

**RURAL LAND DISPUTE SETTLEMENT MECHANISMS IN TIGRAY: THE
CASE OF HUMERA**

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Declaration

I, Haftom Tesfay, hereby declare that the thesis entitled “Rural Land Dispute Settlement Mechanisms in Tigray: the Case of Humera”, 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 and it has not been presented for the award of any other degree, diploma, fellowship or other similar titles of any other university or institution.

Haftom Tesfay.....

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Acronyms

FDRE	Federal Democratic Republic of Ethiopia
EPRLAUA Authority	Environmental Protection Rural Land Administration and Usage
CDR	Customary Dispute Resolution Mechanism
ADR	Alternative Dispute Resolution Mechanism
JDR	Judicial Dispute Resolution Mechanism
Humera	Woreda Kafta Humera
ECX	Ethiopian Commodity Exchange

Table of Contents

Contents

Chapter One: Introduction	
1.1 Background of the study	
1.2 Statement of the problem	
1.3 Objective of the study	
1.3.1 General objective.....	
1.3.2 Specific objectives.....	
1.4 Significance of the Research	
1.5 Methodology and Method	
1.7 Scope of the study	
1.8 Ethical issues	
1.9 Organization of the Thesis	
Chapter Two: Rural Land Dispute Settlement Across Various Jurisdictions.....	
2.1 Introduction	
2.2 Definition	
2.3 Impact of Land Tenure in General and Rural Land Dispute Settlement Mechanisms in Particular in Human Development.....	
2.4 Causes of the Rural Land Disputes	
2.4.1 Institutional problems.....	
2.4.2 Private Causes	
2.5 The Modalities of Rural Land Dispute Resolution	
2.5.1 Judicial Dispute Resolution mechanism	
2.5.2 Special Courts/Administrative Tribunals	
2.5.3 Informal Dispute Resolution Mechanisms.....	

2.5.3.1 Alternative Dispute Resolution Mechanism/ADR.....	.....
2.5.3.2 Customary or Traditional Dispute Resolution Mechanism/CDR .....	.....
2.5.3.3 Mixed Informal Dispute Resolution Mechanism.....	.....
3.2 During the Imperial Regime.....	.....
3.3 During the Derg Regime .....	.....
3.4 During the FDRE Government .....	.....
3.5 Selected Experience of the FDRE Federal Units in Rural Land Dispute Settlement.....	.....
3.5.1 The Case for the Oromiya Regional Law.....	.....
3.5.2The Case for Southern Nations, Nationalities and Peoples (SNNP).....	.....
3.5.3The Case for Amhara Regional State law .....	.....
2.5.4 Issues of Constitutionality and Comparison of Regional Rural Land Dispute Settlement Mechanisms.....	.....
Chapter Four:A Case Study of Rural Land Dispute Settlement Mechanisms in Tigray	
4.1 Introduction.....	.....
4.2 The Impact OF Land Certification on Disputes in the Region .....	.....
4.3 The Framework of the Proclamation No 136/2007.....	.....
4.4 Dispute Settlement Mechanism in Tigray.....	.....
4.5 The Case of Humera Woreda.....	.....
4.5.1 A Study on the Main Cause of Dispute in Woreda Kafta Humera .....	.....
4.5.2 A study of Woreda Kafta Humera Court .....	.....
4.5.3 Jurisdiction over Fruits.....	.....
Chapter Five.....	.....
Conclusions, Findings and Recommendations.....	.....
5.1 Conclusions and findings.....	.....
5.2 Recommendations .....	.....

Abstract

Tigray regional state has enacted Rural Land Use and Administration Proclamation and regulations pursuant to the Federal Rural Land Administration Proclamation and Article 52(2) of the FDRE constitution.

The Proclamation establishes an identical rural land administration committee across the region irrespective of the size and nature of the rural land there. The main objective of the research is to survey the rural land dispute settlement mechanisms in Tigray region and examine the implication of the proclamation in the context of Woreda Kafta Humera.

Both primary and secondary data are used for the purpose of this study. Particularly the regions rural land use and administration laws have been analyzed. In addition interviews, figures, and temporary certificate/Balbal collected from administration units along with real cases have been used to analyze the power of rural land committee. One of the major findings of the research is the existence of improper rural land dispute settlement mechanisms in Tigray regional laws. Besides it finds out that a farmer holding thirty hectare defacto and ten hectare of land dejure and for all legal purpose is considered as peasant in Humera. Accordingly it deduces two major findings from the fact that a farm land as large as ten hectare and largely producing cash crops is administered by a committee that administers rural land of the region, producing subsistence farming and as small as one hectare in most cases. First rural land disputes in Humera are largely caused due to inappropriate administration units, particularly the temporary certificate (Balbal) that the Tabia administration has issued as it was susceptible to imitation and forgery. Second the researcher observed disputes between squatters are being entertained and disposed by rural land dispute settling institutions and by Woreda Kafta Humera Court. Finally, the researcher finds out the principle of access to justice, specifically accessibility of judicial organs, is at stake in some situations as peasants are compelled to visit both land tribunal and Woreda courts simultaneously for a single case.

As far as dispute settlement part of the laws of the region is concerned, it recommends the abolition of land tribunals and to be replaced by a guided customary dispute resolution mechanism or the mix of CDR and ADR. Plus it recommends Desk (exclusively) at Woreda level and Woreda courts to have, an administration and judicial power respectively, over rural lands in Humera, ranging from two to ten hectares of land. This research also suggests to the Desk, Woreda level rural land usage administration unit, to emphasize on the peasants holding right emanates from the decisions of regular courts for rural lands of which multiple Balbal has been issued earlier while it replaces temporary certificate of holding. This research also suggests bestowment of the power to order stay of execution to an organ having first instance jurisdiction over rural land disputes than to split the jurisdiction and to dismiss cases between squatters as per article 286 of the Civil Procedure Code.

Chapter One: Introduction

1.1 Background of the study

Tigray is one of the federal units that has been recognized as a state, as per article 47(1) of the 1995 FDRE constitution. The region is divided into seven zones namely Western Zone, Eastern Zone, Central Zone, Southern Zone, North Western, Mekele Zone and South Eastern Zone. Woreda Kafta Humera is located in Western Zone of the region along with *Woredas*; Setit Humera, Tsegede and Walqayt. Historically Setit Humera used to indicate the whole area surrounding Humera under the Begemeder administration. Currently, i.e. since after the inclusion of the area under region one as per the standard set out by article 46(2) of the 1995 FDRE constitution, it stands as one Zone of the region namely Western Zone. Because the indigenous people i.e. Walqayt and the town settlers of the so called Setit Humera resemble in terms of language, identity and settlement pattern to Tigray region.

Woreda Kafta Humera is different from Woreda Setit Humera. It has its own separate power of administration including matters regarding rural land of Humera area. Woreda Kafta Humera is one of the principal, if not the leading sesame, cotton, sorghum and other cash crop growing provinces of Ethiopia, a country where oil cash crop products play a paramount role in receiving the indispensable hard currency. Not surprisingly, therefore, it is drawing and in fact will continue to draw the attention of many local and international investors. But institutional, legal and even judicial drawbacks are adversely impacting the efficiency of this fertile land.

Literature review

Land as a crucial economic factor aged long enough almost equally with existence of human being. So it is obvious to expect various literatures addressing rural land, and rural land dispute settlement mechanisms. For example according to the study made in East Timor concerning “Custom and conflict: The uses and limitations of

traditional systems,”¹ the research find out that the peoples in the research area are expecting the legal regime to take part on top of the customary holding and customary dispute settlement mechanisms..² In a marked contrast this research analyzes the legal frame work of the Tigray Regional State and the extent of place that it has for customary dispute resolution mechanisms. Moreover, Gudeta in his recent publication essayed rural land tenure security in the Oromia Regional National State, from the legal point of view. My research however has evaluated the practical obstacles that the local farmers are facing. These farmers are not only strived in earning the so called from hand to mouth products but also intensively involved in producing cash crop products. Besides, unlike the aforementioned research a special group right mainly that of women right is also subject of this research by evaluating the practical barrier that they are suffering. Above all the area of my research is different hence I will use a different regional law. In addition, Yigeremew has explored the less opportunity provided to women’s access to land based on the personal experience of the author. Similarly this research is determined in exploring the practical situation, by substantiating the unfortunate fates that the women are facing in limited area namely Woreda Kafta Humera. Furthermore, the research explores the ramification of the incompetence of institutions like, Women’s Affair Office and land administration units in securing Women’s right. Finally,³ Abebe has published an article titled as “Access to Justice, and Rural Land Dispute Settlement in Ethiopia”⁴. He essayed rural land dispute settlement mechanisms in Ethiopia focusing on one of the founding blocks of good rural land dispute settlement mechanisms namely accessibility of rural land dispute settling organs and he also recommends further researches to be carried out regarding that issue. As an extension of his interesting recommendation my research has thoroughly analyzed the legal framework of the regional state of Tigray. In addition, this research has examined the transparency, accountability, competency and efficiency of these dispute settling and land administration units in Humera Woreda.

¹ S.Meitzner. Y, “The Uses and Limitations of Traditional Systems in Addressing Rural Land Disputes in East Timor,” www.eastimorlawjournal.org/.../ Retrieved on 12 October, 2011

² Ibid

³ Ibid

⁴ Abebe Mulatu, “Access to Justice and Rural Land Dispute Settlement in Ethiopia,” in Muradu Abdo(ed) Eth.Buisiness Law Series, vol.III. (2009)

In short and as it can be observed from the recommendation of Abebe⁵ little effort has been made to research out the dispute settlement dimension of tenure even though having an effective dispute settlement mechanism plays a paramount role in tenure security, land fertility and human development.

Generally, the legal literature has showed little effort to research out land policy and tenure security in Ethiopia.⁶ Further it has been maintained that the legal academy contributes less in researching the land issues albeit sociologist, economist and historians have done more.⁷ This is more so in the case of rural land dispute settlement in the country. So little endeavor has been made in discovering this dimension of tenure security of the nation at all. This research has sought to assess the situation in one of the FDRE federal units, i.e. Tigray region with an emphasis on the reality at woreda level. It is a sociolegal research meaning the present research has been approached from both legal and social point of view. Dealing with this dimension of land tenure security brings about at least two important benefits. First the research has identified the causes of rural land disputes so that a more preventive measure could be adopted by the government. For this purpose the research has suggested a more appropriate and context based rural land administration units. Second in scenarios where disputes are inevitable the research has recommended an effective dispute settlement mechanism taking due regards to the situation or the given context of the localities and the rural land which is subject of the dispute

1.2 Statement of the problem

As clearly stipulated in article 40(3) of the FDRE constitution, nations, nationalities and peoples of Ethiopia along with state are bestowed an ownership right over rural land and other natural resources of the nation. So enactment of various land laws is a power the government is endowed with a special power in land administration by the Ethiopian nations, nationalities and peoples in the constitution.⁸ Basically it is the power of the federal government as per article 51(5) of the FDRE constitution to enact laws governing natural resource including rural land. Regional states of the FDRE are

⁵ Ibid

⁶See also Editorial message of Muradu Abdo(ed), "Land Law and Policy in Ethiopia since 1991:Land Laws and Policies in Ethiopia since 1991 Continuities and Changes" Business Law Series, Vol III, Addis Ababa University, 2009

⁷ Ibid

⁸ The Constitution of the Federal Republic of Ethiopia, 1995, art 40(3) PRO. No 01, *Neg.Gaz.* ,Year 1

given only the power of administration of land and other natural resources.⁹ Using a constitutional power the federal government through the Federal Rural Land Administration Proclamation No 89/1997 delegates the power to enact rural land laws to regional states under the guidance of some articles of the same proclamation.¹⁰ Even for the sake of administration it is inevitable for regional states to enact rural land use and administration laws.

Leaving the matter as it is, for the interest of scope of this research, regional states of the FDRE government have enacted various rural land use and administration laws. It is hard enough to draft good rural land law. Likewise, it is more difficult to create local officials, land registries and local court system that serve all citizens equally, consistently, impartially and based on law in enforcing the entitlements since inappropriate application of law may amount to absence of law. Improper application of land administration and use laws which, among others, is caused by the inclusion of some unsound articles, is adversely affecting land fertility, the interest of various farmers and sustainable human development at large in my research area.

Basically rural farm land in Tigray can either be allotted to farmers or investors that meet certain mandatory requirements. Despite this scheme of allotment, the striking undertaking in issuing certificate to farmers remains awkward. In addition, the interest of women farmers in Humera Woreda remains at stake. Incorrect application of the guiding laws along with obscure understanding of the interdependent nature of the rural land laws of the region with other relevant governing rules by the implementing agencies is worsening the situation there.

Implementing directives also play their own part in worsening the situation since they give enormous power of administration to the rural land administration units without taking into account their actual implementing capacity. Thus, this raises resource curse hypothesis theory, a theory that seriously questions the ability of implementing agencies to manage valuable resources thereby negatively draws the relationship between resources and human development.¹¹

⁹ Id article 52(2)(d)

¹⁰Id article 50(9) states the power of the federal government to the extent of delegating some powers to regional states. And the Federal Use and Administration Proclamation lists about 9 guiding principles that the regional state use and administration laws should consider.

¹¹ Alicia N. Rambaldi et al, "Re-testing the Resource Curse Hypothesis using panel data and an improved measure of resource intensity" International Association of Agricultural Economists Conference, ideas.repec.org/p/ags/iaae06/25289.html Retrieved on 13 March, 2011 This resource curse

Likewise, an attempt has been made to see how the rural land administration units at *Tabia* level negatively affects this highly valued natural resource as the researcher has encountered some inappropriate if not illegal temporary certificate that the *tabia* level administration units have issued. On top of this, the researcher has observed lack of enthusiasm of the *woreda* desk to appropriately manage Humera Woreda rural land since it fails to accurately demarcate the rural land, to issue a permanent certificate of holding to the current holders and to appropriately distribute rural land free of claims by previous legitimate holders. The consequence of this in disputes and dispute settling institutions were studied as it can and in fact will definitely affect the productivity of the rural land and sustainable human development at Woreda Kafta Humera. For this purpose the following basic questions were set

Research Questions

1. How is dispute settlement mechanism across various jurisdictions framed? What are the main causes of rural land disputes? Are there any universally established principles and theories of institutional efficiencies of rural land administration units? Are the rural land dispute settlement mechanisms similar across the world? Or vary as per the context and existing situation of the nation or the region?
2. What can we learn from land tenure history of Ethiopia and selected land laws of other regional states of Ethiopia?
3. Did the Tigray region register rural lands? If so, how did it affect rural land disputes? How did the framework of the current rural land laws of the Tigray regional state affect potential rural land disputes? How is the rural land dispute resolution mechanism in Tigray regional laws framed? Is the framework efficient enough to enhance farm productivity and human development?
4. How is rural land allotted to peasants in Humera Woreda? How did rural land administration power of the land administration units affect land dispute in Humera Woreda? Is there rural land dispute judicial committee in Woreda Kafta Humera? And if any, how much is it effective in Humera *woreda*? How did Woreda Kafta Humera court resolve rural land disputes both in its appellate and first instance jurisdiction and the

theory which was formed in 1990s and its core idea is that natural endowment and economic growth are negatively related; even from the domestic provincial level is true.

effect of such on land fertility, human development and sustainable human development as well?

1.3 Objective of the study

1.3.1 General objective

The general objective of this research is to assess the framework of rural land dispute settlement mechanisms in Tigray region and to conduct a case study on rural land dispute mechanisms and institutional efficiency in Woreda Kafta Humera.

1.3.2 Specific objectives

The specific objectives that the research achieved are the following;

- To portray the causes and mechanisms of settling rural land disputes across various jurisdictions
- To appraise the intuitional efficiency, the substantive laws that the history of tenure system of the nation has provided to the current tenure system as well as lessons from selected land laws of other regional states in Ethiopia; and
- To examine the effect of Tigray rural land dispute settlement mechanisms on productivity of the land and human development of the region in general;
- To examine the adequacy and human development impact of the rural land administration laws, units including dispute settling institutions in Woreda Kafta Humera.

1.4 Significance of the Research

The finding of this research may serve as a reference or land literature to courses relating to land laws. More over the research might serve as an input for similar in-depth researches in the country, would contribute to legislative revision, good implementation of the exiting land dispute related laws and enhance the efficiency of the judiciary tasked to dispose rural land cases.

1.5 Methodology

The research strategy was a case study in so far as it has assessed the repercussion of the unintended actions of the Tigray rural land laws, acts of implementing agencies and the dispute settling institutions on peasants of Tigray region and Humera Woreda.

1.6 METHOD

The research mainly employed document analysis. It has used the guiding substantive laws plus theories and the synergic effect of them on the administration of rural lands and rural land cases. In addition, it has interviewed relevant offices.

1.6.1 Data collecting Tools

Documents such as table indicating the total area of land and the amount of yields collected in Woreda Kafta Humera and Balbal, a document signifying temporary land holding certificate of peasants in Woreda Kafta Humera were collected. In addition to these, Proclamation and Regulation Directive were collected.

Three active criminal files of western zone high court, two active files of Woreda Kafta Humera court, and three dead files of woreda Kafta Humera court were also observed or collected.

In addition to this, the researcher interviewed personnel of various offices in order to gain adequate and in-depth information regarding the issue. Accordingly, four questions were asked to the head of women affair office. Similarly nine questions have been asked to two civil bench judges and president of Woreda Kafta Humera court. Besides, six questions were forwarded to one judge of Tabia My kadra rural land judicial committee. Finally the department head of EPRLAUA (Environmental Protection Rural Land Use and Administration Authority) was interviewed by using ten questions. Tigrigna was employed in all interview sessions since all of the officials are Tigrigna speakers so that the researcher would gain the necessary information using a better communicative language.

1.6.2 Participant of the study

There were four judges in Woreda Kafta Humera court. From these two of them were selected by using judgmental sampling technique because these participants thoroughly involved in solving rural land cases. The research interviewed Tabia My Kadar's rural land tribunal. It was a kind of purposive sampling i.e. the researcher selects My Kadra since it occupies the lion share of land from the Twenty one Tabias administered under Woreda Kafta Humera. EPRLAUA at Woreda level along with Woreda Kafta Humera Women Affair Office were selected because the researcher can obtain the necessary and desirable data concerning administration of rural land and women right only from them respectively.

