the types and causes of rural land dispute are discussed, the type which is most prevalent and the leading cause will also be identified.

4.2.1. The Types of Rural Land Disputes in Dugda Woreda

Land disputes come in many forms, but can broadly be organised by factors such as: (i) the type of land involved, e.g., privately or publicly owned, common property of a community or natural resources; (ii) the parties involved and their interests, e.g., individuals, families, communities, private sector and official actors and (iii) the nature of the dispute.[289] Boundary or trespass dispute, family dispute, dispute over cultivation/crops, disputes between investors and peasants, violent land use right acquisition, destruction of property over land, lease, and inheritance.[290] Teferi discussed the major types of rural land disputes in Oromia and specifically mentioned land inheritance dispute as the one which most prevails in the Region.[291]

Narrowing down to Dugda Woreda Court, the data amassed shows that inheritance disputes, boundary disputes, land use right disputes, land use related contractual disputes and disputes in relation to right of way are the common ones.

To identify the magnitude of each type of land disputes (in percentage), 58 files which are related with land disputes and entertained by Woreda Court, in the last three years, are randomly selected. These 58 court cases are analysed and demonstrated shortly in the

[289] UN Habitat, Land and Conflict:, (A Handbook for Humanitarians, Global Land Tool Network, 2009), P. 9.
[290] Cited above at note 142. See also UN Habitat, Land and Conflict, A handbook for Humanitarians, September 2009, p.9.
[291] See also Teferi Bekele, The Practical Problems in Resolving Oromia Rural Land Disputes: The Law and the Practice, (Research conducted in Oromia Justice Sector Training and Research Institute in Afan Oromo Language, Unpublished, 2010), p. 52-68.

following table. Of course, the types of disputes are categorized simply based on the title of the action and the content of statement of claim.

Table I

No	Type of disputes	No.of files	No.in percentage
1	Inheritance	5	8.6%
2	Un lawful possession	24	41.4%
3	boundary	11	18.9%
4	Illegal contract (lease, donation and sale)	16	27.6%
5	Right of Way	2	3.4%
	Sum	58	100%

From this table one can easily draw a conclusion that, in the Woreda, unlawful possession of rural land (any claim pertaining to interference with the right to possession and dispossession) related to is type of rural land disputes that is most rife. Dispute in relation to illegal contract is the second type of disputes that stands second in rank. These ranks do not align with the ranks of the causes of disputes. While the leading cause is illegal transfer of land, why is the type of disputes that is most prevalent does not align with it? is the question that must logically be answered. This is caused because for one thing, as I said above in categorizing the types only the statement of claim is focussed on and when one further goes on investigating the statement of defence, the whole issue is changed mostly into cases of contract. Three of my interviewees[292] have also said that as some plaintiffs (after willing fully transferring their land (through illegal means)) are claiming the restoration of land stating in their statement of claim the defendant unlawfully possessed my land i'e, hiding the cause, it is hard to conclude that the number of cases related to possession are greater in magnitude than contract related cases. They further said that, in this Woreda, obviously contract related cases stand first in rank. So, form this one can infer that despite the number indicated in the table it is analysed that still types of disputes which are related with contracts are prevalent in the Woreda.

[292] Interview with Ato Bisrat Tesfaye and Henok Mamuye, The Judge of Eastern Shoa Zone High Court and the President of Dugda Woreda Court, held respectively on July 16 and July 5, 2018. Similarly, an interview with Abdulmannan Adam, a Dugda Woreda Court judge, held on July 5, 2018.

4.2.2. The Causes of Rural Land Disputes in Dugda Woreda Court

In order to minimize the magnitude of the rural land disputes it is obviously necessary to find out the causes or sources of the disputes. Regarding the causes of disputes, a research undertaken by Haftom has revealed that absence of effective, efficient and strong rural land administration unit along with the clashes of private interests are the main causes of rural land disputes.[293] Of course, literature tells us that the functional deficits of institutions are not the core reason for land conflicts; they merely facilitate them.[294] Similarly, other source shows that changes in population, increasing land prices, changes in education level and the work of *dalals* (brokers) are the basic causes of disputes.[295] It is further identified that legislative loopholes, contradictory legislation, poverty and poverty-related marginalisation (exclusion), missing or inaccurate surveying are also the causes of land disputes.[296] On top of these, uncertainties over the nature of land interests and over the position of ill-defined boundaries are fruitful sources of disputes in many developing countries.[297]

Coming to the general causes in Oromia Regional State, in this region, the unclarity of the law in relation to inheritance of land is said to exacerbate the inheritance disputes. The unclarity is related to the subjects who have the right to inherit rural land. In this regard, the Federal Proclamation states that any holder shall have the right to transfer his rural land use right through inheritance to members of his family.[298] It further defined "Family member" as any person who permanently lives with holder of holding right sharing the livelihood of the latter.[299]

Similarly, the Oromia Proclamation provided for this right of rural land holder. But as to the definition of a 'family member', it differs as it says 'family member' is children of the landholder or dependents who do not have other income for their livelihood.[300] Here, the question one can raise is for how long you have to stay with the holder to inherit?, What if you have income and live with the holder?, Are the children going to miss it? Any ways, the

[293] Cited above at note 30, p. 35.
[294] Cited above at note 142, P.9.
[295] Danielle Stein, Land Disputes and Settlement Mechanisms in Nepal's Terai, The Justice and Security Research Programme, The Asia Foundation, 2014, p. 9.
[296] Cited above at note 142, P.9.
[297] Tim Hanstad, "Designing Land Registration Systems for developing Countries," American University International Law Rev., Vol.13(1998), P. 654-655.
[298] Cited above at note 18, Art.8(5).
[299] Id., Art.2(5).
[300] Cited above at note 59, Art.2(16).

proclamation of Oromia seems to categorize the children and other dependants who are required to have no income in order to inherit. Seen in light of the Federal Proclamation, it seems it restricted conditions that must be fulfilled in order to inherit and the provision is also not clear. This problem in law is identified as a cause of disputes.[301]

This being the general causes now let me turn to the causes as identified in Dugda Woreda. In this Woreda, as the Woreda court and Kebele Administrations do not have a data base that separately registers rural land dispute, it is not easy to identify the exact level of the disputes. As a result, to dig out the status of rural land disputes (whether increasing or decreasing) and its causes, questionnaires are administered to 34 respondents (lawyers, prosecutors, judges, Kebele Administrators, disputants, experts in Rural Land Administration and Environmental Protection Offices (RLAEPO), expert in Woreda Women and Youth Affairs) and out of these respondents, 26 (76.5%) responded that the rural land dispute in this Woreda is increasing year after year. They reasoned saying that the increase in the value of the land, the peoples' demand (claiming to inherit and claiming to acquire from government), juridical acts not entered into according to the land laws are all the causes for the increase in land disputes.