1.6.3 Data collection procedure

In-depth interview with the president of woreda kafta humera court was made before the researcher interviewed the two, civil bench judge of the same court. Next the researcher exerted an effort to interview the Mayor of Tabia Maykadra and one judge from the rural land tribunal of the same Tabia. Nevertheless almost all of staff members of the municipality of this Tabia administering the rural land were sent to jail hence none of them were interviewed except the rural land tribunal judge. Apart from that, the researcher interviewed the Women Affair office of Woreda Kafta Humera before the researcher collected the necessary directives and figures from the EPRLAUA at Woreda level. The Research also conducted an interview with head of land department of the same office, also known as Desk. Furthermore, the existing and pre existing proclamations and regulations of both Federal and Regional land laws have been collected from internet, Woreda Kafta Humera council, Woreda Kafta Humera court and from EPRLAUA at Woreda level. The researcher has also collected about eight cases from justice office, western zone high court and woreda kafta humera court. Particularly he let three staff members of the registrar identify rural land cases relevant to this research as they have done it in three consecutive days. Besides, the researcher has translated every collected data into English. Finally the laws were interpreted and their validity were assessed relating with the objectives of land law, dispute settlement laws, and other political economy theories and the ultimate implication that they could have on similar forth coming rural land laws, cases as well.

1.7 Scope of the study

The research targets at identifying the loopholes of land administration in Tigray region, Humera Woreda and hence it is limited in place. Particularly the gaps in the framework of the proclamation, regarding the land administration units, the working manuals and implementing directives of the region have served as a springboard in identifying the essential problems of the region and Humera Woreda in respect of land disputes. The research has targeted both the present and historical causes of disputes in Tigray region and Humera Woreda. Apart from this, the Thesis has aimed at assessing one of the many dimensions of tenure (i.e. dispute settlement) by taking other land tenure issues such as certification, restriction and limitation, rights in land and expropriation when such issues have bearing on the theme of research. The research area is a rural part of the region and known for producing mainly cash crops namely sesame, cotton, and even sorghum. So the so called peasants strived to harvest cash crop items of these area are the main addressees of this research. Woreda Kafta Humera in terms of the potential area that can be cultivated it is as large as the region itself. Practically the peasants of the area as per the directive hold a very large area of rural land as compared to other part of the region and even the nation. The research covers peasants of the area and by scrutinizing the matter it has appreciated the specialty of those farmers. The research finds it crucial to determine the factual holding capacity of the peasants of the Woreda in order to suggest a special dispute settlement organ, including the rural land administration institutions. Nevertheless the research shares the fabric of the proclamation and regulation of the region concerning the remaining peasants of Woreda Kafta Humera, their holding capacity of which is not as large as others nor does their lands produce cash crop.

1.8 Ethical issues

The researcher has made an attempt to develop a sense of trust. Consent was gained genuinely. Above all I have explained to the interviewees as to the confidential character of our relationship. The researcher holds a neutral role as it has made it in this final text in order to avoid ethical issues that may pose in report writing. Unquestionably, the researcher remained neutral and avoided biases to the extent possible. Particularly, as per the guarantee that I have made to my research participants; the research problem has a rational for its importance, the utility to the

area in particular and to the nation at large. No person or group was offended despite the critics/comments/ on some selected acts of the administration units, the committee and regular court judges. Moreover, the researcher did not use any language of inclination favoring either of the respondents or audiences or any interested group of the research

1.9 Organization of the Thesis

The study is organized around five chapters. The first chapter determines the scope of the paper and sets out its objective and significance as well. The scope of the research extends to peasants only as defined by the proclamation and enabling directives of the region. In addition, scope wise the study restricts itself to the examination of the practice of rural land dispute settlement in Woreda Kafta Humera.

The second assesses some of the accepted causes of rural land disputes. Accordingly, the chapter discusses institutional problems, as understood broadly to include legislative problems and private conflicts as the two broad categories of causes of rural land disputes. Besides, the chapter looks into rural land dispute mechanisms across various jurisdictions under the broad category of judicial/formal and informal dispute resolution mechanisms.

The third chapter assesses the historical development of rural land dispute resolution mechanisms starting from the Hailesslassie regime up until present time. The positive lessons that the history of tenure system provides to the present and future rural land dispute settlement mechanisms will be analyzed in this chapter. Besides some selected experiences of the current federal units of the FDRE government will be surveyed so that a fruitful comparison within the nation can be made.

The fourth chapter is the empirical portion of the paper focusing on Tigray region and specifically on Woreda Kafta Humera.

Finally, the last chapter pertains to conclusions, findings and recommendations.

Chapter Two: Rural Land Dispute Settlement Across Various Jurisdictions

2.1 Introduction

One of the crucial factors affecting economic development in most developing/least developed nations is security of tenure which in turn presupposes secure access to land, effective dispute resolution mechanisms, and adequate compensation in the event of expropriation. Quite immense amount of the Ethiopian population live in rural area, the livelihood of which directly or indirectly depends on this rural land most notably on agriculture. Lack of security in access to land is a matter of life and death for the citizens of the country. So to understand the exact impact of land security on the productivity of the land, observation is sufficient. But it is not only land disputes and the mechanisms of resolution of such disputes which will affect security of access to land, issuance of valid, clear title deed and others can have a synergy role in securing access to land. Basically land possesses peculiar character not only because it is immovable but also highly politicized almost universally. The inherent sovereignty right of states under public international law broadly extends to land to the extent of precluding land from being subject of both a choice of jurisdiction and applicable law for private international law.¹² The exclusivity of land goes beyond this as one move across some of the provisions of the Ethiopian Civil Code which prohibits foreigners from ownership right of immovable things.¹³ This prevents a potential dispute between foreigners or a foreigner and an Ethiopian over the ownership of the land be it a rural or urban in so far as it is located in Ethiopia though this is exceptioned to the foreigners of Ethiopian origin by article 38(1) of the Investment Proc No 280/2002.

¹² Once the land or the subject matter of the dispute, dispute that involves parties from different nations or domicile, is characterized as immovable property the applicable law will be the law of the state where the property is situated," *locus rei situs*". Almost all of the attempted Ethiopia's drafts of private international law recognize this principle. Refusing to apply such law will nullify the validity of the decision in the stage of enforcement of the award or the decree at the state where the land is situated. Besides one of the limitations to parties autonomy in the choice of applicable law in private international law is state interest externalities one of the clear reflection is which the proof of title or deed in real estate. See also The New Palgrave "Dictionary of Economics and the Law" (A-D) Macmillan Reference Limited 1998) 238 sales. More over articles 25-26 of the 1965 of the Ethiopian Civil Procedure Code endows the local jurisdiction of the disputes arising out of immovable property to the court where the land is situated.

¹³ Article 1130 of the Ethiopian Civil Code defines immovable properties under the Ethiopian legal regime as land and buildings and articles 194, 390 jointly exclude foreigners from owning immovable properties.

Rural land disputes across the different legal systems are different in amount and type. This is largely because of the disparities that countries approach the rights arising out of land and the willingness and extent of the government in recognizing the private ownership of land.¹⁴ For instance as it is impossible to have a dispute or disagreement on the ownership of rural land for nation's that stick on public and communal ownership of land, in a marked contrast it is uncommon to see cases regarding the contract/lease (between the implementing agency and the investors) in nations that bestow the full ownership right to individuals. So the number, degree, magnitude of the disputes in land generally and particularly to rural land is highly affected by the land policy that a particular state prefers to adopt. More over the system that is established to entertain rural land disputes, the procedure that it employs is also the logical out flow of the land policy of a particular state. Nevertheless it is not only the land policy of a particular state which will determine the nature of rural land dispute settlement in a given state. The cause of the dispute above any other thing will dictate the shape of the institutions to entertain the dispute.

Here as the research has clearly tried to demarcate its scope in the introductory chapter it is aiming at addressing the rural land dispute settlement in Tigray region. The case study will focus on Woreda Kafta Humera, an area which almost entirely grows cash crop yields. Constitutionally speaking farmers in Ethiopia can either be a peasant or an investor, possessing a large scale of farm land.¹⁵ Peasants in Humera are the ordinary farmers who possess plot of rural land as per the standard set by the appropriate directive of the area. These mere peasants can never be considered as an investor for various legal reasons. They are not supposed to obtain an investment license nor are the rural farm land endowed to them in the form of lease contract. So for all practical and legal conveniences they resemble an ordinary peasant than an investor as it is also the stand of all of the Tigray Rural Land Proclamation.

¹⁴ Private ownership of land backed by the notion of efficiency also often questioned its ability in attaining fairness is highly recommended in nations that adopt a market friendly economic policy. In a marked contrast communal ownership and state ownerships vehemently criticized since their ability to bring about fairness is only at the expense of efficiency have also unnoticed effect on the nature of the dispute and the institutions thereby.

¹⁵ Supra note 8 Article 40(4), (6) clearly recognizes the life time holding right of rural land to peasants and limited use right to private investors on the rural land.

This part of the paper will benchmark some universal causes of rural land disputes and the mechanisms of settling these disputes. Accordingly literatures addressing institutional and private causes of rural land disputes will have coverage along with the modalities of settling these disputes. Particularly the role of regular courts (JDR) (judicial dispute resolution mechanisms) and informal institutions (special administrative courts, ADR, CDR, mixture of CDR and ADR) will be seen in each sub sections of this chapter as in the order provided. At this juncture it is also worth to early mention one of the rural land dispute resolution mechanism i.e. Informal/Alternative dispute resolution mechanisms as it mirrors and adequately defies the enigmas of rural land disputes in my research area. Alternative dispute resolution mechanism largely employs various techniques of negotiation, even in the channel of arbitration. It gives almost unfettered freedom to the parties in resolving their dispute as it is highly influenced by the *Laissez Faire*¹⁶ thinking of dispute settlement. That is the intervention of third parties is limited and allows the parties to settle their dispute amicably by themselves and even if there is intervention less and limited grounds are framed. As the area of my research largely depends on a state based dispute resolution mechanism analyzing the situation from the aforementioned thinking will bring a definite plus to the area and hence it will be germane to my thesis if I touch up on the general rules of alternative dispute settlement mechanisms.

Rural land disputes as opposed to land conflicts usually happened between individuals or individuals and administrative organs. Causes of such can be comprehensively categorized either under institutional or private causes. The mechanisms of settling those disputes vary as the history, tenure system and culture of dispute settlement of states varies. But the mechanisms may comprehensively be classified under formal and informal traditions namely judicial dispute resolution mechanism, administrative, alternative and customary and the mixture of alternative and customary dispute settlement mechanisms. Portraying the causes and mechanism of settling these rural land disputes will assist this research well. For one thing the research will bench mark on the mechanisms of settling rural land disputes and will borrow the good lessons of

¹⁶ Laissez Faire originally is meant to express free market economy, where the grounds of government intervention are less and specific. Similarly it can also be used to explain the limited intervention grounds of dispute settling institutions when much more freedom is given to the disputant parties in resolving their dispute amicably.

such to the research area. In addition identifying the causes of disputes in this chapter will serve as a basis of analysis to the causes of disputes in my research area. For this purpose causes of rural land disputes will be addressed under a separate section after the research defines the concept of rural land disputes in the upcoming section. Finally in the last part of this chapter the mechanisms of settling those disputes will be assessed.

2.2 Definition

Basically as it is not easy to distinguish a conflict on rural land from disputes over rural land, trying to differentiate the two every now and then is a matter of indifference to some land literatures.¹⁷

Various authors have suggested different definitions regarding conflict and disputes of rural land. For example Babette has defined rural land conflicts as a social fact in which at least two parties are involved, the roots of which are difference in interest over the property right to land; the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it.¹⁸ Another author suggested the following regarding land conflict; Land Conflict, scope wise can be extended from disagreement to armed confrontations where competing interests and claims have caused or threatened a breakdown in ordinary or even peaceful coexistence whereas disputes are associated with distinct justiciable issues which require a solution, can be managed and as a matter of fact requires a third party intervention.¹⁹ Irrespective of the debates in the name disputes are very crucial and have a direct effect on land security. In addition

¹⁷ W. Babette, "Land Conflicts a Practical Guide to Dealing with Land Disputes (2008) Eschborn GTZ Land Management", www.landcoalition.org/pdf/08_GTZ_land_conflicts.pdf retrieved on March 13, 2011. J. Verplanke, "Boundary Dispute Settlement Using Mobile GIS," proceeding.esri.com/library/proc03/abstracts/a0468.pdf Retrieved on 23 March, 2011 and Mr. Sithan Phahn, "Land Conflict and Conflict of Resolution Through Cadastral Commission," <http://www.forum-urban-futures.net> Retrieved on 23 March, 2011. Whereas the former 2 researches address disputes and conflicts as an indifferent nomenclations, the latter tries to draw the difference observably from the lists of the actors of the land conflict in Cambodia. For example villagers and other villagers from neighboring communities or seasonal migrants, villagers and other outsiders such as demobilized or active soldiers police officers.....

¹⁸ W. Babette, "Land Conflicts a Practical Guide to Dealing with Land Disputes," Eschborn GTZ Land Management, (2008) www.landcoalition.org/pdf/08_GTZ_land_conflicts.pdf Retrieved on March 13, 2011.

¹⁹ Supra note 4

economic development of every nation is measured not only by the economic growth, but also by equity. Therefore the mere fact that rural lands are producing sufficient amount does not necessary indicate the good living standard of all peasants. Because the equity dimension of economic development suggest equal/faire distribution of income between citizens of a given nation. Dispute settlement mechanisms will play a paramount role since they determine the rights and entitlements that have direct impact on faire or equitable distribution of resources.²⁰ Here one point worth mentioning is the distinctness of dispute over land from conflict of the same as the latter is broad and often manifest the political dimension of land and the solution as well. Land dispute are not enigmatic and do not usually defy a solution nor it is impossible to enforce the decision or any sort of arbitral award. However merely failing to appropriately address rural land disputes may culminate itself with rural land conflicts. Particularly unfair distribution of land, no matter the degree of efficiency that it may bring about, the equity dimension of economic development will urge the majority to go beyond the dispute resolution mechanisms and still above the law for the sake of securing their right hence a threat to conflict. The victims of such being that of indigenoues peoples or original settlers, as the case may be, change the remedial aspect from dispute resolution institutions to the more strong, rather an extra judicial, political measure could be the option less veracity that every property system will face.²¹ Here it is highly unlikely that a weak bargainer or loser of a certain dispute will be compensated in some way by the state from the tax that it may collect of the giant bargainers. For strong reason how could a person be the beneficiary of a corrupted institution, an institution which fails to protect the ab initio endowed right to him/her?

²⁰ Economic development as a sum total of economic growth and equity has a large portion for fairness and equitable distribution of income which in turn presupposes the role of justice system, including tenure system in bringing faire and appropriate distribution of resources/entitlements. See also "Economic Development vs. Economic Growth," www.diffen.com/.../ retrieved on 13 October, 2011

²¹ Here as per one of the efficiency theories of distribution; that is "pareto optimal" or the "Khaldir khois" named after the name of the author, if a certain distribution of property or any transaction is benefiting one of the parties at the expense of the other and if what the gainer gains exceeds by far from the loser loses that particular transaction or distribution is believed to be at pareto optimal efficient since the state can compensate the losers by collecting the revenue from the gainers.

2.3 Impact of Land Tenure in General and Rural Land Dispute Settlement Mechanisms in Particular on Human Development

This research is determined in identifying causes of land disputes and the mechanisms of settling those disputes in Tigray region and Humera Woreda. But one can raise a plausible question i.e. what is the impact of this dimension of tenure system in Human development?

Before we see the implication however it is wise if we define what we mean by human development? It refers to the non measurable aspect of development. It particularly takes in to consideration the good living standard of the people, the extent of poverty reduction and literacy or education. Nowadays human development along with economic growth is standing as one independent variable in measuring economic development and sustainable economic development of any nation.²² Basically the impact of land tenure in human development has been seen in so many researches. However land tenure is broad enough to include land dispute settlement, certification, expropriation and right in use of the land. Therefore indicating the implication of dispute settlement in food security and human development is one of the ultimate goals of this research. The mere fact that land fertility of a nation is not affected by disputes and dispute settling institutions may show enhancement of land fertility but not necessarily human development. Because what is being produced might have been collected by a handful of individuals that constitutes a small segment of the society that are able to corrupt the land administration units and dispute settling units in securing their interest. In such circumstance it is difficult to talk about development if the majority is living under poverty line. Because the equity/human development dimension of economic development will seriously question such economic growth on the ground of the absence of good living standard, faire distribution of resources and poverty reduction of a given nation.²³ In addition the existence of good land administration units, including dispute settling units plays a significant role in

²² "Economic Growth and Human Development, World Resource Institute"

www.wri.org/publication/content/8372 Retrieved on 13 October ,2011

²³ Ibid

avoiding land exploitation and some other unfriendly act towards the environment.²⁴ for instance if the dispute settling institutions continue to entertain disputes between squatters then peasants will be encouraged to deforest the land and continue to hold land at one's own motion.

Thus, it will raise a question of sustainable human development to the extent environmental protection is taken as a measurement for the existence of sustainable economic development as opposed to economic development alone. Similarly having inappropriate dispute settlement mechanisms may expose the fertility of the land and aggravate poverty since peasants will not place their fate on the justice system regarding their right. Because a peasants' willingness and curiosity to invest his time, money and energy, as a matter of fact depends on the level of certainty that he/she places on the holding right of the land. This will further expose the land to the problem of under use or the tragedy of anti commons. In addition dispute resolution mechanism which is accessible, reduces litigation cost, and mirrors the peasants' own/traditional dispute settlement will play significant role in reduction of poverty since the cost of litigation will not exceed the outcome of the decision or the ratings. Besides dispute resolution mechanism that focuses on the root cause of the dispute instead of distribution of right may create harmony between the peasants and no threat to land conflicts. Plus having good administration and dispute settling institutions that avoid nepotism and corruption by itself is an indication of the existence of human development. Above all participatory dispute settling institution that take in to account the interest of women will positively affect human development since women can develop a confidence regarding their livelihood by themselves.²⁵ Not only this dispute settlement mechanism that take in to account the interest of indigenous peoples right will play paramount role in avoiding intertribal conflicts, and ultimately enhance human development. For instance resettlement program which is also one

²⁴ Sustainable Development, Wikipedia, the Free encyclopedia,en.wikipedia.org/wiki/Sustainable_development Retrieved on 13 October ,2011

²⁵ Promoting Sustainable Human Development Rights for Women in Africa www.twinside.org.sg/title/africa-cn.htm see also W. Janet, "Women's Property Right Violation in Kenya," in A.philip etal (ed) , *Human Rights and Sustainable Development in Africa*: Oxford University Press,2005 P 133-172 www.twinside.org.sg/title/africa-cn.htm_hdr_undp.org/en/reports/global/.../joseph%20oloka-onyango1.pdf , Retrieved on October 13,2011. Also O.Karen etal, "Human Rights and Sustainable Development in Africa," in A.philip etal (ed) *The Development Impact of Gender Equality in Land Rights*, Oxford University Press 2005, P 114-132, www.twinside.org.sg/title/africa-cn.htm_hdr_undp.org/en/reports/global/.../joseph%20oloka-onyango1.pdf Retrieved on October 13,2011

means of poverty reduction will be welcomed by the indigenous peoples if the dispute settlement mechanism and administration system take in to account the special right of those indigenous peoples.

2.4 Causes of the Rural Land Disputes

Effective management of rural land dispute settlement mechanism presupposes to a large extent the identification of the causes of the dispute. Discovering the cause of the dispute would be an irrefutable stride in reducing the escalating amount of disputes, as prevention will assume a prevalent role instead of the remedial approach in achieving the secured entitlement of rights in land and fostering development endeavors. Disputes are unavoidable instance of human life especially since after the introduction of the concept of private property right.²⁶ This is truer for land since entitlement of the right in reality is too onerous and complicated. The traditional fence and even the party wall cannot accurately and adequately demarcate the line nor can they avoid any potential disputes. This does not however mean that disputes in land are only caused due to lack of clarity in the entitlement. The rural land systems, the officials and political decisions are also some of the frequent causes for the dispute.

Besides as disclosed in some researches causes of the dispute in a comprehensive manner are boundary conflicts, ownership conflict between state and private/common/collective owners, limited access to land due to discrimination by law, custom or practice, multiple sales/allocation of land, peaceful, informal land acquisition without eviction, dispute over the value of land, dispute over the payment for using/buying lands.²⁷ Almost all of the causes deserve a credit since they are there for the sake of appropriate claim, productivity, and creating clarity on the rights

²⁶ Demstz a famous economist asserts land became subject of the private property right evolutionary and right after the value of fur increases sharply which in turn triggers the quest for private hunting territory in Indian Tribes the modern day of Quebec. See also Richard. Epstein. "The Allocation of the Commons: Parking on Public Roads," *Journal of Legal Studies*, June 2002, vol. 31, no. 2, pp. 515-544. www.jstor.org/stable, Retrieved on October 13,2011 Richard A. Epstein "The Allocation of the Commons: Parking and Stopping on the Commons," www.law.uchicago.edu Retrieved on October 13,2011.

²⁷ See supra note 18 this research further list out the causes of land conflicts including, Violent land acquisition, conflict between human/cultural and natural use (flora and fauna), market evictions and distortion of local land market/values, violent land acquisition, incl.clashes and wars over land, destruction of property.

arising out of the land. Most of the causes become visible as a natural and inevitable save for the institutional causes. The latter cause precisely disputes caused by the rural land administrating unit needs a little explanation as those institutions are playing an antagonistic role from their objective of establishment.

2.4.1 Institutional problems

As has been advocated by some authors :Understanding land conflicts/disputes in a pervasive sense would culminate the embodiment of them in political economy and sociology of tenure regimes, i.e. in political and institutional governance arrangements that manage access to land, security of tenure and distribution of land among those who have access to land.”²⁸Even though a number of institutional theories under various schools of thought seriously question the merit of administrating units, there are also theories that vehemently advocate on behalf of administering units as if purposely destined to attain efficient and faire distribution of resources. The New Haven School of thought for instance advocates for the regulatory and administrative actions to the extent they are capable of bringing about efficiency and justice.²⁹ Further The Modern Republican Theory, a theory conceived back in the 1960s propounds the separation of decision making from an individual interest and details the content of decision as fruits of farseeing and intelligent individuals pursuing common good.³⁰ Otherwise if the role of these institutions is to complicate and to blur the rights arising out of the lands the level of disputes will increase massively. In a marked contrast the school of Public Choice Theory refutes the prophecy of administrating units are for the common good rather they are aimed at guarantying their long political objectives and make a calculated move or invest towards that end than on economically productive action.³¹ Similarly the Capture Theory reverses the situation of regulation and the relationship between institutions and regulated hence the problem of agency capture that is the regulated will capture

²⁸ Jean Daudelin, “Alternative Dispute Resolution in Land Conflicts: A Tentative Assessment,” 2004 unpublished. www1.carleton.ca/npsia/ccms/wpcontent/ccms.../Pubs-Daudelin.pdf Retrieved on March 23, 2011

²⁹ Mercuno, N. and Medena, S.G , “Economics and the Law: From Posner to Post Modernism” Princeton University Press, New Jersey, 1997), at pp. 3, 13-24, 51 cited as note 98 Solomon Abay “Designing Regulatory Roles of Government in Business:The Lessons From Theory, International Practice and Ethiopia’s Policy Path,” in.....(ed) Journal of Ethiopian Law vol 23 No 2 dec, 2009 pp 79

³⁰ Id cited as note 93 pp79

³¹ Id cited as note 88 pp- 78

the regulating agencies instead.³² Among the general causes of a rural land disputes that have been mentioned above in different literatures preponderance of the causes has directly or indirectly a lot to do with institutional causes. Generally speaking if the cost of production exceeds the benefit of that production then the institution is not running its function at efficient cost. The same can be said to such institutions which fail to bring about the desired outcome of their purpose and aggravate the level of disputes. Apart from the direct costs that the public is incurring to cover the costs of institutionalizing of the agencies, it is also suffering from the uncertainties of the allocation of the rights and duties over the land. Because quite undeniable amount of disputes are attributable to lack of title deed or certificate, even if issued lack of clarity in title deed, inappropriate documentation of the title, and incompleteness of the demarcation in reality. Besides Resource Curse Theory³³ proves how highly valuable resources can negatively affect economic development of a certain nation mainly because of the corrupted administrative system.

However absence of the institutions or the limited role of some institutions is also one of the main factors that aggravate rural land disputes; hence institutional indispensability will also go without saying in the existence of effective rural land administration. For instance it was observed in Tanzania the villagers of Kisagna that the customary land tenure system governed by the colonial land regulation of 1923 as a factor for the frequency of cases.³⁴ The land owners in that particular area possess 'deemed right of occupancy' which is not title deed albeit the right arising out of it was transferred to the heirs/legates for a long period of time in the form of succession.³⁵ Had there been an administrative organ at least a certificate of ownership or any other similar document showing an entitlement could have been issued. Lack of clarity in the land laws is also one of the causes for the dispute as it is not uncommon to see ambiguity and inappropriate standard of compensation in the event of expropriation.

³²Kabir,R., "Security Market Regulation: An Empirical Investigation of Trading Suspension and Insider Trading Restriction,"(Dissertation nr, Faculty of Economics and Business Administration, University of Limburg, the Netherlands, 1990), at p.103 cited as note 140 p 84-85

³³ Even though an empirical research has been done to show the positive link of the two that is development and valuable natural resource it is based on the data that it has got a minimum of better or good governance of a nation in the form of index. See also supra note 12

³⁴ M.K.Verplanke, "Boundary Dispute Settlement Using Mobile,"
Proceeding.esri.com/pro03/abstracts/a0468.pdf Retrieved on 13 October ,2011

³⁵ Ibid

Though largely needs a political and legislative commitment³⁶ the problem of access to land in its pervasive sense goes beyond that of landlessness and to the extent of encircling problems that out flow from fragmentation as they will make ownership or control of the land as meaningless as zero divide by infinity, and owning nothing.

2.4.2 Private Causes

Here causes of the dispute are clashes of interests between the private parties. For instance failing to perform one's own obligation emanates from any kind of undertaking between peasants. The institutions may be as good as to issue prompt certificate or to register any private undertaking between peasants or a peasant with an investor, but for various reasons the parties may enter into a dispute. Some of the frequent forms of land dispute arise regarding inherited lands which are contended by a person's sister or brother and other family members plus usual type of clash also involves land that is operated by one family member, but used by other relatives.³⁷ Besides there are instances where local functionaries described those relatives who come from outside the village demanded relatives to use the land. Subsequent to the cultivation of the land for quite a lot of years, these relatives institute an action on the ground of effective use and productivity of the land.³⁸ In addition Family base disputes most conspicuously the case of succession, post divorce and their far reaching implication on the matrimonial relation of the spouses are also causes that can be categorized under private causes of land disputes. Disputes within a given family may adversely affect that of women in most cases since the application for land certification or the certificate itself excludes them from being registered.³⁹ Even for rural lands that they could maintain use right and decision making women lack the knack of effectively holding or controlling the lands. Dispute with creditors is one of the common rural land disputes.⁴⁰ Another common instance of which a dispute over land may arise is in situations where rural land serves as collateral. In such cases as the ownership title or the title which shows the legality of the possession, for

³⁶ It is also resulted as one of lack of institutional efficiency if we are in a position to extend the horizon of institution to be broad enough to include the legal or legislative gaps.

³⁷ Uch Utey et al, "Social Assessment of Land in Cambodia," A field study-working paper 20 march 25 2011, Cambodia development research institute phnom penh, www.cdri.org.kh/webdata/download/wp/wp20e.pdf Retrieved on 13 March, 2011

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

countries adhering state ownership of land, remains with the borrower transferring the title deed often times than not is solved with an intervention of third parties. The problem once again as usual adversely affects the interest of women.⁴¹

2.5 The Modalities of Rural Land Dispute Resolution

Basically mechanisms of rural land dispute settlement may vary depending on the tenure history, culture and stage of development of a given nation. Regardless of the diversity any opted mechanism must mirror culture of the society and must bring the desired outcome of the land policy. The following point is worth to note, “These mechanisms must fulfill the same requirement and can be analyzed in terms of their immediate-spatially and temporally-effectiveness in producing nonviolent outcomes to disputes; their cost, which has an impact on the relative preference of actors for one among a range of available conflict resolution mechanisms and on the distributional consequences of the outcome of the conflict resolution process.”⁴²

Even though rural land dispute resolution mechanism varies across different jurisdictions, for the purpose of this research all of the devices can be categorized into two general and comprehensive families i.e. formal and informal way of settling disputes. It is worth to point out that this classification spotlights in the nature/means of the of dispute settlement than the end or the outcome of the dispute settlement.⁴³ Accordingly formal and informal ways of dispute resolution mechanisms are the prevalent mode across the globe. Formal way of dispute resolute mechanism has a lot to do with the state based dispute resolution mechanism often noted as judicial dispute resolution mechanism (JDR). The informal way of dispute settlement in its pervasive sense includes the so called alternative dispute resolution mechanisms, customary dispute resolution ways and religious base land dispute resolution mechanism.

The point of distinction between the two is not only on the principal actors or directors of the dispute but also on the hosting institutions of the dispute. It is the state

⁴¹ Ibid

⁴² Supra note 18 this research addresses conflicts and disputes interchangeably.

⁴³ As far as similarity in the end is concerned almost all religious and judicial dispute resolution ways have a similar end of win lose as it is also the case for arbitration nevertheless the degree of losing and winning is not in all a zero sum game.

along with its machinery backed up with all of its substantive and procedural laws, recruited judges and employees which will play a leading role in JDR.⁴⁴ Whereas it will be the religious institutions, customary organs or the ADR, usually non-governmental bodies which will lead and direct the process of dispute settlement for an informal rural land disputes. Besides, the nature of the dispute and the parties to the dispute may sometimes wholly determine the natural propensity of the case to be disposed of by either of the dispute resolution organs. For instance it is highly unlikely for a dispute that caused by expropriation to be entertained by rural land customary dispute resolution method nor will a judicial organ entertain a dispute of which the genuinity of the customarily issued title deed is contested if that customary document is not legalized by the property system of that particular state.

One of the tips that any legal system would gain by sharing the power on rural land dispute settlement with some other extra judicial organs is avoiding the frequent and trickiest gears that most judicial system faces. Most importantly over load of cases and other incidental externalities to the public like accessibility of these organs and the least cost that the parties will incur as opposed to the unimaginably exorbitant expenses of judicial litigations.

2.5.1 Judicial Dispute Resolution mechanism

Judicial organ which is meant to entertain every little dispute has served its usual role as far as rural land disputes are concerned. This organ contrasting to any of the remaining organs is presumed to have professionals or intellects possessing the necessary wisdom and ability in the protection of natural right of parties to the dispute.⁴⁵ Particularly the judges are supposed to know the basic and fundamental right of women and children so that a universal equity could be rendered. Here it is worth to mention that the strength of a judicial organ in bringing about the desired goal goes beyond this as these judges are once again presumed to be in a position of

⁴⁴ Here employees is referring to executive government employees either with a quasi judicial power or as it is not uncommon to see bestowing the exclusive land dispute settlement power along with land administration to the land administration units.

⁴⁵ Here as it has been vehemently advocated by John Locke, Property right like some other rights including the right to life is a natural right once a person can exert his/her labour and combines it with the land. See also Erik F. Meinhardt, "Critical Analysis of John Locke's Theory of Property Rights in Chapter Five of the Second Treatise of Government Philosophy," www.scribd.com/doc/93360/John-Locke-on-Property-Rights Retrieved on 9 October, 2011

understanding efficiency hence an appropriate implementation of the efficiency aspect of every land laws.⁴⁶ The number of cases that some judicial organ disposes is flooded out with the land issues.⁴⁷ This data may in fact show how the tradition of litigation was and the confidence of the public that it has developed in trusting the judicial system. This is not however without any limitation as the judicial organ has been subject to criticism for a long period of time largely on the practical implications of its decision and inability to escape from some institutional efficiency theories.

Practically courts often times than not commit a deliberate mistake to the extent of miscarriage of justice.⁴⁸ It is more true to land disputes due to the high and the ever demanding values of land and rural land in particular disputants tend to easily corrupt the rural land courts comparing to other civil cases.

Judicial dispute resolution mechanism is not as participatory as other alternative dispute resolution methods. Despite the fact that a public hearing of trial has gotten a prevalent cognizance almost across the globe it is not safe to conclude that a judicial system paves the desired room for public participation.⁴⁹ The dreadful feature of this system comes from its weakness in avoiding corruption and the escalating expenses of the litigations⁵⁰. Powerful as a short hand representing for a group of peoples including high ranking politicians, civil servant, the military, the police, companies and other rich and influential groups or individuals are the usual winners when courts are involved in resolving rural land disputes.⁵¹ Majority of the poor lack the courage

⁴⁶Fazhibao, "Social Stability and Administrative Litigation," chinaperspectives.revues.org, Retrieved on 23 March, 2011. By reviewing and correcting activities of the state agencies by a specialized device outside of the administration the courts may achieve unity of the administrative legal system and administrative efficiency.

⁴⁷ H.Mamo, "Land Dispute Settlement in a Plural Institutional Setting; the Case Arssi Oromo of Kokossa District Southern Ethiopia" pp-127 Unpublished www.africa.kyoto-u.ac.jp/Kiroku/asm_suppl/.../11%20Mamo.pdf Retrieved on 23 March, 2011

⁴⁸, "Reducing Corruption in the Judiciary" Office of Democracy and Governance USAID Program Brief June 2009, www.usaid.gov Retrieved on October 9 2011 see also supra note 18 p 11

⁴⁹ Though the American legal tradition paves a little more room by the concept of the jury none of the remaining legal traditions do so. And even the Anglo Saxon fully doesn't open the role as the role of these juries is very limited in power.

⁵⁰ Senyo M. Adjabeng, "Using ADR to Reduce Corruption and the Cost of Accessing Justice in Ghana," ebookbrowse.com Retrieved on 9 October, 2011, see also "Supporting Zambia judicial....-", U4, anti corruption resource centre, www.u4.no/helpdesk/helpdesk/queary.cfm Retrieved on 10 October, 2011

⁵¹ Supra note 18 p 11

to stand in a court of law against the powerful litigants as it is also evident from the outcome of most disputes which favors the rich due to nepotism and corruption.⁵²

Besides the outcome of the dispute always leaves the future parties relationship in animosity notwithstanding the judge endeavor to make the outcome as peaceful as and as amicable as possible. Access to justice in its pervasive sense has a little place of accommodation in the judicial disputes resolution mechanisms. Most courts are located in places where infrastructures are fulfilled and far apart from the rural areas.

The inaccessibility of courts to the rural poor dwellers exposes them to unbearable costs, particularly expenses to lawyers and transportation costs.⁵³ Apart from this court decisions are very unpredictable in spite of the fact that various legal traditions have adopted a precedent/case law approach for the sake of uniformity and certainty as well.⁵⁴

2.5.2 Special Courts/Administrative Tribunals

In principle regular courts are presumed to be in a position to entertain every land dispute. Nonetheless in some intricate land situations it is not uncommon to snatch the power and give it to a specialized land courts. The substantiating reason for such is lack of the necessary expertise on regular courts and lack of concentration by the same as they concentrate to entertain every kind of dispute irrespective of its nature. Land disputes are sometimes as complicated as other enigma which demands an immediate attention of land experts to appropriately understand the nature of the dispute than calling for the expert witness/of land to appear in regular courts every now and then. This in turn will simplify the costs of litigation and time spent to finalize the case (congestion). For instance in Great Britain disputes regarding compensation for the confiscation of land are entertained by land tribunals, together with appeals submitted of the decisions of the government and other agencies as well as decisions depicted by local courts, government and other authorities, as well as

⁵²Ibid, the expense that the parties incur drastically challenges the rural land dwellers, the power imbalance between the poor litigants and the wealthy guys affects not only the expense aspect but also the morality of all the poor's to fight for their future right and let them easily surrender every claim that they may have on the land.

⁵³So Sovannarith et al, "Social Assessment of Land in Cambodia," working paper 20 p 39, Nov 2001 Cambodia Resource Development Institute www.cdri.org.kh/webdata/ Retrieved on 13, March, 2011

⁵⁴Even the Ethiopian legal tradition which shares largely in common to the continental legal tradition has a place though limited to the case law approach for the aforementioned reasons.

decisions passed in local courts.⁵⁵ Besides in USA disputes that fall within the ambit of the establishment of land property right are subject to settlement court.⁵⁶ The disputes between the leaseholders and the land owners are analyzed either in general court or in some of the land disputes are tried out by district committees on soil protection and recovery.⁵⁷

This trend of the common law legal tradition is also applauded in some of the leading continental states due to the intersection policy of land that is private ownership. Accordingly in France, a dispute over land tenure is settled by commissions on land tenure, and disputes resulting from lease relations by party courts on agricultural lease. (These agencies are headed by the justices of the peace.)⁵⁸ And research indicates in Kenya the land administration committees (LAC) and the land dispute tribunals (LDTs) have gained popularity and acceptance by the Kenyan people specially by the rural dwellers.⁵⁹

Apart from this the agricultural land tribunal (ALTS)⁶⁰ entertains applications by close relatives of a deceased or retiring tenant to succeed to the tenancy, applications by land lords for consent to a notice to quit served on the tenant; application for a direction to tend ditches or carry out drainage work on neighboring land; and application by land lords for a certificate of bad husbandry on the ground that the tenant is not farming in accordance with the rules of good husbandry; applications by tenants for approval to carry out long-term improvements on the holding; and applications for a direction to provide fixed equipment.⁶¹ Even though the genuinity of the tribunal is questioned due to the potential conflict of interest upon the intervention of the Ministry of Land in land issues in the appointment of the chairperson of the district land tribunal in Tanzania the establishment of tribunals is not unprecedented

⁵⁵, The Great Soviet Encyclopedia (1979) when it defines land disputes. <http://encyclopedia2.thefreedictionary.com/Land+Disputes> retrieved on February 23

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹, "Land dispute resolution mechanisms in rural Kenya: The Case of Land Tribunals," institute of policy analysis and Research (Nairobi) www.allbookstores.com retrieved on 12 March, 2011

⁶⁰ Serviced by defra (the department of environment food and rural affairs has a jurisdiction in England and wells.