It is further identified by interview that the whole government organs especially at the Woreda level (Woreda Administration, Kebele Administration, Woreda Land and Environmental Protection Office, Woreda Justice Office and Woreda Court) are busy entertaining complaints in relation to land.[302] On top of this, an interview with the president of the Dugda Woreda Court exposed that 'the regional government seems accepted, at least theoretically, the Maxim in Afan Oromo that goes saying 'Lafti Keenya Lafee keenya'meaning; 'Our Land is Our Bone'. However, seen from the perspective of the real and practical administration of rural land, as the administrators are not living up to their slogans, as the proper functionality of the mechanism is not checked, as special attention is not given on governance, and above all, as the Kebele Administrators in their role in relation to rural land disputes are neither made accountable to Woreda Land and Environmental Protection nor to Woreda Administration and there is no follow up, as it is also not made

[301] Cited above at note 22, p. 61.
[302] Interview With Kifle Feyisa, Expert at Zonal Rural Land and Environmental Protection Office, held on July 17, 2010 and Interview with Abera Badada, ex-Judge of the Dugda Woreda Court, held on September 13, 2017.

court annexed, it seems this weakness in administration itself contributes to the increase in magnitude of the disputes.[303]

On the other hand, those respondents who said the Woreda's rural land disputes are decreasing, 8 persons (23.5%) have justified saying the decrease attributed to the first land possession certificates that is issued to the farmers. However, as to these certificates (the effect of these certificates are clearly shown below) as some of my interviewees have said that 'the first degree land certificates are not qualified, above all land is measured traditionally (either being at office or using ropes), experts involved in measurement of land were simply guessing the size of the land (inaccurate surveying), the farmers themselves were also not free in showing their whole land because they feared that it results in increase in tax payments', the certificates contribute nothing in lessening dispute.[304] Hence, it can be concluded that, in this Woreda the land disputes are increasing year after year.

As to the causes (factors that contribute) of the Woreda's rural land disputes, the respondents have said that the causes are too many and interrelated. Among the causes mentioned; unethical behaviour of (corruption by) the judges, lack of clarity of the land laws, lease and donation not contracted as per the land laws, natural population growth which resulted in increase in demand for land, and consequently land prices, the unqualified land possession certificates, sale of rural land under disguise of leasing or donating, boundary disputes, increase in the value of land, flaws in the land administration system are some. Interview conducted has similarly revealed that some of the above problems are the real factors.[305] As to the major (leading) cause, out of the 30 respondents who are willing to fill in the questionnaires, 18 of them (60%) have said that in the Woreda, illegal transfer of land (unlawful contract of lease and sale) stands first in rank.

The lack of concrete evidence i'e, absence of well documented land titles (certificates) on the rural land is revealed as the second cause. The third is not identified as no two, three or four

[303] Interview with Henok Mamuye, the President of Dugda Woreda Court, held on July 12, 2018 and interview with Kifle Feyisa, Expert at Dugda Woreda Rural Land and Environmental Protection Office, held on July 17,2018.
[304] Interview Note No.279.
[305] Interview with Abdulmannan Adam, A judge in Dugda Woreda Court, held on July 12, 2018. In addition, interview with Kifle Feyisa, Expert at Dugda Woreda Rural Land and Environmental Protection Office, held on July 17,2018.

respondents have selected a similar factor. Furthermore, in this regard, interview[306] and focus group discussions were conducted with disputants, judges of the Woreda Court and experts of Oromia RLAEPO and they all, in the same vein, concluded that, in the Woreda, illegal transfer of land stands first.

The Experts[307] added that the first degree land possession certificates, which do not even create presumption of possession (holding), are also becoming a cause of dispute. They further explained that the certificates are devoid of quality and sometimes two certificates are given on a single plot.[308] The size and boundaries are also not clearly indicated on certificates, boundary on the certificates also do not fit with physical boundary markers. There are also farmers who have fraudulently received first degree land possession certificates on community land holding.[309] In spite of these weaknesses, in the Woreda, from the year 1996 to 2002, first level certificates are given on 93.26% of the total size of rural land.[310] An interview similarly revealed that there is land which is totally not measured.[311]

On the other hand, the second degree rural land possession certificate, which is declared conclusive evidence under article 15(5) of the Regulation, is currently being issued. These certificates are issued on 29.45% of the total size of Woreda's land. They are said to reduce rural land disputes.[312]But still in an interview with one of the disputant (Woman), this second level certificate is still questioned. She said that 'in Our Woreda some persons hold the land through either lease or mortgage and then acquire second degree certificate, the elders and Kebele Administrators favour those who have possessed the land and economically more strong, as I don't have husband and the whole family administration lied on me I couldn't obtain second degree certificate'[313]. The disputants also elect their relatives as elders and this

[306] Ibid.
[307] Focus group discussion with four experts of Oromia Rural Land and Environmental Protection Bureau (Dawit Abdisa, Gammachu Manzura, Getachewu Hordofa and Malkamu Fufa), held on July 13, 2018.
[308]Ibid. and Interview with Bado Yami, Disputant at Dugda Woreda Court, from Oda Bokota Village, held on July 9, 2018. An interview with Malkamu Magra, Disputant at Dugda Woreda Court, held on July 9, 2018, also showed same. In addition, an interview with Abdulmannan Adam, Judge of Dugda Woreda Court, held on July 12, 2018.
[309] Interview with Kifle Feyisa, Expert at Zonal Rural Land and Environmental Protection Office, held on July 17, 2018.
[310] The Yearly Report of Dugda Woreda Rural Land and Environmental Protection Office, 2010.
[311] Interview Note No.279.
[312] Cited above at note 310.
[313] Interview with Bashadu Dade, A disputant at Dugda Woreda Court, held on July 9, 2018. In addition, an interview with Henok Mamuye, the President of Dugda Woreda Court, held respectively on July 16, 2018. Likewise, an interview with Ato Bisrat Tesfaye, The Judge of Eastern Shoa Zone High Court, held on July 16,

is also becoming a cause for bias.[314] There are also cases where a person who has possessed the land in lease transfers to another person sub-leasing it in Dugda Woreda.[315]

The other point that needs to be discussed here is the issue pertaining to rural land dispute after divorce. This is the case where a girl is married to a boy who has acquired a land holding right before marriage and used the land with the girl in the course of marriage and then finally divorced. The issue is, then, should the wife share the land use rights equally with the men for the mere fact that she has used for a long period of time or not. Neither rural land law nor family law of the Oromia Region has a clear answer for the issue in question.[316] The decisions of the district courts in the zone are not consistent.[317] So, as a peasant woman has the constitutional right to access the rural land and in this special case as she has been using the land together with her husband, one can reasonably conclude that, the husband and the government has consented to and have recognized her use right. But here the question which deserves answer is; for how long should she use to share the land use rights equally?, it is unresolved.