⁶¹, [File:///c:/users/donloads/USA.htm/ archive.defra.gov.uk/food_farm/farm_manage/alt/](File:///c:/users/donloads/USA.htm/archive.defra.gov.uk/food_farm/farm_manage/alt/) - Retrieved on 23 March, 2011. as per the procedural laws of the agricultural land tribunal (rules) order 2007/3105 that implemented on 15 January 2008 along with additional earlier laws the tribunal will accept the submission will be free of charge and defra cover the expenses of alt for hearing but not for transportation and professional advise expenses.

in some African countries.⁶² But the jurisdiction that has been bestowed upon the tribunal is not exclusive jurisdiction as the village land council, the ward tribunal the high court (land division) and the court of appeal of Tanzania have also a jurisdiction as per the hierarchy.⁶³

2.5.3 Informal Dispute Resolution Mechanisms

Here informal way of rural land dispute resolution mechanisms in its pervasive sense is referring to three kinds.

First, the so called alternative dispute resolution mechanisms which have acceptance in the modern world particularly for commercial dispute resolution mechanisms. It is believed to be the mirror image of the laissez faire thinking of litigation with a confidential character. Highly influenced by the western thinking is also highly demanded for every kind of dispute settlement. Second customary or traditional dispute resolution mechanism or often termed as CDR shares much similarity with ADR but very traditional and local based. Parties obliged to comply with the decision of an arbitrator in particular since the far reaching implication of the decision on the future livelihood of the parties is crucial. Failure to accept the decision portrays readiness to bear the condemnation and value judgment of the society or community at large. The third mode as it has gotten a frequent application on rural land disputes is the application of ADR and CDR as a mix under the guidance of rural land administration units or any other appropriate government body. Because the arbitrators are not only acquainted with techniques of customary dispute resolution mechanism but equally capable with modern arbitrators of ADR since they are widely cognizant of some basic human rights which is crucial regarding women, indigenous people and children rights.

⁶² P.K Onesmo, "1990'S Tanzania land laws reforms and its impact on the pastoral land tenure," The pastoral week at Arusha from 14th-16thfebruary, (2010) pp-11 of 1-25 [www.tnrf.org/.../E-INFO LHRC New Land Laws Paper Pastoral Week 2010.pdf](http://www.tnrf.org/.../E-INFO%20LHRC%20New%20Land%20Laws%20Paper%20Pastoral%20Week%202010.pdf) retrieved on 11 March, 2011

⁶³ The court (land dispute settlement) of the republic of Tanzania, act, 2002 www.comcourt.go.tz/comcourt/.../02-2002 Retrieved on 11 October, 2011

2.5.3.1 Alternative Dispute Resolution Mechanism/ADR

Equally important to the formal way of dispute settlement mechanisms, disputes are also resolved by alternative dispute resolution mechanisms, often known as ADR. The achievement of these modes is by far better than the contentious or formal dispute resolution mechanism at least for the following main reasons. The decision in most of the cases will emanate from the parties themselves as it is the case for negotiation and mediation. The result will definitely satisfy the parties to the extent of making appeal impossible. As we have seen above the room for corruption and nepotism is pervasive as far as rural land JDR is concerned.⁶⁴ Nevertheless it is rare if not in the case of ADR mechanism.⁶⁵ The awesome aspect of this modality is the less time that it will take to dispose a single case, at least comparing to JDR. Rural agricultural land will remain unused if the dispute takes a prolonged time. Even if it is going to be ploughed by either of the litigants due to the problems of execution no one can be the beneficiary up until the decision is rendered. Apart from this none of the peasants might be certain to plough or sow seed in the land to the extent the harvest will only be ordered in favor of the creditor who may not have been actually held or controlled the land. So the congestion problem of the judicial dispute resolution mechanisms can and in fact is also terribly affecting the agricultural land due to the long time that it often takes to dispose the case. The decision will culminate itself by a diametrically opposite consequence of the tragedy of the commons; that is the land will remain underused which may ultimately expose any of the party to further cleaning expenses of the land. Moreover the pluses of alternative dispute resolution mechanism does not end here as it is also accessible, the time that the parties incur to travel, not to mention the travel expenses, which is almost unavoidable for judicial dispute resolution mechanisms, will be multiplied by zero. The arbitrators are to be nominated by the parties themselves including the mediators so there will be little room of abusing the power. Mediation, negotiation, conciliation and arbitration are the modalities that have gotten a cognizance under ADR not only in relation to rural land dispute resolution but also for any kind of dispute⁶⁶. The involvement of third parties is material for all save for negotiation. The mediator serves as the facilitator of the

⁶⁴ Supra note 18 p 5

⁶⁵ Supra note 50

⁶⁶ "Alternative Dispute Resolution-Wikipedia." The free Encyclopedia en.wikipedia.org/wiki Retrieved on 11 October , 2011

negotiation without having any power neither imposing a decision nor suggesting a solution hence solution emanates from the disputant parties themselves. In a marked contrast the role of a conciliator is a bit larger than the mediator to the extent he or she can suggest a solution on top of its facilitative role that he/she will portray.⁶⁷ The story for arbitration is different and shares much commonality with judicial dispute resolution mechanism especially when the output is concerned.⁶⁸ Yet it is by far efficient in terms of the average time that it may consume in disposing a certain dispute not to mention the definite credit that it has from the angle of arbitrators as they are party nominees than sovereign appointees. The degree of achievement that this system will bring about to the society varies across various jurisdictions. The more institutionalized, modern is the ADR the more it will be efficient and satisfactory.

In an efficient, organized and modern ADR the probability of having a land expert is high, the decision of which will be efficient and with an interesting effect on the continuity, effective and efficient use of the land. Time wise, decision wise (predictable usually), and the far reaching implication on the future relation of the parties by avoiding any sense of animosity, enmity it is not dubious to let disputes solved by this organ. This modality can be taken as the safest and best for rural land disputes and in fact adequately fit the existing gap in rural land dispute resolution mechanism. Unquestionably there are a number of benefits that a certain system will gain from introducing the alternative way of settling disputes.

But as we all know this is easier said than done. How can tenure system of least developing or even developing nation introduce this easily? Particularly from where will the system find trained mediators, conciliators or arbitrators for a practical matter who advocates equality irrespective of sex, race or any other ground? Or an arbitrator who understands children and indigenous people's right and finally an arbitrator who values time most and capable of rendering decisions on time? This will take us to the other informal way of dispute settlement mechanism often times plausible in nonwestern society i.e. customary or traditional dispute resolution mechanism (C

⁶⁷ Alessandra Sgbuni et al, "Arbitration, Mediation and Conciliation: Differences and Similarities from an International and Italian Business Perspective," www.mediate.com/articles/sgubiniA2.cfm Retrieved on 10 October, 2011

⁶⁸ Ibid

2.5.3.2 Customary or Traditional Dispute Resolution Mechanism/CDR

As mentioned above rural land community has developed its own mechanisms of rural land holdings, like customary certificates. Similarly it has also introduced a mechanism of dispute settlement regarding those lands i.e. customary or traditional dispute resolution mechanism (CDR). It has a number of intersecting characters with ADR. To be specific the advantage that it will bring to the parties in the form of win-win situation in case if the elderly peoples are serving as a mediator or conciliator. One of the notable weaknesses of this system is the long time that it consume to dispose the case.⁶⁹ It can be said it is not as efficient as ADR in terms of the time that it takes to solve the dispute. Perhaps the frequent drawback of this modality has a lot to do with lack of experts who are endowed with the knowledge of understanding the universal values of human rights particularly that of women, children and indigenous peoples.⁷⁰ On top of this the system fails to provide enough opportunity to women in the process of dispute settlement, either as an arbitrator, conciliator or mediator.⁷¹ This weakness of such institutions is not as inherent as the drawbacks of the judicial dispute resolution mechanisms. After all such shortcomings can easily be overcome by delivering a short training to the arbitrators or the mediators as the case may be.

One of the underlying reasons why customary mechanisms should be advocated from the point of view of manner and intelligence is not to let the parties shift their problem to any of state officials or any of land administrative unit officials, and provide an opportunity of resolving their own dispute by themselves. The room for this is very wide as all of the customary dispute resolution mechanisms are participatory. The arbitrators are there to be assigned by the best whim and interest of the parties. Even the conciliator or sometimes the mediator is also there due to the consent of the parties. Above all if the parties opt to resolve through negotiation the possibility of externalizing the problem i.e. the outcome of the dispute is less if not, none at all.⁷²

⁶⁹ Song Vansin ,“Recent experience of Oxfam GB-Cambodia Land Study Project in the Land Reform in Cambodia,” International Conference on Access to Land: Innovative Agrarian Reform for sustainability and Poverty Reduction, March 19-23 2000, Bonn, Germany, pp 1-4
www.angoc.org/portal/publications/EAPLCPR retrieved on 23 March , 2011

⁷⁰ Ibid

⁷¹ Ibid

⁷²O.Norm etal, “Settling Customary Land Disputes in Papua New Guinea,” pp 226-237
www.ausaid.gov.au/.../pdf/MLW -Case Study Retrieved on 13 march 2011 It is based on this and other merits, including the plus of having local expertise and decentralization of decision making the land

2.5.3.3 Mixed Informal Dispute Resolution Mechanism

The other dimension of informal way of rural land dispute settlement is a form of ADR and CDR but regulated for the sake of efficiency and gap filling. The rural land administration units or any other appropriate local administrative unit will intervene and regulate the dispute resolution mechanism. Here the authority will not take part in the decision making process nor will it impose the dispute settling unit regarding its decision. Rather the intervention will only be justified on the grounds of the failures of both CDR and ADR. That is to regulate the timeframe that they should consume to dispose their case. Some of the notable merits of such system is it will bring all of the benefits of ADR contextualized by the given community. That is the role that an arbitrator, conciliator or a mediator of ADR plays will be portrayed by the elderly selected peoples of the given community, usually sharing the character of mediator. They will take some training on fundamental issues of land and human rights to overcome the apparent inherent problem that CDR possesses, most notably the prolonged time that the mediators may take and lack of necessary knowledge to equally treat certain group of people, like women, children and indigenous peoples.⁷³ The acceptance of such particularly that of mediation as a model of addressing land conflicts crosses some of the Asian countries like East Timor under the management of land and property directorate.⁷⁴ With all of the financial and some other resource limitations it is able to achieve considerable achievements in successfully managing a large number of potentially violent disputes without mentioning its innovativeness.⁷⁵ This organ creates a bridge between traditional dispute resolution mechanisms and the court and set aside use of ritual and customary institutions when the parties agree, and reference to the courts when the parties are unable to agree.⁷⁶ Avoiding problems associated with a lack of capacity in the court system and having greater access to self-funding opportunities than the courts and entrenching the mediation system in land administration rather than judicial administration which countenances remedies

Titles commission, as an agency for settling land disputes over customary land, be abolished and replaced by a three –tiered system of mediation, arbitration, and appeal that was a part of the national judiciary and was decentralized to the province and the district.

⁷³Supra note 69

⁷⁴Daniel Fitzpatrick, “Mediating Land Conflicts in East Timor,” pp 178-197 [au/publications/pdf/MLW_VolumeTwo_CaseStudy_9.PDF](#) retrieved on 23 March 2011

⁷⁵Ibid

⁷⁶Ibid

out of stock in the courts such as selling, leasing, dividing or exchange of land are some of the definite plus that the system has provided to the disputants.⁷⁷

In New Papua Guinea a special land court is established to entertain matters of rural land conflicts which entertain cases if a mediated agreement is failed. Further according to the new act of the New Papua Guinea, mediated agreements are evidence of land rights but they do not bind the parties (unless approved by a local land court), whereas arbitrated settlements do bind the parties.⁷⁸

The local land court is also authorized to deal with other matters inextricably involved with the land dispute before it. In general, disputes cannot be taken further than the local land court, but the act does allow a limited right of appeal (against a local court decision) to the provincial land court (stage three) and the grounds for appeal are confined to errors of jurisdiction, decisions made contrary to natural justice or cases of manifest justice.⁷⁹ The act is largely administered by the provincial land dispute committee for the provenience concerned.

Lawyers for all-purpose are disqualified from coming along in land court hearings and the land courts are not obligated by any laws excepting the act itself or any other act expressly applied to them.⁸⁰ In special circumstance, under section IV of the act, the national government may declare that a land dispute should be settled by some means other than those provided by the act.⁸¹

Such special circumstances include that the dispute is longstanding and previous attempts at mediation have failed, or the dispute has already resulted in serious breaches of the peace. This Section of the act was included to facilitate, for example, speedier access by resource companies to customary land as has recently occurred in a number of cases.⁸² The lesson of the New Papua Guinea elucidates the decline of the system in 20 years span of time after the act had been declared despite the long stand history of the system.⁸³ As per the symposium conducted to examine the cause and

⁷⁷ Ibid

⁷⁸ Supra note 72

⁷⁹ Ibid.

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

solution of such system, the problem did not lie on the inherent character of the guided dispute resolution mechanism rather the under finance and under staff problems accompanied with lack of an appropriate short or long time training to the mediators and arbitrators were detectable.⁸⁴ In effect the strength and continuity of such system heavily depends on the ability of the system to appropriately fund it both financially and staffs wise plus on its ability of infusing the definite pluses of ADR on the same.

To sum up 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. The more disputes we have the less will peasants exert their best effort to enhance the productivity of the land due to the level of uncertainty that they place regarding their right on the land. This will not affect the income of peasants only as a group of peasants' signals human development there. Moreover if peasants fail to place their fate and confidence on the dispute settling institutions, usually for indispensable disputes, certainly it will also affect certainty of right over rural land and the courage to invest one's own energy, time and money as well. As we all know from the wisdom of the universal dispute resolution mechanisms; particularly that of ADR when contextualized to the given area can appropriately serve for good rural land disputes mechanisms of a given researched area. This is what this chapter has dealt with i.e. it has assessed the rural land dispute settlement across various jurisdictions and the jurisprudential value of each to rural land dispute settlement everywhere. Surveying the universal causes and mechanisms of dispute settlement mechanisms provides undeniable opportunity in any research nevertheless it goes without saying that "development should also come from within" which demands the assessment of rural dispute settlement within the nation as briefly dealt with in the next chapter, that is chapter three.

⁸⁴ Ibid

Chapter Three: Historical Development of Rural Land Dispute Settlement in Ethiopia

3.1 Introduction

The fate of the economy of Ethiopia almost entirely has been dependant on agriculture. Logically, therefore, introducing a strong and credible tenure system has been the primary task of every regime in the history of the nation. This chapter addresses rural land dispute settlement mechanism starting from the period of Hailelassie regime until the present time. Surveying the historical rural land laws of the nation is essential. It goes without saying that, continuity and consistency of tenure system in a given jurisdiction heavily depends on the ability of the system to inherit positive attributes of the preceding deterrent experiences. Plus conducting sound legal research presupposes learning some wisdom from within even though cross reference to some jurisprudential values of the external world should be made. Moreover, past experience assists well in assessing the strength of the current system and to what extent does it borrow good lessons of the past, if any. So this chapter traces dispute settlement mechanisms under Hailelassie and Derg régimes. Finally, it examines the institutions of dispute settlement mechanism during FDRE government together with some selected experience of federal units of the FDRE most notably the Oromiya, SNNP, and Amhara Regional state laws.

3.2 During the Imperial Regime

As I have tried to make it clear from the outset land policy of a particular country highly affects the type, number, and magnitude of cases, to which Ethiopia is no exception. It is worth to reiterate that Ethiopia's land policy for the last 70 years lacks consistency, i.e., change of government involved change of land tenure. The types of rural land disputes that are highly related to private ownership of land were historically possible exclusively during Hailelassie regime albeit it was almost impossible for about 37 years since after the overthrow of the imperial regime. This is evident since private ownership of rural land was not abolished in the mentioned time.

Even though land policies of Derg and the FDRE cannot be considered as identical there is a commonality between the two as regards ownership of land⁸⁵

In 1930s land policy of Ethiopia was ambiguous, not uniform nor consistent across the nation. The land system in the northern part was predominantly on the basis of *rist* system and the *gebar serat* in the eastern, southern, and western part of the nation. As far as the 1931 constitution is concerned it guarantees the acquisition of ownership to the possession to the imperial family, the nobility, governors and the Ethiopians at large.⁸⁶ The 1955 constitution too is a matter of indifference to the extent that the mode of ownership is concerned, as when one reads article 44 of the 1955 constitution it states that everyone has the right, within the limits of the law, to own and dispose of property. And it further stipulates that it is only under the guise of expropriation that the ownership over the land can be deprived as per articles 88, 89 and 90 of the similar constitution accompanied with the payment of just compensation as may be determined by agreement or by the judicial procedure established by law. In short the legal regime governing the land matters was the constitution, the Civil Code, customary laws, and by various proclamation including government and church land grant laws.⁸⁷ The institutions that were established to entertain land disputes were both customary and regular courts.⁸⁸ The bestowal of such power to the regular courts coincides with enactment of the Civil Procedure Code. But the jurisdiction was not an exclusive jurisdiction of the regular courts, due to the introduction of alternative dispute resolution mechanisms in the Civil Procedure Code. So the level of dispute that could arise may even go to the extent of disputes over ownership. The nature of disputes may vary and range from usufruct to ownership; almost every bundle of property right can be subject of the dispute at hand.

Obviously the universal causes of rural land disputes were also a matter of indifference as far as the causes of rural land disputes of the then time is concerned. Some of the specific possible causes of the time include, among others, the poor and amorphous property system, absence of unambiguous laws and incompetence of the

⁸⁵ In both regimes neither can an ownership right be valued nor can a dispute go to that extent.

⁸⁶ Article 74 and article 75 of the 1931 constitution recognizes private ownership of land by the emperor and imperial family, and the right of the nobility, governors and all Ethiopians respectively.

⁸⁷ Supra note 4

⁸⁸ Ibid

courts.⁸⁹ As it has been stated already the number of disputes, though not substantiated by an accurate research or data was as numerous as the entitlements. Delays of the courts in disposing the case were believed to be the major setback to the litigants.⁹⁰ In addition it is conceivable that a number of claims were not brought as justiciable matters mainly due to the inaccessibility of the courts.⁹¹

3.3 During the Derg Regime

The era of post 1975 concerning Ethiopian tenure system was more or less similar particularly from the perspective of ownership policy of land. The mode of ownership of land in the 1975 PDRE constitution as an extension of the central planning economy was ownership of state of the land.⁹² Generally and historically speaking it was the Derg regime which has made a significant achievement in addressing the rural land disputes in an organized and comprehensive manner. It particularly enacted Proclamation No 31/1975 a proclamation to provide for the public ownership of rural lands as later amended by the Proclamation No 223/1982 a proclamation to provide for the consolidation of peasant association and further elaborated the judicial tribunal matters by the organization and consolidation of peasant association proclamation No 71/1975. Almost all of the aforementioned proclamations extensively address the dispute settlement part of a rural land in a separate chapter, specially the last proclamation, i.e. Proclamation No 223/1982 a proclamation to provide for the consolidation of peasant association. Jurisdiction of the Kebele judicial tribunal, woreda judicial tribunal, and finally the awraja judicial tribunal, with an ultimate and supreme jurisdiction has been dealt with exhaustively by Proclamation No 223/1982.⁹³

Land policy of the Derg regime brings to an end all customary land rights; every property, including land belongs to the state save for the single residential house per family on top of its full and exclusive power in redefining the right and access to

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

⁹² The Constitution of the Peoples Democratic of Ethiopia. 1995, art 24.No 01 , Neg.Gaz. Year 1

⁹³ A proclamation to provide for the consolidation of peasants association, 1982, articles 36-40 Proc. No. 223, Neg.Gaz. , Year gave both civil and criminal jurisdiction over rural lands to all levels of the judicial tribunals.

land.⁹⁴ Particularly rural land was under the peasant association which has also the power to redistribute land as a result of which along with the inheritance of land use right tremendously reduces the size of the rural land holdings and with an ultimate negative effect on tenure security.⁹⁵

The extent of the transformation, and the abruptness with which it was declared and realized, led most observers, together with many radical Ethiopians and nearly all envoys from socialist countries, to anticipate economic tragedy and social collapse.⁹⁶ Such mysterious prophecies were rather resulted in the exact opposite in store of the expectation and imagination of the aforementioned surmises.⁹⁷ The economic end result of the land reform were rather to increase in production, due mostly to good weather conditions, and a substantial improvement in the peasants' livelihood order.⁹⁸ Obviously the number of peasant association has shown a tremendous increase since after the downfall of the imperial regime in 1975. In the aftermath of the downfall of the imperial regime the number of association increases from 18,000 to 24,700 and the membership from four million to 6.7 million.⁹⁹

As per the Proclamation No 31/1975 a proclamation to provide for the public ownership of rural lands all rural lands were nationalized in particular the ownership of rural land by individuals or by any business organization has been expressly prohibited.¹⁰⁰ The proclamation in particular snatched off the regular courts the power to adjudicate rural land matters and established a different rural land dispute settlement system. Above all this particular proclamation determines the fate of the pending cases as if they never have been instituted. And completely prohibits the courts from entertaining or disposing any of forthcoming rural land disputes even if the special tribunal was not in action.¹⁰¹ Sub article one of article 28 in particular

⁹⁴ Solomon Bekru et al "Removing Limitations of Current Ethiopian Rural Land Policy and Land Administration," workshop on land policies and legal empowerment of the poor, (Nov 2-3,2006)the world bank Washington D.C, eltap.net/tenureSecurity.asp Retrieved on 23 March, 2011

⁹⁵ Ibid

⁹⁶ C:\JSTOR African Studies Review, Vol_ 20, No_ 3 (Dec_, 1977), pp_ 79-90.mht marina Ottawa land reform in Ethiopia 1974-1977 African studies review vol 20 no III DEC 1977 Retrieved on 13 March, 2011

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ A proclamation to provide for the public ownership of rural lands.1975.articles 3, 3(2) .Proc.No. 31, *Neg.Gaz.* , Year.. declares the public ownership of land and condemns the ownership of rural land clearly respectively.

¹⁰¹ Id, article 28

annulled all cases of rural land which were pending in court of laws. Sub article 2 of the same article prohibits any action from being instituted before regular courts even after the establishment of rural land judicial tribunals.

More surprisingly sub article 3 of the same article clearly prohibits the challenge of the decision of the judicial tribunals on the ground of legality.

One might raise the question: Why did the proclamation become anti JDR as far as rural land disputes is concerned? Was there any historic reason to do so? Did this imply the loss of confidence of the public or rural poor in the preexisting justice system?

Particularly sub article 3 of article 28 prohibited the possibility of judicial review. Generally the system was both against the principle of separation of power and rule of law. One can question the validity of this proclamation from the spectrum of accessibility of justice and rule of law as a process in general. Socialism as a thinking believes in the capacity of associations to bring about the desired goals of any matter.¹⁰² The framework of the proclamation might have been emanated from this judgment. But this would raise a question of validity particularly from the angle of access to justice. Though some jurisdictions across the world favor special administrative rural land courts none of them prohibit the concept of judicial review. In fact the jurisdiction of these judicial tribunals as per articles 36-52 of Proclamation No 223/1982 a proclamation to provide for the consolidation of peasant association was to the extent of criminal matters. In effect a person was sent to jail by the mere decision of judicial tribunal other than a court decision on criminal matters related to rural lands. Article 43 of the proclamation empowers the judicial tribunal to the extent of ordering a maximum of three month imprisonment if a criminal fails to comply with decree of forced labor that the tribunal ordered as per article 40(1)(e) of the same proclamation. The principles of procedural due process of law were at stake as far as this proclamation was concerned. Incriminating a peasant or a suspect on the ground of land offense may ultimately result in imprisonment. Can mere judicial tribunal

¹⁰² It was suggested the establishment of revolutionary peasant committee to implement the land distribution program as one aspect of land reform in Russia in the aftermath of the victory of the revolution see also Lenin. I., "Socialism and the Peasantry," www.marxists.org/archive/lenin/works/1905/oct/10.htm retrieved on October 14, 2011

deny the liberty of a person and send him to jail with a criminal record? In addition a forced labor for a maximum of 15 days can be ordered by the tribunal decision as per article 40(1) (e) of the proclamation, an impossible decision even by regular courts.

Further the proclamation allows the redistribution of rural land to be carried out for the best interest of the poor families which does not exceed 10 hectares for the sake of family maintenance after it clearly prohibit labor contract of any kind.¹⁰³

Besides, this particular proclamation was determined to address the fate of large scale farms as exact opposite in store of the previous manner that they were incorporated. Accordingly they shall be organized only by the government or by cooperatives in the absence of either of the modalities to be allotted to the tillers after a due amount of compensation regarding the value of the movable property or some other permanent work on the farm land, is paid to the previous owners of the farm land.¹⁰⁴ This stand of the proclamation makes it the rural land as a general and the status of the rural land possessors equal. Therefore there should not obviously be special dispute resolution mechanisms as far as the large scale farms of the rural land are concerned. The probability of entertaining issues over rural land of large scale farming as investment cases or disputes is none at all. Since the rural land is to be redistributed to the rural poor families if not to the government so less opportunity was there for similar matters to be dealt with by regular courts at the pretext of investment issues. But what should be the fate of these large scale farms that were transferred to the cooperatives. What if a dispute arises regarding those large scale farms of rural lands most notably on the basis of certification, border dispute or some other potential disputes? Could the peasant association entertain such disputes? It is apparently true that the regular courts were completely excluded from entertaining any rural land dispute, be it a large scale farm or a peasant dispute irrespective of the soundness of the system.

Kebele peasant association was set in motion in each district with an area of about 800 hectares, woreda peasant association at all woreda's, and an awraja peasant association in every awraja.¹⁰⁵ Here the association which was established to implement the rural land policy of the nation was also empowered by article 10(4) of

¹⁰³ Supra note 100, article 4

¹⁰⁴ Id, Article 75,10 it is the role of the minister of land reform and administration to determine the organization of these large scale farms and the amount of compensation too.

¹⁰⁵ Id, Article 11(3)

proclamation No 31/1975 to establish land tribunals that shall hear land disputes arising within the area. Besides, the land reform officer, assigned by the Minister of Land Reform and Administration of the time¹⁰⁶ shall act as a chairman of the judicial tribunal of the peasant association established at woreda and awraja levels; provided that no land reform officer who has presided over a case heard at woreda level may do the same at awraja level as per sub article 1 of article 14 of the same proclamation. And the officer's (the land reform officer) duty to establish the office of the judicial tribunal with an aim of keeping the records of the office was clearly stipulated in the proclamation.¹⁰⁷

Generally rural land dispute resolution jurisdiction has been given to Kebele judicial tribunal, woreda judicial tribunal, and the awraja judicial tribunal. The *Woreda* judicial tribunal had been bestowed with a first instance jurisdiction over rural land cases or as an appellate jurisdiction to the decisions that were rendered by the Kebele judicial tribunal in which cases was serving as final and non-appealable¹⁰⁸ Similarly, *Awraja* judicial tribunal would have an appellate jurisdiction with a final decision over matters that have been seen by the¹⁰⁹ woreda judicial tribunal as a first instance jurisdiction.

Article 5 of Proclamation No 31/1975 a proclamation to provide for the public ownership of rural lands further makes it clear that “no person may sale, exchange, transfer by succession, lease or otherwise transfer his holding to another; provided that up on the death of the holder the wife or husband or minor children of the deceased or where these are not present, any child of the deceased who has attained majority, shall have the right to use the land.” The meaningful difference in practice to the courts as far as this dichotomy of succession and substitution is concerned was a matter of doubt to some authors hence courts were facing less intricacies in implementing this article.¹¹⁰

Here as we have seen in the second part of the paper the Derg regime opted to adopt a special administrative tribunal to handle all rural land cases without making a distinction on the size of the land or the nature of the output of the rural land. No

¹⁰⁶ Id Articles 2(10) and 12(2)

¹⁰⁷ Id Article 14(2)

¹⁰⁸ Supra note 4

¹⁰⁹ Ibid

¹¹⁰ Ibid

place is there for courts to entertain and dispose a decision on any rural land disputes to the extent article 28(3) of Proclamation No 31/1975 prohibited regular courts from reviewing the decisions of administrative tribunals on the ground of legality. More specific, elaborative and clear provisions were included in the last proclamation of the PDRE on rural land use and administration proclamation No 223/1982.¹¹¹ Chapter eight of the proclamation dealt with the provisions and procedures common to judicial tribunals.

The place where the hearing on rural land disputes entertained shall be in the office of the peasant association and the time for hearing the rural land disputes shall always be convenient but it was not by any means at the working hours of the association.¹¹² In addition all of the decisions of the tribunals shall be rendered by a majority vote.¹¹³

Here the jurisdiction of the judicial tribunal goes far beyond civil matters of the rural land hence any criminal aspect which has logically arisen from the given rural land is also to be settled by the power of the tribunal.¹¹⁴

Accessibility of the tribunals was one of the striking issues that trigger the proclamation to come up with a new solution. As per article 50 of the same proclamation in rural areas where judicial tribunals are not established on the effective date thereof, civil and criminal cases fall within the jurisdiction of said tribunals hereunder shall be heard and decided by the regular courts and in accordance with the regular procedures; provided however that the regular courts shall, as of the day they are notified of the establishment of judicial tribunals in the area concerned cease to entertain cases, other than those pending before them on the day of notification, which fall within the jurisdiction of the judicial tribunal hereunder. In addition any rural land tribunal with an appellate jurisdiction can admit new or additional evidence if it deemed necessary for the attainment of justice.¹¹⁵

The proclamation further determines the number of judges that can have a seat in the woreda judicial tribunal. There shall be three permanent member judges and

¹¹¹ A proclamation to provide for the consolidation of peasants association, 1982, Proc. No 223, *Neg.Gaz.* , Year is a proclamation that has been enacted to repeal the proclamation to provide for the public ownership of rural lands.1975. .PRO.No 31, *Neg.Gaz.* ,

¹¹² Supra note 100, Article 3

¹¹³ Id, article 38(2)

¹¹⁴Id, articles 39 and 40-48 clearly states the power of the tribunal in handling offenses related to rural land.

¹¹⁵Supra note 93 Article 52

alternative two as may be nominated by the general assembly, an assembly which was also empowered to nominate the chairperson of the tribunal.¹¹⁶ These provisions depict how the tribunals were established under the structure preferred by the proclamations. They were appointees of the associations as every administrative tribunal. Almost all members of the tribunal were elected by the senior officials of the peasant association. The proclamation however did not stipulate whether the members should be trained legal experts in spite of the fact that a judicial power over criminal matters was bestowed to them.

Further, proclamation No 233/1985 stipulated the basis of material jurisdiction of those various judicial tribunals. Accordingly cases which the Labor Proclamation No 64/1975 covered and a dispute of which a government office or organ is a party shall totally be out of the reach of the jurisdiction of the Kebele tribunals.¹¹⁷ But the Kebele could have jurisdiction on any dispute including succession cases involving private property situated on the Kebele peasant association but subject to article 18 of the 1965 Ethiopian civil procedure code; any dispute involving the division of common property of spouses within the Kebele peasant association, where the divorce has been decided by the family arbitrators and pronounced by the court; any dispute involving garden plots; and any dispute involving pecuniary claims of up birr 500 or any disputes on property of a value up to birr 500.¹¹⁸ Furthermore the particular proclamation has given the first instance jurisdiction to the Kebele tribunals on disputes between Kebele peasant associations with woreda, disputes between service cooperatives and peasant association with in the woreda; disputes between service cooperatives with woreda.¹¹⁹

The story for the manners of appointment of members for awraja tribunals is different albeit similar in number. The permanent numbers of the tribunal members are three and two alternative members and it is the congress which the proclamation powered to appoint the chairperson of the awraja judicial tribunal. Moreover Awraja tribunal used to have first instance jurisdiction regarding disputes between peasants association and Awraja and an appellate jurisdiction on the decisions of Woreda

¹¹⁶Id Article 53

¹¹⁷ Id Article 54(1)

¹¹⁸Id, Article 54(1)(a-c)

¹¹⁹Id article 54(2) and (3).

tribunal.¹²⁰ The decision of the awraja judicial tribunal was taken as final since it was at the top from the hierarchies of the given judicial tribunals.¹²¹

3.4 During the FDRE Government

In the aftermath of the overthrow of the Derg regime by the current leading party in 1991 a change to the rural land dispute settlement mechanisms has been introduced. Policy wise particularly from the spectrum of land ownership there was no substantial difference if not none at all between the predecessor and the current leading party of the nation. They both abolish private ownership of land. Particularly the present regime makes land to be owned by the nations, nationalities and people of Ethiopia along with other natural resource of the country.¹²² So the type of dispute that may arise on rural land is more or less the same. Definitely no issue of ownership of land can be the subject of dispute to the dispute settling organ. So the disputes can no longer go beyond possession of the rural land. More frequent disputes include among other things the following; disputes based on border conflicts, disputes caused due to unclarity of certificates of holding, disputes of inheritance, and to some extent as a post divorce issue of common property disputes between spouses, contract based disputes between two peasants or a peasant with investors or the government and disputes with rural land administration units. Nevertheless the current Ethiopian land administration and use system has advanced with a different and unprecedented modality of rural land dispute resolution mechanisms.

In 1997 the first rural land proclamation was issued by the federal government, i.e. Federal Rural Land Administration Proclamation. This first proclamation was meant to serve as a bench mark to the regions of the nation while they enact the rural land laws. Basically it was this proclamation which has specifically recognized the power of the regional states to enact rural land laws. It is only for the sake of administration that the regions have conferred a power to enact a rural land proclamations¹²³

¹²⁰ Id Article 60

¹²¹ Id article 60(2)

¹²² Supra note 8, Article 40

¹²³ Supra note 8, article 52 Empowers regional states to administer rural land Federal rural land administration, and Federal rural land administration, 1997 art 6 proc. No 89, Neg.Gaz. ,permits clearly

otherwise it is uncontested that the rural land legislation is the exclusive jurisdiction of the federal government by virtue of article 55(2)(a) of the 1995 FDRE constitution. As per this proclamation there are about twelve guidelines that the regional states need to follow while they implement the rural land administration through their laws. Some of the core and basic principles were¹²⁴

- 1) Ensure assignment of holding right to peasants, nomads equally and without any discrimination particularly on the basis of sex;¹²⁵
- 2) The assignment of holding right should have the end of sufficient for subsistence;¹²⁶
- 3) Should not prevent women from hiring labor or an arrangement to that effect;¹²⁷
- 4) The extension of the women privileges to orphans and to children fail to attain majority;¹²⁸
- 5) More than anything the proclamation puts the regional states under the duty to lay down a system based up on transparency, fairness as well as the participation of peasants, especially of women, for purpose of assigning holding rights and carrying out distribution of holdings.¹²⁹

More pertinently the proclamation in article 11 obliges the regions to provide a grievance procedure on matters pertaining to holding rights and the distribution of holdings. This grievance procedure refers to one of the sectors under the land administration units hence it refers to administrative solution to complain regarding the distribution of land or holding right. The sector is not dispute settling institution but stands as a compulsory step before any grievance goes to the dispute settling organ based on administrative decision.

In addition to this the federal government Rural Land Administration and Use Proclamation No 456/2005, a proclamation that has repealed the Proclamation No

regional states to enact rural land laws albeit some regional stated have enacted earlier to this enabling proclamation, particularly the Amhara regional state law proclamation no

¹²⁴Federal rural land administration, 1997 art 6 proc. No 89, Neg.Gaz. ,Year There are about 11 guiding sub articles that the regional states adhere and take as a reference articles while they are enacting rural land use and administration laws.

¹²⁵Id Article 6(1)

¹²⁶Id article 6(2)

¹²⁷Id article6(3)

¹²⁸ Id article 6(4)

¹²⁹Id article 6(10)

89/1997, clearly recognizes negotiation/conciliation and arbitration as appropriate manners of dispute settlement over rural land.¹³⁰ Almost all of the rural land use and administration proclamations that have been enacted after the fall of the Derg regime emphasize informal dispute settling institutions, as opposed to any other form of administrative tribunals, regular court or special courts.¹³¹

3.5 Selected Experience of the FDRE Federal Units in Rural Land Dispute Settlement

There are nine member states of the Federal Democratic Republic of Ethiopia as per article 47 of the FDRE constitution. These regional states have the power to administered land and other natural resource in accordance with federal laws.¹³² But Federal Rural Land Administration Proclamation No 89/1997 was enacted to enable them to draft their own rural land laws within the limits set as guiding principles in the same proclamation. Accordingly Regional states have enacted their own land laws particularly Amhara, Oromiya, SNNP and Tigray regional states. As per the guiding articles of the federal rural land law they are expected to effectively address dispute settlement part separately. So this part will look at some of these regional laws namely the Oromiya regional law, SNNP and Amhara land laws. This is essential for the purpose of comparison with Tigray regional state of which the research covers in part. After all one of the merits of federal state arrangement is, by fostering legislative competition among the federal units, to bring about efficient and effective law in a given country. The legislative experiences of these regions in avoiding potential disputes and the mechanisms that they have adopted regarding disputes, if any, will be seriously considered.