4.3. Analysis of the Effectiveness and the General Problems Associated with Rural Land Dispute Resolution Mechanisms as identified in the Dugda Woreda Court of the Eastern Shoa Zone

Although it is not easy to comprehensively measure the effectiveness of a judicial system there are experts who try to set parameters to determine it.[318] Accordingly, the most basic elements of an effective judicial system are (a) predictable judicial discretion applied to rulings; (b) feasibility of access to the courts on the part of the general population regardless of income level; (c) disposition within a reasonable time; and (d) adequate remedies.[319] It is also stated that increases in delays, backlogs and uncertainty associated with expected judicial outcomes have the impact of hampering access to justice and diminishing the quality

2018. Focus group discussion with four experts at Oromia Rural Land and Environmental Protection office, held on July 13, 2018.

[314] Ibid.

[315] Interview with Dawit Abdisa, Director to Follow and Supervise Matters of Rural Land Disputes, held on July 13, 2018.

[316] Interview with Ato Kamilo Yusuf, The Judge of Eastern Shoa Zone High Court, held on September 5, 2018.

[317] Ibid.

[318] Cited above at note 198, p.95.

[319] Ibid.

of court services.[320] Literature further shows us that the procedure of hearing or examining cases and the use of ADR have impacted efficiency of a court. These parameters are employed to measure judicial system in general. These can possibly be narrowed down and applied to a single Woreda Court (the procedure before Kebele Administrations and Dugda Woreda Court).

In this Woreda, despite these formal mechanisms there is a council of Abba Gadaas called 'Saglan Gadaa' that settles disputes (including rural land disputes) which cannot be corroborated with evidence.[321] They are also playing their role of settling rural land disputes. Disputes are brought to this council of Abba Gadaas if the parties are consented to, and the Council is reconciling based on customary system which requires each party to produce their families to take an oath.[322]

Similarly, it is important to economically analyse the mechanism of enforcing property rights i'e, enforcing rural land disputes. In economically analysing the new mechanism of rural land dispute settlement (mechanism that mandatorily requires application to be presented to Kebele Administration and in doing this goes beyond the rules of Civil Procedure), one can take the rule of thumb that the Ethiopian Civil Procedure is reasonable in fixing reasonable length of trial. This procedure obviously aims to ensure that disputes (including land) are handled by an impartial legal tribunal in a fair and orderly manner and as expeditiously and economically as possible. This shows us the procedure has the objective of reducing the costs of government as well as parties. Rules that go beyond this and increase costs are not effective. Hence, if the rules (be it proclamation or regulation) that we follow in resolving rural land disputes do not have other objectives than just adding costs to the party (increase average costs of litigation), then the mechanism should be economically analysed. Accordingly, questions like, how far is the ADR's objective of reducing case load achieved?, How lengthy is the procedure of examination of rural land disputes?, Are there cases resolved through ADR and before the Kebele Administrators?, are to be analysed below.

[320] Ibid.
[321] Interview with Badaso Jima, The Chairperson of Dugda Woreda 'Saglan Gadaa', held on July 20, 2018 and with Bulaa Hayee, A Member of the Saglan Gadaa, held on July 20, 2018.
[322] Ibid.

4.3.1. Analysing the Extent of Achievement of the ADR's Objective of Reducing Court's Case Load

Although the objective of mandatorily requiring rural land disputes from the Kebele Administration is not clear from the Proclamation No.130/2007, there are sources that tell us that, among others, it has the objective of decongesting cases in the court and thereby save resources. [323] The procedure of ADR has also the objective of bringing the parties to peace, saving costs and time.[324]

To identify the extent of land disputes that are resolved before the Kebele Administrations (i'e, before reaching the court) interview is conducted with four Kebele Administrators and told me that they all do not have registered data of cases resolved; despite this, they all said that there are a lot of cases that are resolved employing ADR.[325] Sometimes after resolution through ADR by elders, cases come afresh because of the fact that there is no evidence of resolution or lack of clarity of the subject matter of resolution.[326] The Kebele Administrators also said that compulsory conciliation is not very effective as the disputes are not stopping at that level. They[327] further said that 'the elders chosen by the parties to disputes are reluctant in complying with the time requirement laid by regulation for the report, the elders say the Kebele Administrators cannot compel us, they are not willing to write the proposed solution, even when they write the reports (proposed solutions) are not qualified[328], when the dispute is related with community holding they favour the private person, if the elders are among who have transferred their land illegally they favour the side their personal view is inclined to and they have lack of adequate knowledge of law.[329]

[323] Kabbabawu Berhanu and Ifa Kenea, Acquisition of Rural Land, Holding Rights, Period of Limitation and Mechanisms of Resolving Rural Land Disputes, Module Prepared for on service Trainees, Oromia Justice Sector Professionals Training and Research Institute, 2016, P. 75.
[324] Interview with Abera Badada, ex-Judge of the Dugda Woreda Court, held on September 13, 2017.
[325] Interview with Gutama Shanko, Badaso Feyiso, Koricho Bariso and Adane Danbal, Administrators of Birbirsa Galle, Sera Wakelle, Walda Kalina and Waddesafi Orgocho Kebeles respectively, held on July 20, 2018.
[326] Interview Note No.279.
[327] Interview Note No.325.
[328] Ibid. Similarly, interview with Abera Badada, ex-Judge of the Dugda Woreda Court, held on September 13, 2017.
[329] Interview Note No.325. Similarly, interview with Bado Yami, Disputant at Dugda Woreda Court, from Oda Bokota Village, held on July 9, 2018.

On the other hand, an interview with a judge demonstrates that even the Kebele Administrators themselves do not have a legal knowledge.[330] They (and Dugda Woreda RLAEPO) also support those who illegally evicted the farmers and try to acquire certificates.[331] They (also the elders) do not have incentives (salary) and as a result do not vigilantly follow the rural land disputes that are presented before them.[332] In fact, it is also ascertained that Dugda Woreda RLAEPO has also no expert in law to either advice the office itself or create awareness.[333] These all show us that there are factors that affect the effectiveness of mandatory conciliation.

Furthermore, to show the mandatory conciliation's proper effectiveness, it is necessary to analyse practical cases. The first case analysed is the case between Kushu Birbirsa and Fittala Dagaga brought to Dugda Woreda Court.[334] In this case, Kushu Birbirsa was a plaintiff and Fittala Dagaga was a defendant. The plaintiff in her statement of claim indicated the boundaries and size of the plot of land and claimed that as the defendant has unlawfully interfered with my possession of the plot of land and unlawfully obtained a certificate of possession on the land which I am claiming, I request the court to order cessation of interference and restore my possession. But before the case is brought to the Woreda Court seven elders in Tuchi Dembel Kebele has given a decision saying that the land belongs to the plaintiff. When the case reaches the Woreda Court, the Court simply considered the decision of the elders merely as evidence.