¹³⁰ Federal rural land administration and use, 2005 art 12 proc. No 456, *Neg.Gaz.* , Year, the arbitral body as per this article may be elected of the parties or the regional law may provide a detail provisions specifying to the effect.

¹³¹ See the discussion below on the systems of the regional dispute resolution. Amhara, Oromiya, and the SNNP one way or another recognizes the ADR, CDR or both mechanisms as opposed to any of the institutions that we have seen in the first chapter.

¹³²Supra note 8

3.5.1 The Case for the Oromiya Regional Law

Basically the Oromiya rural land regional laws like other similar regional laws recognizes the institutionalization of agricultural and rural land development bureau which shall make a survey on rural land by geo referenced and prepare map to the peasants for a life time via certificate of holding.¹³³ More interestingly the Oromiya Proclamation No 130/2007 clearly prohibits a peasant to factually hold any of the rural land unless a certificate has been given to him/her and imposes a criminal punishment on top of the expulsion measure that the authority may take.¹³⁴ The proclamation further stipulates the minimum plot of rural land that a farmer may gain. Accordingly 0.5 and 0.25 hectare of land is the minimum for annual and perennial crops respectively.¹³⁵ But none of the provisions limit the maximum plot of land that the rural land holder (peasant householder) can claim except for the irrigated rural lands which shall not exceed 0.5 hectare.¹³⁶

Here as it has been stated from the outset dealing with rural land dispute resolution mechanisms presupposes the identification of the disputes and avoiding the potential disputes from the very beginning. As one sign of the institutional role in avoiding potential disputes the Oromiya national region has conducted a registration program in since after the Tigray and Amhara region have conducted the registration reform program.¹³⁷ The experience of the Oromiya regional national law depicts that the power on rural land disputes was once a matter left to social courts which lasted not longer than 2007. For one thing giving the power to entertain land disputes to such many organs would possibly complicate the outcome of disputes. In addition bestowing the power to social courts considering the value of the rural land may not always be advisable as the Oromiya region is well known for its cash crop products. Though social courts unexplainably reduce the burden of the courts they can equally load the burden of the parties and the system in so many instances. They can easily be

¹³³ A Proclamation to Amend the Proclamation No 56/2003, 70/2003, 103/2005 of Oromian Rural Land Use and Administration, 2007, article 15(1)(2) and (6) Proc..No.130

¹³⁴ Ibid Article 15(14)

¹³⁵ Ibid, article 7(1) and (2) states also the average size of the community in the locality shall be taken in to account while the organ is determining the plot size of the new settlers

¹³⁶ Ibid article 14(4)(a)

¹³⁷ Supra note 4

corrupted apart from their incompetence to understand dimensions of rural land in particular and the implication of land policy of the nation in general.

Hence the system had already been abolished as per Proclamation No 130/2007 and introduces another form of conflict and dispute resolution mechanisms.¹³⁸ It further determines the fate of the pending cases under the social court jurisdiction to be resolved in accordance with article 16 of the same proclamation.¹³⁹

Be the development as it may, any grievance or dispute over rural land in Oromiya shall be first submitted to the local Kebele administration and followed by the establishment of arbitration according to the current proclamation. The parties shall submit two arbitrators the chairperson of which will be elected by the elderly two arbitrators or the parties themselves, if not by the local Kebele administrator provided that the parties have agreed on it. So in plain English the Oromiya rural land use and administration law opts ADR or alternative dispute resolution mechanism accompanied with a sort of CDR or customary dispute resolution mechanism. Specifically the provision refers to arbitration. Usually it is in arbitration that parties elect their own arbitrators and a third or fifth other party or parties to be elected by some other party, a party not to the dispute if they fail to reconcile on having a common third or fifth arbitrator. In addition sub article 2 of the same article opens the room for the parties to resolve their dispute in any private manner. For the sake of efficiency the time limit of which the arbitration channel may consume to dispose the cases is also set by the proclamation.¹⁴⁰ Accordingly 15 days is the maximum days that the elderly arbitration should use upon the request of the local Kebele administrator in declaring the rate or in finalizing the dispute. Here the intervention of the local Kebele in the process of justice is limited and is only to determine the speed of the arbitration channel. Even though the proclamation empowers the Kebele administrator in assigning the chairperson of the elderly arbitration channel it is only upon the freely given consent of the parties that s/he can do so. To make the matter more strong the woreda courts are prohibited from entertaining suits in case the parties fail to attach the award of the arbitration.¹⁴¹ Almost as an unprecedented phenomenon, the Oromiya rural land use and administration proclamation gives a

¹³⁸ Supra note 133, Article 16

¹³⁹ Id, article 17

¹⁴⁰ Id, article 16(1)(d)

¹⁴¹ Id, article 16(1)(g)

primary cognizance to the arbitration. But the appellate jurisdiction can be made only to the high court from the woreda courts. In effect the arbitration channel is not having a full first instance jurisdiction coupled with the wording like “suit” in article 16(1) (G). This eclectic lesson which takes the definite pluses of arbitration by combating the delay ensures the best interest of the parties primarily. It should also be the benchmark for the rest of regional laws. It neither bestows the power to the social court nor does it form a separate administrative rural land dispute settling organ albeit it recognizes an agricultural rural land use administration unit.

3.5.2 The Case for Southern Nations, Nationalities and Peoples (SNNPR)

As per the constitution and Proclamation No 12/1997 of Federal Rural Land Administration Proclamation every federal unit of the FDRE is bestowed with a power of administration of the rural land which is also applicable to the Southern Nations Nationalities and Peoples region. Accordingly it has proclaimed the Proclamation No 110/2007 of the southern nation nationalities and peoples of rural administration and use.

The proclamation defines rural land administration in article 2(3) as broadly as it can include various matters. As per this article rural land administration is a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural land holders are resolved and the right 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. So it merges the so called substantive and procedural aspects of tenure as well as the institutional aspect.¹⁴² Like the Oromiya Proclamation No 130/2007 it fixes the minimum plot of rural land as half hectare, if it is rain fed and the maximum of 0.5 hectare for irrigable rural lands the expenses of which have been covered by government.¹⁴³ As to the measurement and issuance of certificate of holding the proclamation recognizes both customary and modern way of measuring rural land. The certificate shall clearly show the rights over the size of the land and it shall be issued for indefinite period of time.¹⁴⁴ Furthermore, the SNNP

¹⁴² This pervasive definition of the SNNP proclamation is totally identical with the definition provided under article 2(2) of the Federal Rural Land use and administration proclamation, 2005, Proc, No 456, *Dehub Neg.Gaz.*, Year 11 which indicates the influence of federal rural land laws in regional states.

¹⁴³ The Southern Nations Nationalities and Peoples Regional State Land Administration and Utilization 2007, art11 (1)(A) and (B) Proc. No 110. *Dehub Neg.Gaz.*, Year 13

¹⁴⁴ Id, articles 6(2),(3) 7(1)

proclamation bestows the rural land holders the power to transfer their holding to peasant, investor, to the maximum limit of time that it has set, that is five years, if it is within the peasants themselves ten years if the transfer is to an investor and 25 years to an investor that grows a permanent crop.¹⁴⁵

Article 12 of the SNNP proclamation articulates the dispute settlement dimension of rural land as part and particle of rural land administration. The parties are expected to submit their dispute to the Kebele land administration committee. The role of the committee will be to let the parties resolve their dispute by negotiation and arbitration to be formed by the parties. As stated above the SNNP proclamation has defined the rural land administration broadly to include dispute settlement of rural lands. Not surprisingly therefore article 12 of the proclamation obliges the parties to submit their claim to the rural land administration unit at Kebele level. Here the role of the Kebele land administration committee in dispute resolution is not to entertain the dispute and dispose it of thereby. Rather it should try to persuade the parties to resolve their dispute amicably through negotiation otherwise the matter would be referred to the arbitration channel composed of the elderly people. Unlike the Oromiya Proclamation No 130/2007 the SNNP does not clearly set out the time limit that the arbitration channel need to dispose the case nor does it state the procedure for the appointment of the chairperson save for the two arbitrators as they may be selected by either of the parties. The jurisdiction of the regular courts as far as the SNNP Proclamation No 110/2007 is only in the form of appellate jurisdiction. None of the courts especially the woreda court can have a first instance jurisdiction over rural land disputes.¹⁴⁶ This seems appropriate as disputes of rural land are more of disputes of fact than law. The litigations in fact can easily be appreciated by the tribunal which is close to that area of dispute. The more the case dispatches from the nearly situated jurisdictions the less it will be clear to the higher courts or courts situated far from the area of the dispute.¹⁴⁷ Moreover, the SNNP proclamation clearly stipulates the possibility of rural

¹⁴⁵Id , Article 8

¹⁴⁶ Id, article 12

¹⁴⁷ Excluding issues of fruit land disputes particularly disputes pertaining to holding need an issue of fact than law. See also article 123 of the Directive No demonstrating fact exposition than legal interpretation.

land cases to be entertained by the Cassation Division of the Supreme Court of SNNP.¹⁴⁸

3.5.3 The Case for Amhara Regional State law

The Amhara land administration and use proclamations and regulations proclaims to the effect of establishment of a council at each sub Kebele under the supervision of the Kebele land administration committee.¹⁴⁹ This elderly council elected from each sub Kebele can dispose any rural land cases provided that either of the dissatisfied party can make an appeal to the woreda court.¹⁵⁰

In a fashion similar to other regional laws as well as dispute settlement provisions of federal rural land administration laws, the Amhara regional law too favors informal dispute settlement mechanisms. The other intersection character that the Amhara, Oromiya, and the Southern Nation, Nationality and Peoples rural land dispute settlement mechanisms share in common is the fact that they cross refer to the elderly peoples to lead the arbitration process. This attitude of the laws implies that the place for CDR (customary dispute resolution) is also not slum shut.

Generally, the regional rural land laws pave a room for an informal dispute resolution mechanism despite the difficulty in determining the sort of informal way of dispute settlement they are adhering to. Their laws have been criticized on the ground of redundancy with the provisions of the Civil Code (articles 3325-3346) and Civil Procedure Code (articles 274-277 and articles 315-319) on arbitration and mediation.¹⁵¹ As far as this research is concerned since the provisions of these rural land proclamations emphasizes the role of elderly arbitrators there is a room for customary dispute resolution mechanisms. They recognize both alternative and customary dispute resolution mechanisms as regulated by relevant land administration units for some selected efficiency reasons especially for speedy decision-making. In fact there are some un-clarities regarding the types of laws these elderly arbitrators are

¹⁴⁸ Supra note 143, art 12(5)

¹⁴⁹ Supra note 4

¹⁵⁰ Ibid

¹⁵¹ Ibid

supposed to use to arbitrate the disputes which the researcher did not ascertain as he has not been in a position to access detail directives of each region.

2.5.4 Issues of Constitutionality and Comparison of Regional Rural Land Dispute Settlement Mechanisms

Basically article 78(4) of the 1995 FDRE constitution clearly stipulates that special or ad hoc courts which take powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally established procedures shall not be established. So any ad hoc or special court with a judicial power cannot be established unless clear procedural laws are enacted to handle the adjudication. In the meantime article 78(5) of the 1995 FDRE constitution states the council of regional states can render validity to existing or forthcoming customary or religious courts. Determining the nature of arbitration unit is crucial for this purpose. If it is wholly CDR then no constitutional issue will be posed as state councils have the mandate from article 78(5) of the FDRE constitution. But as we can clearly observe the setting from article 16 of the proclamation the elderly arbitration is to be guided by the Kebele administration unit. Plus the maximum time for the interest of speedy trial is also limited by the proclamation, a time which may not be the case for the custom of the region. Apart from that involvement of the administration organ in the nomination of an arbitrator will question the totally CDR nature of the arbitration unit. But as we can observe from article 16 of the Oromiya Rural Land Use And Administration Proclamation No 130/2007 No specific procedure is articulated nor it clearly left the specification to the potentially subsequent regulation or directives of the proclamation.

Can we say that this is unconstitutional? Is setting a procedural law as per article 78(4) a lone element or is it applicable for every ad hoc and special court with a judicial power? As one can see the first limb of the first paragraph of article 78(4) of the constitution, these special court or ad hoc courts should take the judicial power away from regular courts or institutions legally empowered to exercise judicial functions. But what does “take the judicial power from.....”mean? Is it a

judicial power that totally excludes the courts like the situation in the Derg regime? Article 37(1) of the FDRE constitution states that courts or an institution with judicial power can entertain cases which are justiciable. So constitutionally one can say safely that judicial power is highly attached with justiciability. In effect if the ad hoc or special court can deny the parties to bring any justiciable matter to courts or any legal institution, then that special or ad hoc court need to have clear procedural laws.

Article 16(1) (f) of the Oromiya Proclamation No 130/2007 entitles the party who is not satisfied by the rating of the elders to institute a fresh suit before courts within 30 days. Moreover article 16(1) (h) of the same proclamation allows an appeal to be made only from the woreda courts to higher court. So can one argue that the elderly arbitration channel is taking away judicial power from courts? Or is the framework in the Oromiya regional law blocking access to justice so that it can suggest also procedural laws to the elderly arbitration channel.

Without the need to search for the detail of the regulation or directives of the region it can be concluded that these framework or arbitration channel is not taking away the judicial power of courts nor it denies the parties from bringing their case as justiciable matter before the court of law. Rather for efficiency reasons particularly to reduce the burden of the regular courts on overflow of cases the Oromiya regional law is simply giving priority to informal means of rural land dispute settlement without affecting the justiciability of the matter. This is advisable at least efficiency wise as elaborated below.

First pursuant to article 16(1) (a) of the proclamation it is mandatory to file an application to the Kebele administration which makes the regulated CDR and ADR mechanism as mandatory to every dispute. Next as per article 16(1) (g) of the same proclamation a party is expected to attach the rating of the arbitration unit. So the law is both encouraging and imposing the parties to settle their dispute amicably and by their own appointed arbitrators which will also positively affect the judicial system by reducing the magnitude of cases that they should entertain.

It may be argued that it is simply adding a burden on the parties who do not want their dispute to be settled by the elderly arbitrators to the extent the jurisdiction of the arbitrators is not in the form of first instance jurisdiction.

However, it is a firm stand of this author that the law is striking the balance between the issues of constitutionality and efficiency. In addition as every law, it is serving as a mirror of the society by recognizing the value of elderly peoples to settle rural land disputes as well as to serve as medium of change to the society by making the judicial power from courts in so far as it will entertain the matter in the form of first instance jurisdiction. One may interpret the framework in the SNNP proclamation purely as CDR in order to avoid the constitutionality issue based on article 78(4) of the constitution. Obviously elder arbitrators in rural areas cannot be considered as arbitrators of ADR. Moreover, the proclamation does not state about the possibility of trainings these elderly arbitrators nor it fixes the timeframe for adjudication neither the rural land administration unit involve in the selection of arbitrators. It resembles to CDR than to any other modality albeit the author remains skeptical to safely categorize under any of the modalities of rural land dispute settlement mechanisms. For this purpose article 78(5) of the 1995 FDRE constitution can be cited as an article empowering regional councils to recognize customary or religious courts. So there is no need to establish procedural laws for the elderly arbitrators or the process of negotiation as custom will have its own procedure of adjudication.

Summary

To sum up the history of Ethiopian tenure system provides less rural land dispute settlement mechanisms. The period of Hailesslassie assimilates rural land disputes with other kind of disputes and failed to suggest a special rural land dispute settlement mechanism. So the general dispute solving bodies, regular courts, that the Civil Procedure Code recognized were entertaining rural land disputes. From the jurisprudence of rural land dispute settlement mechanisms that the paper portrays JDR was the modality in the regime of Hailesslassie without denying the then *de facto* rural land dispute settlement mechanisms and the implications of the recognition of alternative dispute settlement mechanisms as were incorporated in the 1960 Civil Code and 1965 Civil Procedure Code.

Derg, as a consequence of its command policy has abolished private ownership of land and introduced unprecedented modality of rural land dispute settlement. It snatched the power from regular courts and made it the exclusive jurisdiction of land tribunals under the peasant association. The hierarchy and material jurisdiction of these land tribunals begins at Kebele level and ends at awraja level. Proclamation No 31/1975 in particular clearly prohibits regular courts from entertaining rural land disputes even to pending disputes. Further, the judicial tribunals of the time were having criminal jurisdiction regarding rural land offences as per the proclamation. So courts were excluded not only from civil matters of rural land disputes but also for criminal offences that can be committed in respect of rural land.

Derg regime established special administrative tribunals under peasant association. The weakness of this regime was its total disregard of the justiciability of rural land disputes by merging both an executive and judicial power under an executive organ. It did not open any room for customary dispute resolution mechanisms nor for alternative dispute settlement methods which have a lot to do with land tenure almost equally starting from the time when tenure was conceived. The tenure system under the Derg regime emphasized on rural land disputes and established a special dispute resolution mechanism. Nonetheless, there are some lessons that the current and the upcoming tenure system of the nation should not emulate in relation to the experiences of the Derg regime. First, disregarding the role of the regular courts in rural land dispute settlement is not advisable and may pose the issue of access to justice under the current FDRE constitution. Any form of rural land dispute settlement is opted to JDR mainly in order to overcome some of the limitations that JDR may have. Case loads of courts coupled with issue of accessibility justify other rural land dispute resolution mechanism to have an exclusive jurisdiction or to share the power with regular courts. At least it goes without saying that judicial organ is endowed with an inherent power of reviewing actions of every tribunal decisions. On top of this mixing both criminal and civil matters regarding rural land cases is not advisable as criminal aspect of land dispute have other social goals.

Rural land dispute settlement mechanisms under the FDRE government have shown notable changes. It does not opt any of the extreme phenomenon that the history of tenure system in earlier regimes provided. It considers rural land disputes as any

justiciable matters. Particularly the federal Rural Land and Administration and Use Proclamation No 456/2005 encourages regional states to adopt informal dispute settlement mechanisms. Further, none of the federal rural land laws expressly prohibit regular courts from having a jurisdiction on rural land disputes. Particularly the experience of regional state laws portrays at least regular courts will have an appellate jurisdiction regarding rural land disputes. In other circumstance regular courts will have a first instance jurisdiction along with informal way of rural land dispute settling institutions as it is a case for Oromiya national regional law.

Chapter Four

A Case Study of Rural Land Dispute Settlement Mechanisms in Tigray

4.1 Introduction

This chapter surveys the Tigray regional law dispute settlement mechanisms. It particularly analyzes the framework of the rural land laws and their role in avoiding potential disputes and the extent to which they recognize good rural land dispute settlement mechanisms. Hence a portion of this chapter assesses researches done on the impact of land certification of the region in reducing rural land disputes plus deficiency of the proclamation regarding rural land administration units, including dispute settling institutions and their impact on rural land disputes in the region. On top of this, causes of disputes and dispute settling institutions in Woreda Kafta Humera are surveyed. Directives of EPRLAUA regulating only Western Zone of Tigray national state, interviewees with senior officials and judges, and some criminal and civil cases as well as the researchers own observations in Woreda Kafta Humera serve as main sources of this chapter.