The case reaches Eastern Shoa Zone High Court in appeal[335] and the high court said that as the Kebele elders have decided on the matter going beyond their power, the decision is inadmissible. Although as discussed above the Proclamation says a party elects two elders each, in this case more than two are selected by both. In addition while the Proclamation states the elders should endeavour to reconcile and propose a solution, the elders in this case have rendered a decision. The Woreda and High Courts are also different in valuing the

[330] Interview Note No. 324 and Interview with Mohammad Kasim, Dugda Woreda Court Judge, held on July 12, 2018. Similarly, interview with Adane Danbal, The Administrator of Wadesa and Orgocho Kebele, held on July 20, 2018.
[331] Interview Note No.279 and Interview with Mohammad Kasim, Dugda Woreda Court Judge, held on July 12, 2018.
[332] Ibid. In addition, an interview with Kifle Feyisa, Expert at Zonal Rural Land and Environmental Protection Office, held on July 17, 2018.
[333] Interview with Lenjiso Dadi, Leader of Dugda Woreda Rural Land and Environmental Protection Office, held on July 09, 2018.
[334] Kushu Birbirsa (Plaintiff) V. Fitala Dagaga (Defendant), File No.19516, unpublished, Dugda Woreda Court, decided on April 16, 2017.
[335] Fitala Dagaga (Appellant) V.Kushu Birbirsa (Respondent), File No.48162, unpublished, Eastern Shoa Zone High Court, decided on June 8, 2017.

elders' proposal of settlement. These all indicate that the elders are not playing their role properly.

In a similar vein, out of the 58 files of the Woreda Court examined 12 (20.6%) files revealed that the elders who are empowered to propose a solution are going beyond their power and giving a decision. These files also show that when the respondent fails or refuses to appear, the procedure that is being followed is, either simply reporting this fact or report it after hearing evidence of one side. These all imply that the reports of the elders are not similar and thus not predictable, they are not effectively carrying out their duties and that they do not have adequate knowledge of the law. It is similarly revealed by interview that elders usually decide on the matter.[336] Despite this, there is an informant who said that, as part of promoting cultures through expanding the roles of elders, it is necessary to give the decision making power to them.[337]

4.3.2. The Dugda Woreda Court's Examination of Rural Land Dispute cases

As it is discussed above, although the Proclamation has obliged rural land disputes to start by application that is submitted to Kebele Administrations with a view to reconciling the parties at Kebele (village) level, the resolution of disputes do not usually end up there and Dugda Woreda Court is receiving after making sure that the procedure before Kebele is exhausted. Once it reached the court it obviously employs rules of civil procedure in finally coming to decision. It decides on the issues hearing witnesses of all disputants. However, it is rare the Woreda Court decides rural land disputes depending itself only on evidences presented by the parties to the disputes. In this regard 58 files of the Woreda Court is randomly selected and analysed. Out of 58 files, the Woreda Court ordered additional evidence (some from Kebele Administrations, others from Dugda Woreda RLAEPO and sometimes ordered to jointly investigate) on 31 (53.4%) files. These institutions, however, do not have formal documentation system. There is no effective land register which can show who is entitled to what plots of land, the land with clear boundary and indentified size. They gather information from different elders and persons who are supposed to know the plots. This means that while these procedures should have carefully and seriously carried out before reaching the court, the court is deeply searching for truth by ordering additional evidence in the majority of cases.

[336] Interview Note No.324.
[337] Interview with Mulugeta Fekadu, The President of Eastern Shoa Zone High Court, held on August 1, 2018.

An interview is further conducted in relation to this and exposed that as there is often no concrete evidence documented by government institutions the whole burden of digging out the truth is shouldered on the court and that the role Kebele Administrators must have played before the case reaches the court is being played by the court in the name of additional evidence.[338] In addition, an interview with Oromia Supreme Court Cassation Bench judge disclosed that usually the Oromia Supreme Court Cassation Bench remands a case to the Woreda Court when rural land dispute is decided without information (evidence) gathered by the committee at the Kebele level.[339] This procedure will also obviously have a bearing on the court's effectiveness.

4.3.3. Predictability and Accessibility of the Dugda Woreda Court

Obviously, in spite of the existence of the aforementioned measurements, in the courts of Oromia Region, there are reform tools like BPR (Business Processing Reengineering) and BSC (Balanced Score Card) which are currently being underway. Based on the BPR, the time within which a case should be completed is set and the BSC measures all the businesses including predictability, accessibility, clearance rate[340], congestion rate[341] and the time within which a case must be completed. In this regard, it is pretty important, at least, to evaluate the Woreda Court's performance in the last three years. The results are worked out based on formula laid down and public survey conducted by the court. It is indicated in the table below.

Table II

Number	Subject matter measured	2008 EC	2009EC	2010 EC
1	Predictability of the Court	92.47%	84%	91.95%
2	Time within which a case is completed	98.96%	93.58%	96%

[338]Interview Note No.303.
[339] Interview Note No.286.
[340] Clearance rate is the ratio of total cases disposed to total cases filed within a certain period. A clearance rate above 100% implies a reduction of backlog cases.

[341] Congestion rate is the ratio of total cases older than one year to total cases disposed.

3	Clearance Rate	97.9	91.6	104.49
4	Congestion Rate	1.075	1.41	1.06

This table shows us that predictability of decision of the Woreda Court and case completion within timeframe were very high in 2008 EC, come down in 2009 EC and come up a certain level in 2010 EC. Compared with the performance of 2008, it is currently still low. In addition, the clearance and congestion rate of the court seem to be improved in 2010. This implies that there is reduction of backlog. Seen in relation to the results in 2008, the backlog was increased in 2009. So, this shows the current level of performance of the court.

Similarly, pertaining to the work's load of the court, questionnaires were administered and out of 31 respondents, 18 (58.06%) said that the workload of the court is medium. Small number of respondents (19.4%) said that the Woreda Court gives repeated adjournments.

Regarding accessibility the Woreda Court was endeavouring to organize four circuit Benches in different parties of the Woreda.[342] However, due to budgetary and human resource limitation it was not implemented.[343]

4.3.4. The Perception of the People at the Grass Root on the Mechanism

To establish the perception of the Dugda Woreda People on the mechanism laid down by law to help resolving rural land disputes questionnaires were administered. They were administered to identify the perception questioning that to what extent 'are you happy with the laws' that compel the disputants to start with the application made to the Kebele Administration and given choices (saying high, medium or low). Accordingly, out of 33 respondents 19 (57.6%) said medium, 12 (36.4%) said high, 2(6%) said low. This shows that more than half of the respondents are happy with the land law's order to start rural land disputes by application at village level. They corroborated their choices stating the mechanism is aimed at minimizing costs, the village is near to truth if they dig out, it prevents disputes from growing fierce and it results in win-win feelings. An interview with a disputant also showed that beginning with the application to Kebele Administration is good.[344] So, generally the majority of those responded to the questionnaires are happy with the procedure

[342] The Yearly Report of Dugda Woreda Court, 2010.
[343] Ibid.
[344] Interview Note No.325.

despite its weaknesses as analysed under effectiveness of the mechanism. Few numbers of respondents are not happy with the procedure and they reasoned mentioning the problems of elders discussed above. Interview is also conducted with one of the disputants and in explaining his preference he said;

> 'in our Woreda, land was previously sold in large scale, farmers usually sell it when they lose money to cover medical expenses and basic necessities, the farmers then come to recognize that laws prohibit such acts and claim back, they then take their dispute before Kebele Administrations and the elders try to reconcile saying 'as you have already transferred it in consideration you better not claim it back, and stop it here, however; the court entertains this based on the law and orders for restoration of the land which is unlawfully transferred, hence, I prefer the court.'[345]

This interviewee is indirectly telling us that the elders (Conciliators) either knowingly ignore enforcing laws (including constitutional principles that prohibits sale of land) or do not know them, and this needs to be rectified by reworking on the composition of elders (conciliators). Furthermore, an interview revealed that there are Rural Land Administration and Use Committees at Kebele Level and the People want their case to be heard by them at Kebele Level with a condition that the members of the committee are free from any relative or other influences.[346] There are vulnerable groups like women.[347] These women and other illiterate farmers who cannot afford to apply in writing must also have a chance to apply orally.[348]

4.4. Chapter Summary

Under this chapter, the issue as to whether the mechanism which is employed by the land laws of Oromia Region is conciliation or arbitration? is discussed and come to a conclusion that the laws adopted conciliation. In addition, the issue as to which type of rural land disputes should undergo the ADR mechanism? is dealt with and concluded that all types (including inheritance) should undergo through the process of ADR. On top of this, the question as to whether the objective of the scheme laid down is clear or not? is analysed and

[345] Interview with Bado Yami, Disputant at Dugda Woreda Court, from Oda Bokota Village, held on July 9, 2018. An interview with Faajjoo Kabato, Disputant at Dugda Woreda Court, held on July 9, 2018 has also disclosed the same thing.
[346] Interview with Waarii Kushiina, Administrator of Shubi Gamo Kebele, held on August 14/2018.
[347] Interview Note No.325.
[348] Ibid.

generalized that the objective is not clear. The meanings given to 'Family Members' by the Federal and Oromia land laws are comparatively dealt with and summed up that the Proclamation of Oromia has more restricted the prerequisite to inherit rural land. It is also identified that there is power overlap in between different organs that administer rural land in Oromia.

Furthermore, through focus group discussion, case analysis, interview and administering questionnaires it is concluded that, farmers in the Woreda are not aware of the land laws in general and procedure of settlement of rural land disputes in particular, they generally prefer ADR with its practical limitations, that land administration is not practically given a great attention, that the first level certificate does not create presumption of being possessor and contributed in increasing rural land disputes, that rural land dispute is increasing in the Woreda, the leading cause of rural land disputes in the Woreda is illegal transfer of rural land, that disputes related with illegal transfer of rural land is most rife in the Woreda, and that as a result of bad ethics and lack of adequate knowledge the mechanism put in place to resolve rural land dispute is less effective.

CHAPTER FIVE

5. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1. Findings

Land disputes are a common phenomenon generally in this country and specifically in Oromia Region. These disputes often have extensive negative effects on economic, social, spatial and ecological development. To avoid or reduce these negative effects, effective mechanism which enables one government to resolve the disputes must be put in place. Oromia Regional State, as one of the Regions in Ethiopia, has enacted land laws that provide for the means of resolving land disputes. However, some of the provisions of these laws are found to be unclear and there are gaps in them. In addition, the practical problems in Dugda Woreda are identified.

Accordingly, this Thesis specifically found out that the land laws of Oromia have adopted a hybrid approach of rural land settlement mechanism, that the terms 'result' and 'arbitration' are vague, that type of ADR method employed is conciliation, there is confusion and overlap of power in between different organs that are involved in administration of rural land, that the objective of scheme (ADR) introduced by the Proclamation is not clear, that the law is not clear as to the length of year the women should use land to share during divorce and that all types of rural land disputes (including inheritance) should undergo through the process of ADR.

Furthermore, it is found that Regulation No.151/2013 is defective in that it provides for Ex-parte procedure in the process of ADR and discriminates in the procedure of summoning when a case involves organizations and individuals. The regulation is also not clear as to the type of liability that Kebele Administration bears when it does not comply with the time limit set for every activity.

With regard to the practical problems in the Dugda Woreda, this Thesis identified that the people of the Woreda prefer ADR and want their cases first heard at the village level. It is also found that the reports of the elders are inconsistent and there are ethical problems of the Woreda judges, Kebele Administrators, land experts and elders. The Thesis further identified

that there is no data base that separately registers rural land disputes. There is also lack of legal expert in the Woreda Office of RLAEP.

It, in addition, disclosed that practically two certificates are given to different persons on the same plot of land, that rural land dispute is increasing in the Woreda and that the leading cause of rural land disputes in the Woreda is illegal transfer of rural land. The Thesis also revealed that people of the woreda lacked adequate legal knowledge and the Woreda Court is repeatedly establishing a committee which shall investigate the real possessor of the land in the name of additional examination (investigation). On top of these, the Thesis revealed that there is delay in the Woreda Court, problems of follow up, supervision, practical flaws in administration, and generally less attention that is given to the mechanism put in place, and these have impacted the level of effectiveness of the mechanism.

5.2. Conclusions

The main findings of this Thesis have demonstrated that there are lack of clarity and gaps in the laws that govern rural land dispute settlement mechanisms and that there are practical problems in the study area (Dugda Woreda). This Thesis has further identified the leading cause, the type of rural land disputes that is prevalent and the factors that have contributed to the effectiveness of the mechanisms that are laid down by the rural land laws of Oromia.

Because of these problems in law, the farmers in Oromia in general, and due to the problems in practice and problems in the causes (factors) that have contributed to the effectiveness of the mechanism, particularly the farmers in Dugda Woreda might lose the confidence in enforcing their land holding rights employing the mechanism put in place by the land laws of Oromia. These problems, obviously, have bearing on tenure security and hinder the farmers from optimally exercising their constitutional and legal land right. And these, in turn, stifle economic development. In order to remedy these problems, the writer recommends legislative amendments, faithful implementation of the law as well as institutional reform.