Accordingly the first section of this chapter sees the impact of the land certification program that the region has implemented. It particularly consults researches that have been done to show the impact of land certification on disputes and the institutions meant to resolve rural land disputes. The research particularly raises a question “whether the reform program has assisted the dispute settling institutions that the proclamation has empowered with a judicial power?”

In the next section i.e. in section 4.3 it analyzes the impact of the Proclamation No 136/2007 in avoiding disputes and solving rural land disputes in a desired manner. This analysis uses one of the jurisprudence of causes of rural land disputes i.e. institutional problems in order to examine the setting in Tigray. Not only this in section 4.4 it has also analyzed the mechanism of rural land dispute settlement that the region has employed vis a vis various rural land dispute settlement mechanisms that this paper has seen in chapter two.

The research makes an empirical study in Woreda Kafta Humera in order to show the implication of the general analysis that has been done in Tigray region in the first two

sections of this chapter. Accordingly section 4.4.1 of this chapter explores the cause of rural land disputes in Humera Woreda and the competence of the dispute settling institutions empowered by the proclamation also in woreda kafta humera. So lion share of this chapter analyzes the causes of rural land disputes in Woreda Kafta Humera by conducting a field study mainly by interviewing relevant officials, offices and by collecting data, cases, land laws and the researcher own observation. It particularly has analyzed the practical impact of the legislative oversight in Woreda Kafta Humera and link the political economy theory that the paper has addressed in chapter two. Finally the research surveyed the dispute settling institutions in Woreda Kafta Humera by employing similar methods. Particularly the research portrays the hard realities that Woreda Kafta Humera court is facing in settling rural land disputes and the effect of such on peasants of the area by raising the issue of jurisdiction in rural land disputes over the fruit of the land in section 4.5.3.

4.2 The Impact of Land Certification on Disputes in the Region

Tigray regional state conducted rural land registration program as an extension of land reform, across the region in 1998. Broadly speaking the processes of registration is described as efficient or kind of reform implemented with the least cost to the extent it uses students trained for a short period of time. It particularly revealed unclear border conflict cases that have to be resolved. It was accomplished in a tremendous high speed.¹⁵²

Although the stride has been seen as encouraging and unprecedented progress, not all literatures unanimously agreed as to the triumph of the end that it was meant to bring about. The cause for this was due to lack of an appropriate mechanism of registration that the region has adhered which also has already negatively impacted the purported and initial over plan of the reform.

¹⁵²Stein Holder “Land certification in Ethiopia: process and evidence on impact some preliminary finding,” Norwegian university of life science, http://siteresources.worldbank.org/RPDLPROGRAM/Resources/459596-1161903702549/S5_Holden.ppt Retrieved on 23 March, 2011

First of all the certificates were issued in a simple format and as single as a page which is not sufficient to include every right arising out of the land.¹⁵³ Apart from this, it registers the husband as the head of the house hold in most cases than not.¹⁵⁴

The fact that it only focuses on cultivated land also made it to be exclusive and insufficient to cover the entire and potential rural lands of the region which will in turn complicate the matter to the illegally captured lands both in the stage of land administration and dispute settlement as well. Moreover, it uses inexperienced students that cause many errors due to lack of experience, which resulted in conflicts in some cases.¹⁵⁵

Additional limitation of the certification program is the fact that it has been made as a onetime exercise. Very few or limited attempts have been made afterwards excepting the little effort that was made in 2005 by the *Tabia* land administration committee.¹⁵⁶ It was the anticipation of the program that the project would be superseded with another firm, durable permanent certificate showing the exact maps of the parcels of the land holders.¹⁵⁷ The problem becomes worst as the program was implemented in the absence of any supervising land administration organ.¹⁵⁸ Be that as it may the predictions are yet to come, most notably due to lack of fund to carry out the reform. The errors that happened during the implementation of the program are also yet to be rectified.¹⁵⁹

The question that one can pose here is what is the impact of certification on the ground in the multidimensional aspect of tenure? Has the certification/reform program contributed to the better access of land in the market thereby fertility and alleviation of poverty achieved?¹⁶⁰ Or what is its impact on the level of disputes and the dispute settling institutions? Has it complicated the matter to the dispute settling institutions or deterred the parties from litigating by setting their right or borders accurately?

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ Supra note 94

¹⁵⁶ Supra note 155

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Ibid

¹⁶⁰ See Asmelash Woldemariam “The Effect of Land Reform on Peasant Social Organization a study of Village-Level Dynamics In Central Tigray” Addis Ababa University Press, (2006),

In fact all of the aforementioned issues may need their own separate and independent empirical research. But as the interest of the researcher is to assess the impact of it over disputes and dispute settling institutions certain reference has been made to some researches for a practical matter. Accordingly the land reform program that the region has contributed a lot and positively affects disputes over rural land. Border dispute over rural land has decreased magnificently. According to the findings of a research that has assessed the implication of law cost certification program on rural land disputes that the region has carried out, “ The level of conflicts in general and the level of border disputes in particular, which were more frequent earlier have been reduced since after the implementation of the reform program.”¹⁶¹ As per the hypothesis that the research uses better plot border demarcation accompanied with areal measurement witness and land certificate affects positively the level of disputes which also applies to the case of the Tigray reform program.¹⁶² So despite the limitations, the land reform that the region has gone through positively hits the level of rural land disputes in a desired manner to the extent it reduces the level of disputes and clarifies the matter to rural land dispute settling institutions.

4.3 The Framework of the Proclamation No 136/2007

Tigray regional state has enacted so many rural land laws following the issuance of the FDRE constitution, Proclamation No 89/1997 and Proclamation No 456/2005 both of which empowered the regional states to enact rural land administration laws. The implementation of the power of land administration of the regions presupposes the enactment of proclamation, regulation and directives by the regions. Consequently the mere fact that land is jointly owned by the state and peoples of Ethiopia¹⁶³ or the existence of an article 55(2) (a)¹⁶⁴ in the 1995 FDRE constitution does not necessarily mean that land issues are the exclusive matters of the federal government, at least within the continuum of the enactment of rural land and other natural resource laws. Rather, for more practical and convenience reasons the issues are remote to federal

¹⁶¹ Stein Holden et al , “Can Land Certification and Registration Reduce Land Border Conflicts,” worldbank.org/EXTRAD/Resources/336681/.../holden.pdf#file20litigation.htm” Retrieved on march 12 2011

¹⁶² Ibid

¹⁶³ Supra note 8, art 40(3)

¹⁶⁴ As per this article the federal government has the power to enact laws regarding land and other natural resources of the nation.

government whereas they stand as hard realities to the regional government to be administered. That is why article 52(1) (d) of the FDRE constitution empowers states to administer the utilization of natural resources, including rural land. But is the power to administer broad enough to include the power to enact laws for the sake of administration? Article 52(1) (d) is crystal clear that the power to administer land should be made in accordance with the federal laws. So who has empowered the regions to enact rural land laws? Or is their act unconstitutional? As clearly provided in article 50(9) of the FDRE constitution the federal government can delegate regional states some legislative powers that has been exclusively given to it. So it is by virtue of this provision that the federal government enacted federal Rural Land Administration Proclamations i.e. Proclamation No 89/1997 which provided for some guiding principles that the regional laws need to adhere while they are enacting rural land laws.¹⁶⁵

Moreover, efficiency wise and from the point of view of effective administration of rural land, regions are by far in a better position to administer rural lands. Even constitutionally speaking the matter has clearly been delegated to the regions unless it has cross border effect between and among regions.

Proclamation No 23/1997 of Rural Land Utilization Proclamation of the Tigray national regional state and the rural land utilization, Investment Agriculture and Natural Resource Development Regulation, Proclamation No 15/2001/02 a proclamation that has been enacted in the aftermath of the implementation of the land reform or registration program registration program that the region has conducted and later on the Proclamation No 130/2007 along with the regulation are some of the rural land laws that the Tigray region has enacted.

More often than not lack of clear legislations/rural land laws under the category of institutional problems are causes of rural land disputes and bad rural land dispute settlement mechanisms in a given setting. For this purpose the researcher has studied the provisions of the proclamation of the region which was supposed to follow the basic guiding principles of the Federal Rural Land Administration Proclamation No 456/2005. The role of any rural land law in reducing the level of rural land disputes, the framework that it adopts regarding the administration and use, and dispute

¹⁶⁵ For better explanation see the discussion on the post 1987 in chapter three of this paper

resolution mechanisms is material. Obviously this will in turn highly affect the fertility of the land, and economic development in general. It is universally accepted phenomenon that laws should have preventive role i.e. to avoid potential disputes than providing remedies to disputes. So emphasizing on the strength and extent of rural land administration units, usually vested with a power of issuing certificate, is the prime role that every rural land law should concerned with.

In addition the role of the law in establishing good dispute settling institutions is crucial which demands the assessment of the effectiveness and efficiency of rural land dispute settlement mechanisms of the area. The extent of accessibility of those institutions to peasants, (which will reduce litigation cost), and the room that it paves for experts in resolving rural land dispute are some of the measurements of good dispute settling institutions.

One of the proclamations that the Tigray region has enacted is the recent Tigray regional State amendment on Rural Land Use and Administration, 2007, PRO. No 136, Tigray Neg.Gaz., Year 16 (hereinafter referred as the Proclamation), and Tigray regional State amendment on Rural Land Use and Administration, 2007, REG. No 48, Tigray Neg.Gaz., Year 16 (hereinafter written as regulation). As per the amending proclamation of the region on the use and administration of rural land and the implementing regulation the institutions of rural land that have been institutionalized by virtue of the Proclamation No 77/2004, that is the Environmental Protection Rural Land Usage and Administration Authority's (EPRLAUA) shall continue to play the administrative role that they have been initially empowered by the Proclamation No 77/2004. So despite the fact that new amending proclamation and regulation have been enacted to amend the substance of earlier law, the institutions that have been empowered to administer rural land matters are not substituted by other administration units. Accordingly the Regional Environmental Protection Rural Land Usage and Administration Authority is the highest organ in the region regarding rural land administration matters. Apart from this, new rural land administration and use office at Woreda level is also established as per the proclamation. This institution is known as *Desk* and set up to purposely enforce the power and functions of the authority which has been referred as an appropriate organ in article 2(2) of the definition part regarding Use and Administration of Rural Land.

In addition the Proclamation has defined the term small farm land holding in article 2(5) as a land type which is there to guarantee the food security issue of a certain family the maximum amount of which shall be determined as per article 18 of the same proclamation.

As per article 18 of the Proclamation the size of rural land holding shall not be less than 0.5 hectare save for the rural land holding that has been legally acquired earlier. Once again like the other rural land use and administration proclamation of the federal units of the FDRE and the federal rural land use and administration laws. The Tigray regional law too does not determine the maximum amount of hectare that a peasant may hold. Therefore a peasant proposal to hold greater than 0.5 hectare of land provided that it is practically possible in the area where the claim is made cannot be rejected on the ground of the provisions of the proclamation and regulation of the region. The matters get worse as one goes through sub article two of article 18 of the same proclamation. This article states the possibility of granting large rural farm land to the peasants or households by taking into account the local situation as may be set sooner or later by the upcoming regulations.

At this juncture the legislative gap can be considered as a calculated and deliberate. Because for areas where there is excess land to be administered, granting large amount of land to peasants may be necessary and desirable. Presumably this would prevent under utilization of resources. Besides if the possibility of allotting rural land pursuant to sub article 2 of article 18 turns out to be true the clash for rural land disputes could have been reduced. Because one of the conflict theories of rural land suggests that the cause of disputes in rural land is severe scarcity of rural land¹⁶⁶ which will hold the opposite for situations to be implemented as per sub article 2 of article 18 of the Proclamation No 136/2007.

But equally to this, i.e. to the extent there exists disparity on the extent of rural land that the administration units actually oversee and subject matter of rural land disputes to be entertained by the rural land tribunal committee; the institutions too should have been reconsidered accordingly. Obviously rural land committee in Woreda *Adwa* or

¹⁶⁶ This worry of overpopulation is no more a threat for developed nations since science and technology have simplified things but still stand as a hard reality for least developed and developing nations where the livelihood of the citizen largely depends on land. See also Wolfgram. F. Ann "Population Resource and Environment A survey of the Debate, "globalgeography.aag.org/PopulationandNaturalResources1e/.../CF". Retrieved on 13 October, 2011

Qollaa Temben will not face as complicated administrative and dispute issues as in Humera Woreda nor will they open a crack for corruption and maladministration too.¹⁶⁷ So the proclamation should have been flexible as far as the rural land administration and dispute settling units are concerned at least, for the following main reasons.

First, the power of the environmental protection and rural land use and administration units emanates from these maximum and minimum legal limits. For example none of the *Tabia* level/*Desk* of the region can administer the rural land that has been allocated to the investors for investment purpose. So for the sake of instituting competent rural land administration unit it would have been advisable had the proclamation set the maximum holding right of peasant. The more amount of hectare the law permits for peasants to hold, the more efficient and effective administration organ is also expected to administer the rural land. Competence, accountability, responsibility, consistency, and other dimensions of rule of law as a process would suggest the bestowment of such power to an institution rather strong and effective. Moreover, as one of the theories of rural land conflict believe, that is the resource curse theory, the more we have valuable resources the more rent seeking institutions, individuals would be on top of the high level of conflicts that the system faces.¹⁶⁸ So the matter will definitely be as grave as a hell if the rural land at hand is highly valuable which is the case for cash crop growing or fertile rural lands of the region as opposed to rural lands suitable only for subsistence farming. So fixing the maximum legal limit in the proclamation should have been logically followed by an appropriate administration unit so that rural land disputes caused by institutional problems could be reduced.

Secondly, it is crucial for the sake of determination of the nature of rural land dispute settling institutions. As I have tried to make it clear from the outset the first instance jurisdiction of rural land disputes can be given either to regular courts, customary dispute settling institutions, or to the special administrative courts. Almost all of these mechanisms of dispute settlement adequately fit for disputes among peasants that hold little hectare of land. In effect if the amount of rural land subject to holding in a given

¹⁶⁷ See section 4.5 dealing on the situation of Woreda Kafta Humera.

¹⁶⁸ Resource Curse Hypothesis as per this political economy theory originated in the 1990's resource is negatively co related with growth. See also supra note 11

area is as high as the amount that an investor holds in some other areas there is no reason to give the jurisdiction to informal and ad hoc rural land dispute settling institutions instead of regular courts. Because the more the rural land is valued, higher and competent dispute settling organ is expected to have a jurisdiction on the disputes, preferably regular courts.

To wind up, the framework of the Proclamation No 136/2007 regarding rural land administration units is straight forward. It establishes an administrative unit at *Tabia* level and *Desk* in a given Woreda to administer the use and holding right of a peasant irrespective of his holding capacity there. It suggests the formation of similar dispute settling institutions and administration units at each Tabia and Woreda of the Region for the implementation of the provisions applicable to Peasants. As we have seen in the second chapter, one of the causes for rural land disputes is institutional problems that include defective laws. So as we shall see it in detail this legislative oversight is one of the main causes of rural land disputes and improper rural land dispute settlement mechanism in the region, predominantly in Woreda Kafta Humera. Because it discloses the possibility of disparity as far as peasants holding capacity across the region is concerned but suggests similar administrative and dispute settling institution across the region.

4.4 Dispute Settlement Mechanism in Tigray

Article 28 of Proclamation No 136/2007 clearly recognizes informal dispute resolution mechanism as the prime step that parties need to follow before they go to the judicial dispute resolution mechanism or *Kebele* rural and judicial Committee. The law in particular recognizes negotiation and traditional means of dispute settlement as a first means of dispute settlement. The tendency of the law towards the alternative dispute resolution mechanism though not framed in an obligatory manner deserves a special mention. Moreover, sub article 3 of the same article equates the decision of the rural land judicial committee with that of alternative mechanisms. That is both the decision of the rural land administration units and the alternative dispute units or the outcome of the parties' negotiation is equally enforceable as decisions of regular courts.

What if the parties failed to resolve their dispute amicably or by the arbitral decisions? Then as per sub article 2 of article 28 of the same proclamation the parties can take their case to the rural land administration committee.

Here some authors¹⁶⁹ argue that the provisions of the implementing Regulation No 48/2007 are not in line with the provisions of the proclamation on rural land dispute settlement part. That is the Kebele rural land administration committee which the proclamation in its article 28 gives a dispute settlement first instance jurisdiction, is replaced by the Kebele rural land dispute settlement committee under articles 48-52 of the Regulation No 48/2007. The inconsistency of the terminology between the proclamation and the regulation can be easily seen as the proclamation bestows the first instance jurisdiction to the rural land administration Kebele level whereas the regulation empowers the Kebele rural land judicial committee.

Basically there is no as such conceptual discrepancy between the two laws as both of them give the first instance jurisdiction to institutions other than the regular courts. Apart from that and as one can clearly observe from article 9 of the definition part of the proclamation the rural land administration committee that article 28 of the proclamation in dispute settlement refers, is defined in a pervasive manner to broadly include both powers of administration and judicial as well. Similarly article 9 of Regulation No 48/2007 also defines committee to include both the judicial, and administration power. In addition as the researcher has witnessed it practically the power of dispute settlement is being exercised by the Kebele rural land judicial committee at least in Woreda Kafta Humera.

So there is no contradiction in terminology between Proclamation No136/2007 and Regulation No 48/2007. Rather the regulation is specifying the role of the judicial sector of the rural land administration committee that has been institutionalized under article 9 of the proclamation.

¹⁶⁹ Supra note 4

Therefore, if the parties failed to agree and settle their dispute via private adjudication mechanism they should institute their case to the Kebele rural land judicial committee as per the provision of Regulation No 48/2007.¹⁷⁰

As we have seen in the dispute settlement mechanisms across various jurisdictions the power to settle/resolve regarding rural land disputes can be given to special administrative organ. Some of the basic explanations are due to the proximity of the committee to the area of the dispute. Moreover the committee members are believed to be in a better position to understand the nature of the dispute, and can easily settle the dispute in an appropriate manner to the extent the dispute settling committee is under the sector of the rural land administration units. So the probability of rendering justice will be high as the sectors are presumed to work in synergy particularly in the stage of evidence production.

Furthermore, the issue of accessibility will be settled as the committee venue will be at the Kebele level. Most rural land disputes by their nature involve a dispute in fact than in law, as mentioned in chapter two. So the more the venue becomes close to the place where the land is situated the less complicated will be the matter and more clear and understandable to the committee. The committee members can even appreciate the matter closely and value the land on the ground.

However, the advantages that the parties will gain from such institutions to a large extent can be attained by some other efficient dispute settling institutions which are not also affiliated to the executive organ.