5.3. Recommendations

Based on the findings, which call for express recognition of Oromo Customary Dispute Resolution Mechanism, a change in procedural laws, an establishment of a modified institution, creating public awareness and complying with the laws, generally, through

amending the laws and administrative measures, and as well on the basis of conclusions of the Thesis, it is recommended as follows:-

Recommendations on the Proclamation and Regulations

1. With respect to the unclarity of the objective of Article 16 of Oromia Rural Land Administration and Use Proclamation, the Proclamation should be amended so as to clarify the objectives of the mechanism by expressly stating 'decongesting cases in the court, to speed up resolution, to promote traditional justice system, to build harmony, to save time and costs'.
2. Pertaining to the problems of effectiveness, of follow up, supervision, practical flaws in administration and generally less attention that is given to the mechanism put in place, the aforementioned Proclamation should be amended so as to clearly change the structure and embody that the resolution of any rural land disputes should be tried first by 'Ilaafi Elaamee' (negotiation or compromising mechanism), if it fails through 'Saglan Gadaa' or 'Jarsummaa Mechanism' (which must again be based on the consent of both and have structure at local Kebele level) before the application is made to any organ, and then to mandatory court-annexed conciliation (as land disputes have bearing on the functions of ordinary court), in which case one legal officer of the Woreda Court (who must reside (or work in circuit) in each Kebele, act as secretary of the elders, keep and register the proposal of settlement).
3. Or alternatively, in order to ensure equal accessibility for women and illiterate, to improve the problems of elders' favouritism or biasness due to relation, to improve effectiveness of the conciliation and ensure more community participation in the rural land dispute resolution mechanism, the Proclamation should be amended so as to embody the practice of Philippines, i'e, firstly, the applicant who want to initiate rural land dispute against another individual should apply (in written or orally as the case may be) to the Kebele Administrator, then the Kebele Administrator should transcribe into writing (if it is presented orally) and call the respondent to try to negotiate, if respondent appeared but refused to negotiate, the administrator should create a condition for the parties to select three members of conciliation (who among themselves elect chairman and secretary), who should be empowered to reconcile, from Kebele Rural Land Administration and Use Committee (whose number of members should be increased from 5 to 15, appointed by Kebele Administrator and voted by residents, who must be respected, take an oath and work, at least, for three

years, whose composition should at least consists of three women) or if the respondent refuses to appear, certify this fact and send it to Woreda Court.

4. Or alternatively, to reduce the problem of delay and avoid the Woreda Court's repeated additional investigation through establishing a committee, the Proclamation should be amended so as to establish Administrative Tribunal consisting of three members at the Kebele Level, which shall follow rules of procedure and evidence, shall be empowered to hear and decide only disputes over rural land to which the second degree certificate is not issued, whose member should be from the Kebele Rural Land Administration and Use Committee and take a training on law for at least 4 months.
5. Or if it is left as it is, alternatively to solve the problems of inconsistencies of reports of the elders (whether report of absence of respondent or failure to reconcile) and to keep confidentiality of the conciliation, a single form that compels elders to report simply certificate of failure (like done in Philippines) should be prepared and given to the Kebele Administration, and also that the elders who are elected by disputants should be from respected individuals in the community (which could, of course, be their relatives).
6. As to the problems associated with the vagueness of the terms; 'result' and 'arbitration', the Proclamation should be amended so as to give a consistent and effective meaning, and replaced by 'finding' and 'conciliation'.
7. Regarding the effects of non-observance of the 30 days time limit provided under article 16 (1)(f) of the Proclamation, it should be amended so as to expressly show whether it bars the bringing of a fresh suit or not.
8. With regard to the problem of overlap and confusion of powers in administration of rural land, the Proclamation should be amended to clearly and specifically delimit powers and functions of institutions directly or indirectly involved in rural land use and administration.
9. In relation to the rural land disputes that arise during divorce, the Proclamation should be amended so as to provide for the minimum time limit the spouses should use the land to finally share the use rights to land.
10. With respect to the means of enforcement especially when the disputants have reached the agreement before elders, the Regulation should be amended so as to clearly give the power to enforce the agreement to the organ that has the police power not to the Kebele Administration.

11. Pertaining to the provision that puts the Kebele Administration under liability for not observing time limit, the Regulation should be amended so as to clarify the remedy (identify whether the remedy is compensation or other correcting writs).
12. With respect to the legal defects that are identified in relation to the Regulation's provision of Ex-parte procedure in the process of ADR and discrimination in the procedure of summoning when a case involves organizations and individuals, the Regulation should be amended so as to avoid them.
13. Regarding the weight of second degree certificates, the Regulation should be amended so as to value the second degree certificate as creating simply presumption of being possessor (rural land holder), not as the mandatory requirement to bring a dispute before court.

Recommendations on the Practical Problems revealed in Dugda Woreda

1. Regarding the findings in relation to lack of adequate knowledge of land laws by the public, elders and Kebele Administrators, Rural Land Administration and Use Committee at Kebele Level should create awareness in cooperation with Oromia Justice Bureau; Civic Society Organizations (NGOs) should also be allowed to involve in creation of public awareness.
2. Pertaining to the problems of unethical conduct of the judges, Kebele Administrators and experts of Dugda Woreda Rural Land and Environmental Protection office, Oromia Justice Sector Professional Training and Research Institute should provide a training that aims at improving the ethics of these participants and arrange monthly salary payments for Kebele Administrators.
3. With respect to the unethical conduct (biasness) of elders in the Woreda, Oromia Justice Bureau should arrange a training on which Abba Gadaa (a leader who is currently working on and promoting Oromo's social values) should preach on deep social values of Oromo nation, how the Oromo nation perceives justice and impacts of biasness.
4. Regarding the problems of backlog of rural land cases in Dugda Woreda Court, the Oromia Supreme Court should establish a special bench in the Woreda that entertains solely rural land dispute cases, and fill it with adequate and specially trained judges.
5. With regard to the problems associated with the absence of database that is required to separately register rural land disputes, the district court and Kebele Administrations

should be able to understand the great implication of rural land disputes and keep separately in the computer (database).

6. With respect to the problems of issuance of two similar certificates (for two peasants) over the same plot of land, Dugda Woreda Land Administration and Environmental Protection Office should re-measure the land fully and immediately implementing the modern systematic registration system and finally give second degree certificates of holding to all the farmers in the Woreda.
7. As to the problems identified by this study as sources of disputes (including informal dealings on land such as sale under disguise of leasing, juridical acts which do not comply with administrative formality and extra-legal use rights, the Proclamation should be amended in a way that it regularizes the extra-legal land use rights and in a way it lifts restrictions such as authentication before the concerned organ without, of course, not allowing the sale of land.
8. Regarding the absence of legal expert in Dugda Woreda Rural Land Administration and Environmental Protection Office, at least one legal expert should be assigned to the office.

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Appendix I : Interview Questions

This is an interview designed to gather information to be used in writing an LL.M Thesis on "**Rural Land Disputes Resolution Mechanisms in Oromia Regional State: A Case Study of Dugda Woreda Court in Eastern Shoa Zone**". You as a person working in rural land administration unit, or judge, a member of Woreda Saglan Gadaa Council, or Kebele Administrator, or rural land disputant are selected as an interviewee. The questions will be selectively posed to you as an interviewee with the purpose of gaining qualitative knowledge.

Your genuine and complete responses are highly helpful to make the findings of the study reliable.

Thank you

Part one: personal information

Sex-

Name of the office-

Qualification-

Year of service-

Age-

Part Two: Interview Questions

1. What are the causes of rural land disputes in Dugda Woreda? Which cause stands first in rank?
2. What practical problems are observed in resolution of rural land disputes through ADR (by elders)?
3. What types of rural land disputes undergo ADR mechanism that is controlled by Kebele Administration?
4. To what extent do certificates of land possession which are issued to farmers reduce rural land disputes?
5. Do you think that the public have adequate knowledge of the procedure of the laws?
6. What is the objective of mandatory conciliation before the Kebele Administration?
7. What are the requirements for the eligibility to be elders? Do they have adequate skills and knowledge of the law?
8. Are the elders using the customary rules in resolving the disputes? What procedures do they follow?
9. To what extent is the mandatory conciliation supplementing the court by decongesting cases in the court?
10. Do the people prefer to use the procedure of mandatory conciliation in rural land disputes or want directly to take their case to the court?
11. What are the challenges of Dugda Woreda Court? Is the Woreda Court effective? Is there congestion of cases in the Woreda Court? Is it accessible? What mechanisms of investigations is the court using in resolving the disputes? Is the court receiving the

application of rural land disputes without the findings of the conciliator being attached to the application?

12. What weight is given to first level land certificate? Does it create presumption of being land holder?

Appendix II : Questionnairee

This is questionnaire designed to gather information to be used in writing an LL.M Thesis on "**Rural Land Disputes Resolution Mechanisms in Oromia Regional State: A Case Study of Dugda Woreda Court in Eastern Shoa Zone**". You as a judge of High Court, or a judge of Dugda Woreda Court, or a land expert at Oromia Bureau of Rural land Administration and Environmental Protection, or at Zone level, or at Woreda Level, or a rural land disputant, or a lawyer, or a Woreda Prosecutor, or expert at Woreda Women and Youth affairs, or a Kebele Administrator, or a member of Woreda Saglan Gadaa Council are selected to be a relevant informant. Your genuine and complete responses are highly helpful to make the findings of the study reliable.

Thank you!

Part one: personal information

Sex-

Name of the office-

Qualification-

Year of service-

Age-

Part Two: Questionnaire

1. Have you ever faced a rural land dispute? _____
2. Is the rural land dispute in DugdaWoreda increasing? Or decreasing? _____
3. If it is increasing, why? _____
4. Out of the following reasons and the reasons you listed which reason is the major reason for increasing of the disputes? Which is the minor reason? Please put them in order.
    A. Increase in population size,
    B. The absence of written or documented evidence,

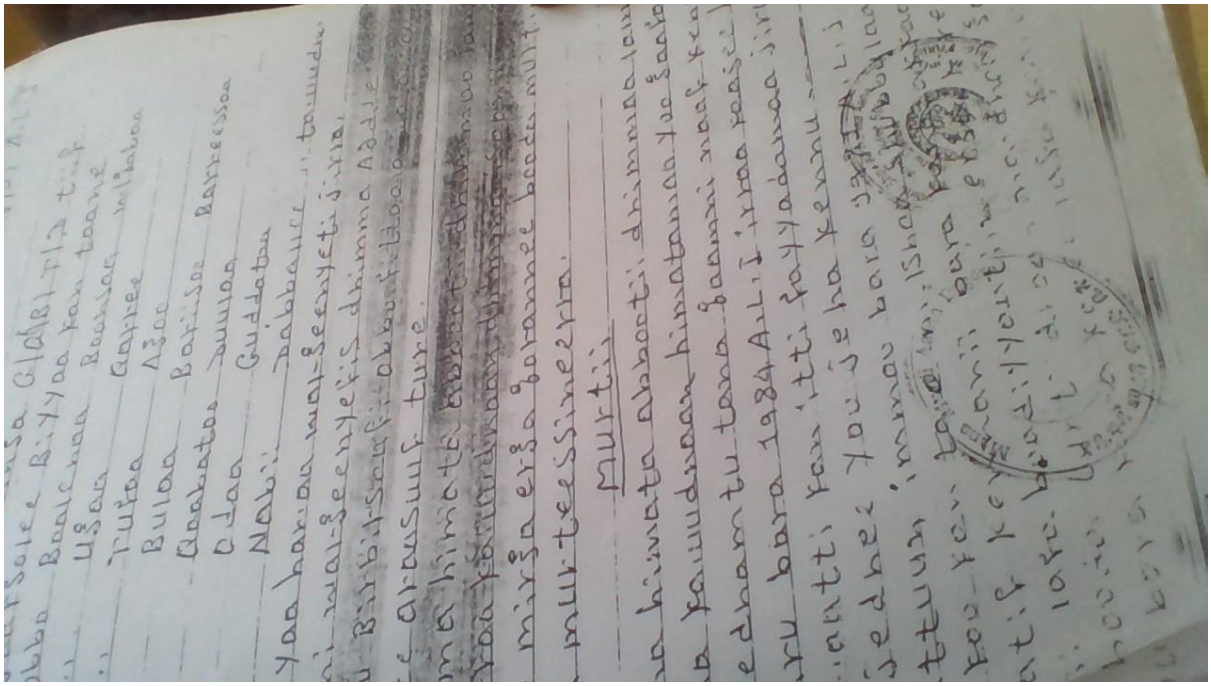
C. Selfishness,
D. Unclarity of the land laws,
E. The absence of clear decision or mediation agreement,
F. Expansion of urban centre and expropriation,
G. Sale and unlawful lease of land,
H. Donation and will not made in writing in accordance with law,
I. Insecure or ill-defined property right.

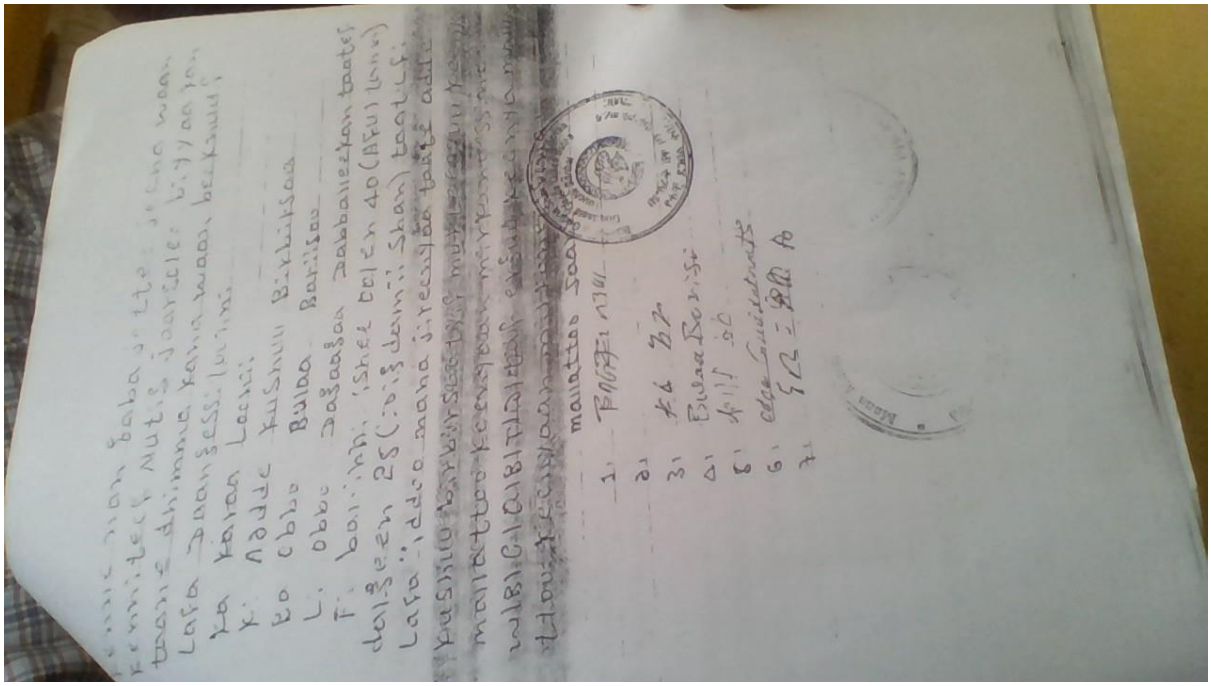
5. What are the causes for rural land disputes in DugdaWoreda? _____
6. Out of the following causes and the causes you listed which cause stands first? Please put them in order.
   A. Inheritance of land disputes,
   B. Land disputes on community of properties between husband and wife,
   C. Boundary disputes,
   D. Disputes related with land holding rights,
   E. Contract related land disputes
7. To what extent is the mandatory conciliation before the Kebele Administration supplementing the court by decongesting the cases in the court? (based on the settlement made by elders and registered)
   A. High level B. Medium level C. Low level
   Why?_____
8. On what level is the backlog and predictability of the Woreda Court? (depending on the data, distance and costs to access the court)
   A. High level B. Medium level C. Low level
   Why?_____
9. To what extent people prefer to resolve their disputes through conciliation? (take into consideration the absence of concrete evidence and the presence of perjury)
   A. High level B. Medium level C. Low level
   Why?_____

Appendix III: List of Interviewees

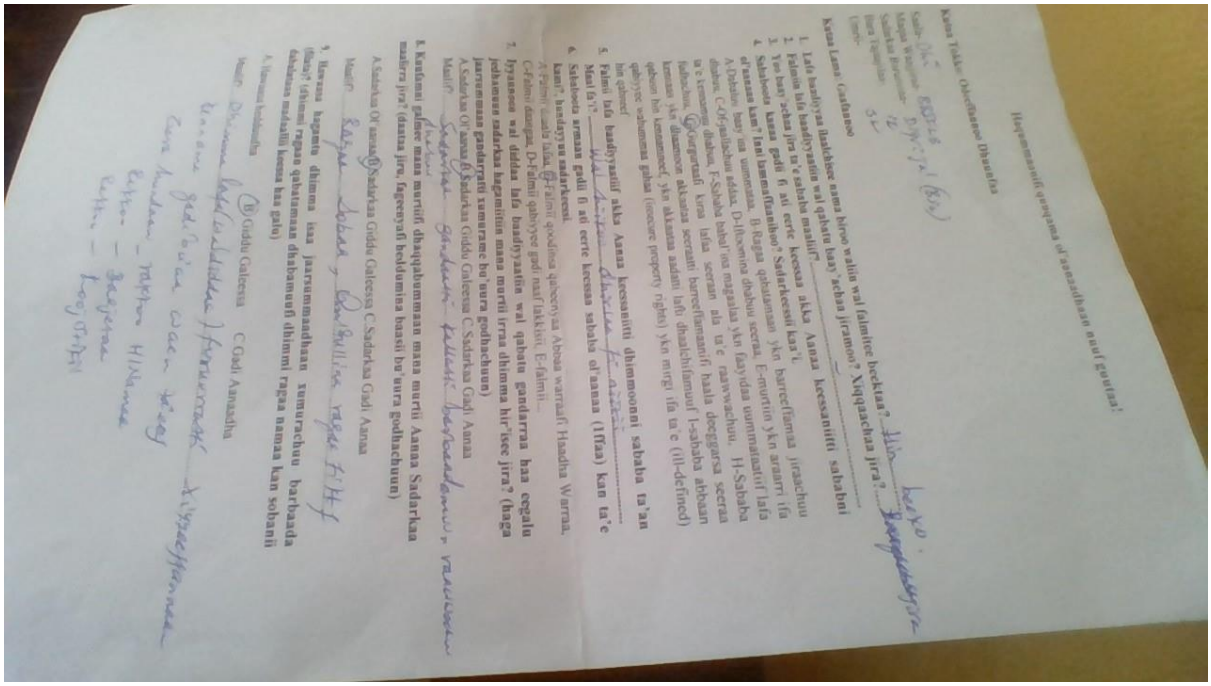
1. Abdulmannan Adam, a Dugda Woreda Court judge.
2. Abera Badada, ex-Judge of Dugda Woreda Court.
3. Adane Danbal, Administrator of Waddesafi Orgocho Kebele.
4. Badaso Feyiso, Administrator of Sera Wakale Kebele.
5. Badaso Jima, the Chairperson of Dugda Woreda 'Saglan Gadaa'.
6. Bado Yami, Disputant at Dugda Woreda Court, from Oda Bokota Village.
7. Bashadu Dade, A disputant at Dugda Woreda Court.
8. Berhanu Beyene, a judge currently working in the Oromia Supreme Court Cassation Bench.
9. Bisrat Tesfaye, a judge of Eastern Shoa Zone High Court.
10. Bulaa Hayee, a Member of the Woreda Saglan Gada Council.
11. Dawit Abdisa, Director to Follow and Supervise Matters of Rural Land Disputes.
12. Faajjoo Kabato, Disputant at Dugda Woreda Court.
13. Gutama Shanko, Administrator of Birbirsa Galle Kebele.
14. Henok Mamuye, the President of Dugda Woreda Court.
15. Kabbada Angasa, the Ex-President of Dugda Woreda Court.
16. Kamilo Yusuf, The Judge of Eastern Shoa Zone High Court.
17. Kifle Feyisa, Expert at Zonal Rural Land and Environmental Protection Office.
18. Koricho Bariso, Administrator of Walda Kalina Kebele.
19. Lenjiso Dadi, leader of Dugda Woreda Rural Land and Environmental Protection Office.
20. Malkamu Magra, A disputant at Dugda Woreda Court.
21. Mulugeta Fekadu, the President of Eastern Shoa Zone High Court.
22. Waarii Kushiina, Administrator of Shubi Gamo Kebele.

Appendix IV: A Decision given by Elders in Tuchi Dambal Kebele





Appendix V: A Sample questionnaire filled in Afan Oromo



APPENDEX V: Cases and Laws