As the framework of the proclamation along with the regulation reveals the structure of rural land judicial committee is under the rural land administration committee. It is accountable to the higher executive /rural land administration units. The existence of this tribunal under the executive organ is crystal clear from the provisions of the proclamation and the regulation. This system is analogous to the peasant association that the Derg regime formed to administer rural land with a judicial power.¹⁷¹

¹⁷⁰ Articles 49-52 specify the manner accusation and the procedures to be followed generally as are also more elaborated by the Directive No 004 of the region that clearly stipulates the power and the functions of the rural land judicial committee, including the jurisdiction.

¹⁷¹ See Supra note 93 and 100

Obviously it would have been judicious had the power been separated from the executive power. Because, one of the powers that the rural land administration committee has as per the proclamation at Kebele level is to issue certificate and determine the holding right of the landholders. Moreover, the possibility of a dispute between the land administration unit and the peasants cannot be ruled out. As every dispute can arise between administrative organs and the interested regulated, the relationship between rural land administration committee and the peasant relation too is not an exception. Besides article 16 of EPRLAUA Directive No 004 on the Procedure and Capacity Building of Rural Land Use and Administration Disputes among Peasants, states plainly that the committee jurisdiction to entertain disputes may include, among other things, disputes regarding the acquisition and exercise of right over rural land. Such disputes naturally will be between the administration unit and the peasant. In addition, sub article 12 of article 16 of the directive gives the jurisdiction to the judicial committee on matters of which the peasants are not satisfied by the decisions of the administration unit at Kebele level.

So how a judicial committee institutionalized under the rural land administration unit is expected to be impartial?

As our survey of the rural land laws of other regions shows,¹⁷² all of the FDRE federal units give the matter either to the guided informal dispute resolving organ, most notably reconciliation and arbitration or regular courts in the form of first instance jurisdiction. Particularly Oromiya Rural Land Use and Administration Proclamation No 130/2007 clearly snatched the power from the so called social courts. Apart from that it assigns the matter to the arbitration channel, supervised by the *Kebele* administrator for the sake of time efficiency since it sets 15 maximum days for the arbitrators to finalize their decision.

Apart from the good lessons of selected experience of the FDRE federal units, the researcher has other reasons to advocate informal dispute resolution mechanism as opposed to the land judicial committee in Tigray region.

¹⁷² See the discussion on section 3.5 of chapter three of this research.

For one thing informal dispute resolution mechanisms, particularly that of CDR mirrors adequately the peasants own mechanism of dispute settlement as the selected experience of regional states in Ethiopia also shows such. Almost no region has established land tribunal. Rather they avoided other courts that are similar to land tribunals particularly the Oromiya regional state declared rural land dispute settlement mechanism against Social Courts and bestowed first instance jurisdiction to regular courts. The stand of federal rural land administration laws encourages informal dispute resolution mechanism.

Without forgetting to mention the partiality issue, even in terms of efficiency there is no need to establish other rural land tribunal at each Kebele level. The average time that the committee consumes to dispose a single case cannot be as short as the private dispute settlement could take. Besides private adjudication process is flexible and implements party focusing procedure other than rigid and written procedural laws of the state. It provides party based solution and with particular attention to the parties' future relationship.

Above all it is not uncommon to see the rural community of Tigray region resolve even severe criminal offences with the help of mediators.

Enriched with all of the benefits of the informal dispute resolution, even the Tigray regional law undertakes to recognize it in articles 28 and 49 of the proclamation and the regulation, respectively, even if such provisions are incomplete to create a full fledged informal dispute resolution scheme.

If that is the case, why does the region empower the judicial committee to entertain rural land disputes instead of emphasizing on the informal dispute resolution mechanism? So since the benefits of guided alternative dispute resolution mechanisms outweigh that of special tribunals the need for the former modality should have been the case in Tigray regional law.

No one can deny that the rural land tribunal committee would ease the burden of the regular courts from an over flow of cases that they are shouldering. But it is not only this institution that can assist the regular courts as nothing has prevented the informal dispute resolution mechanism institutions, too. Here the Tigray rural land proclamation totally leaves the alternative dispute resolution mechanism to serve as a

remedy only at the party's whim and interest. That means it is not compulsory to resolve their dispute using informal dispute resolution mechanism if they opt to lodge their claim directly to the rural land tribunal committee. Not surprisingly therefore the law fails to appropriately fix the detail of the alternative dispute resolution mechanisms although all the other regional states manage to clarify this mechanism in a better fashion.

As we shall see below the practical role that rural land judicial committee is playing not as the initial thought of the legislator as some woreda courts are entertaining the matter almost in the form of first instance jurisdiction than appellate jurisdiction.¹⁷³ Though Woreda courts are empowered to entertain rural land disputes in the form of appeal, *de facto* they are compelled to see the matter in the form of first instance jurisdiction.

Moreover the provisions of the regulation and the directive of the region do not deal with the length of within which the tribunal dispose cases. For practical reasons the average or maximum time that the tribunal need to dispose is crucial. Diametrically opposite the regulation tries to set the maximum time that Woreda Court needs to take in disposing appealable cases. Article 48(9) of Regulation No 48/2007 puts a maximum of 30 days to a woreda court to dispose rural land disputes that come in the form of appeal. Trying to set the limit for regular courts is not wrong by itself considering the situation in Ethiopia. On top of that 30 days for an appellate jurisdiction is average and acceptable. But as the researcher has observed and gathered from the interviews,¹⁷⁴ the average time that the committee takes to dispose a single case is as long as it should not be. Besides some files remain unsettled up until the time where the fruit is collected whereas the file has been opened before the land is ploughed, meaning about 6 months earlier. Trying to set the time limit for the tribunal may not be feasible considering the fact that the tribunal is seeing the case from the scratch. But as per the interview that the research has made and from the files filed with a woreda court in the form of appeal almost all were seen not only in an appellate jurisdiction.¹⁷⁵ One of the judges told this researcher in particular "it is

¹⁷³ See the discussion and the result of interviews below in the case of Humera, Section 4.5

¹⁷⁴ Interview with Ato Gashaw Tsedeke, president of Woreda Kafta Humera court on may 18 2011

¹⁷⁵ Ibid, Also the researcher observation from the case, Ataklti Fesha Vs Yemane Negash, Civil Appeal File No 2616(Woreda Kafta Humera court) decided on 3/10/2003G/krstos Wolde gebrael Vs Desta Embaye File No 2388(Woreda Kafta Humera court) decided on 6/8/2003Frew Girmay VS Eshetu

impossible to identify the error of law from the decision given by the committee” their hand writing is poor and unreadable in most cases. On top of this the committee lacks knack of grasping the hard realities concerning the multiplicity of temporary certificates that the parties produced and no substantial and value adding fact is filtrated by the committee almost in all cases. The situation is worsened since lawyers are prohibited from appearing in the tribunals.¹⁷⁶So practically the time limit set on Woreda courts is not sufficient enough considering the *de facto* function that they are facing.

As the logical outcome of my analysis I suggest rethinking the judicial power given to rural land Committees by virtue of the Tigray region rural land proclamation. Federal Rural Land Administration and Use Proclamation No 456/2005 a proclamation that nullifies the provisions of the regional rural land use and administration laws, when they are inconsistent with it, clearly opts for alternative dispute resolution mechanism. In addition, the stand of all regional laws accompanied with the merits of CDR and ADR, is in favor of informal dispute resolution mechanism. The framework in Tigray regional law is not as effective as other mechanism and is substantially affecting the setting in the administration of rural land.

It is the firm stand of the author that alternative dispute resolution mechanism along with customary mode of the area, i.e. elderly people based arbitration/mediation should be the sole mechanism with a little guiding role of the local administrators on the elderly mediators/arbitrators. Regulating such dispute settlement unit can be excused, among other things, on the ground of speedy of adjudication, which demands setting maximum days to finalize the case. Under such dispute settlement mechanism, disputes will be solved by parties’ decisions which also avoid externalizing the outcome of decision, as it is almost indispensable for decisions rendered by tribunals. In effect no member of judicial committee will be the victim of criticism as the decision emanates from the parties themselves. This is truer when

Alemu File No 2784 (Woreda Kafta Humera court) decided on 3/10/2003 Mulu Teshale VS Shaleka Hailu Negash File No 2750 (Woreda Kafta Humera court) decided on 3/10/2003 Kesshi Gebru Tesfay VS Negasi Girmay and Fesha Berhane File No 2447 (Woreda Kafta Humera court) decided on 6/8/2003
¹⁷⁶ Here the prohibition of lawyers from attending rural land disputes representing their clients at a committee level was meant for the protection of the judges/justice in order not to be misled by lawyers, which is viable in various guided customary and arbitration rural land dispute resolution mechanism (see the 2.5.3.3 the experience of New Papua Guinea).

reconciliation and mandated mediation works out promptly. Even if arbitration is adapted to sort out the dispute still mediators selected by the mutual consent of the parties are by far better than a state appointed members of judicial committee. Plus the elderly mediators of each *Tabia* are believed to be in a better position to understand the factual disputes of rural land. They are even more accessible than any other modalities as they will definitely be from the given locality. Above all the focus in rural land disputes should be in restoring peace rather than on determining the land rights. As we all know a failure of tenure system in settling land disputes may led to disharmony in the society and in some worst cases to 'rural land conflicts', which is more frequent in the form of inter tribal conflicts.

The only intervention that rural land administration units are allowed to make will be on when the need of capacity building on human rights like women, children and other indigenous peoples rights to the elderly arbitrators raise. The more the dispute settlement mechanism has a place for indigenous people's participation the less opportunity will be there for rural land conflicts. Because if those indigenous peoples can participate in the decision making process or the decision by itself considers the special right of those peoples the probability for rural land disputes turning into rural land conflicts will be multiplied by zero. Similarly a rating or decision of land dispute settling body which take in to account women and children right is a good signal of human development, particularly if women took part in the dispute settlement process.

At this juncture, the authority may intervene to nominate local arbitrator in case if parties fail to resolve their dispute by the local mediators and to submit a neutral arbitrator. And to make even, one of the odds of CDR i.e. for the sake of speedy adjudication process maximum time should be set by virtue of the proclamation. Flexibility of this mixed form of CDR and ADR is also another plus that the parties will gain. Even awards of arbitration though they are decision they focus on the future relationship of the parties. The award/rating may make some compromises at the expense of the party who could win the case entirely had the decision been rendered by regular courts. The advantage of such system is it will reduce the amount of cases that the woreda court will receive in the form of appeal than it is receiving from the land tribunal under the current law. Because it is less likely to see an appeal from a compromise or arbitral decision that declares both parties as

winners than a decision of land tribunal which always make one of the parties' loser. Basically this is also the stand of some woreda judges and presidents which this research has surveyed. Although accessibility issue will be at stake particularly for the rural poor women, the power given to the rural land judicial committee is redundant taking into consideration the factual task that the woreda courts are doing.¹⁷⁷ In fact the genuine worries of the interviewees will overcome as the research has rightly suggested for the program of capacity building regarding women and other fundamental human rights which are usually considered as deficiencies of CDR. Otherwise, it is inefficient and resource exploitation to let a single case entertained in the form of first instance jurisdiction by two hierarchically related courts.

In fact local mediators are well known for their quality of reconciling irreconcilable interests and that is why I suggest a mandated mediation than land tribunals. But a mix of ADR and CDR unit i.e. local mediators delegating the parties plus local arbitrator assigned, by the land administration unit, that largely possess a character of local mediator than the so called arbitrators of ADR, which is also by far better than land tribunals, is suggested for disputes that may completely fail to be settled by compulsory mediation. Here when I say ADR I am referring to a couple of things. First had the organ been CDR exclusively we could not have other third party/arbitrator appointed of the land administration unit (which is the case when parties fail to submit). Second almost all arbitrators or mediators in ADR knows some universal values like human rights and finalize their decision in short period of time. These two definite pluses of ADR that may overcome the drawbacks of CDR will be infused on the elderly mediators by the training program that the rural land administration unit may organize. The time limit that this paper suggests is only for this channel i.e. for the channel composite of ADR and CDR dispute settlers.

But the mere fact that the elderly mediators or arbitrators will take trainings on fundamental human rights or since the time to dispose the case is limited by law or merely because they will render decision, doesn't necessary mean that the organ will fall out of the scope of article 78(5) of the FDRE constitution. This article (article 78(5) of the FDRE constitution) doesn't demand any specific procedure as far as

¹⁷⁷ Supra note 174

customary and religious courts is concerned. Similarly to the extent the research has suggested a dispute settling institution a bit deviated from CDR nothing will prevent article 78(4) of the FDRE to govern the matter.

Therefore, considering the *de facto* role that the appellate or woreda courts are playing there is no merit to let rural land disputes be the first instance jurisdiction of rural land judicial committee in the region. Besides the registration program of the region was not completely made in a manner to avoid every potential dispute in the region nor will it be clear enough to serve for the rural land judicial committee as concrete evidence.¹⁷⁸ Moreover, the comparative advantage of both CDR and ADR as may be regulated in limited circumstances by rural land administration units, will seriously question the function and desirability of rural land judicial committee that the Tigray regional law has recognized. In plain English there is no good reason to look for rural land judicial committee to have a first instance jurisdiction on rural land disputes than customary way of settling rural land disputes in the region together with limited regulation from the rural land administration units.

4.5 The Case of Humera Woreda

There are some features that make Humera and its surrounding area unique in Tigray region. It was categorized historically under the large-scale mechanized agriculture along with the province of Arssi the Rift, and Awash valley and has been a center of attraction to both foreign and local investors as well.¹⁷⁹ The majority of the population historically speaking was overwhelmingly the peoples of Walqayt, constituting some four-fifth of the population.¹⁸⁰ The people of Walqayt even in the aftermath of the change from a shifting cultivation to a settled farming was having a large land which

¹⁷⁸ Though there are some achievements regarding the land reform of the region it is not because it was perfect. Rather comparing to the cost that the region incurred in the reform that one can appreciate the end of the reform.

¹⁷⁹ Dessalegn Rahemtu “The peasant and the State: Studies in Agrarian Change in Ethiopia 1950s-2000s” Addis Ababa University press (2009) pp- 95, as one of the large farm mechanized areas a number of agricultural organizations were formed in the 1960’s Ann K.S. Lambton, An Approach to Land Reform, the school of Oriental and African studies, university of London, vol 34, no 2(1971),pp.221-240

¹⁸⁰ Ann K.S. Lambton, “An Approach to Land Reform,” the school of Oriental and African studies, university of London, vol 34, no 2(1971),pp.221-240

was beyond the demand and actual holding capacity of the residents, and grant it in the form of usufruct to outsiders in return for land tax and labor dues.¹⁸¹

Currently, the Western Zone Environmental Protection Rural Land Use and Administration Office is primarily entrusted to administer the rural land of the zone allotted to investors and hierarchically is next to the Environmental Protection Rural Land Usage and Administration Authority of the region. Apart from this, Rural Land Administration and Use unit at woreda level i.e. *Desk*, is in charge of the matters related to rural land administration and use. Below this there are about 21 *Tabias*¹⁸² that are destined to administer the rural land closely to the area of the rural land where it is situated. As per the recent declaration of the regional government resettlement program has tookplace in 2000.¹⁸³ Accordingly a maximum of two hectare of rural land has been allotted to each family holding. This was considered as allocation of rural land with a permanent and valid certificate of holding next to the one issued to the repatriated Ethiopians from the neighboring country, i.e., Sudan. These peoples had permanently settling in all of the *Tabias* in the aftermath of the overthrow of the derg regime and it is those repatriated migrants that establish almost all of the tabias across Humera Woreda.¹⁸⁴ The office of agriculture of the woreda had issued promptly a certificate to them. Before then an *ad-hoc* committee¹⁸⁵ were formed to issue a temporary customary certificate up until the office started to administer the land and issue certificate.

¹⁸¹ Ibid though the government in 1963 claimed a state ownership the Walqayt people contest it. See supra note 166

¹⁸² *Tabia maykadra, Tabia Adebay, Tabia Baker, Tabia Adi Hirdi, Tabia Bereket, Tabia Hagereselam, Tabia Wuhdet, Tabia Mayweyni, Tabia Adigoshu, Tabia Maykeih, Tabia Adigoshukunama, Tabia Hletkokakunama, Tabia Rawyan, Tabia Turkan, Tabia Aydolashgnin, Tabia Erope, Tabia Ruwasa, Tabia Adihrdi, Tabia Aditseser, Tabia Shoala, and Tabia Central.*

¹⁸³ Peoples from all other part of the region which were exposed to drought iteretily, particularly from the Eastern and Central part , were displaced and forced to leave their original settlement to permanently live in Humera woreda. However still there are claims and roars from the original settlers and the peoples of Walqayt to be the benefactors of their land, including the peoples who reside in Woreda Setit Humera (residents of the city of Humera)

¹⁸⁴ Most of This repatriated Ethiopians from abroad also known as “LAJIN” are Tigrians that had been fled mainly to Sudan since 1977 after the drought period that the *Semen* region experienced..

¹⁸⁵ Elderly and original settlers of the Humera Woreda from the “Walqayt” area Ato Gebeyehu, Ato Knfe abrha and Ato Fantahun Bahta they measure the land and traditionally 2 hectare was known as *HADE SAET* or One Hour, the average time that a tractor need to plough it.

4.5.1 A Study on the Main Cause of Dispute in Woreda Kafta Humera

It is not uncommon to see a directive issued by a pertinent implementing agency for the sake of implementation of any regulation. As rural land laws are not exception EPRLAUA of the region has been issuing a number of directives and will even continue to issue. Until now around seven directives titled with mere numbers and long names have been issued by EPRLAUA at regional level. These directives are interdependent and no directive has been issued to amend or repeal the preexisting ones. All of them address different subject matters of rural land. The first directive issued to implement Regulation No 48/2007 is EPRLAUA Investment and Rural Land Determining Manual in Western Zone, 2007, Directive No 001.(here in after called as Directive No 001)

This directive particularly sets the maximum limit that a peasant can hold. Basically article 18 of the proclamation has already set the minimum amount of rural land that a household can be bestowed which is 0.5 hectare. In addition to this, the same article makes it clear that a previous rural land holder, who holds rural land legally, as per the previous standard can continue to hold that irrespective of the amount. Moreover, sub article two of the same article declares the possibility of giving a large amount of rural land taking into account the area of land where the claim is made. These being the spring board articles as stated in art 19.1.1 of the Directive No 001, a peasant in Western Tigray can hold to the extent of ten (10)¹⁸⁶ hectares of land. Besides as can be clearly observed from the decisions of Woreda Kafta Humera Court the holding capacity of most peasants goes beyond this legal limitation.¹⁸⁷ Basically Woreda Kafta Humera Court judges are interpreting article 21.3 of the Directive No 001, as it allows to the extent of thirty hectares of land.¹⁸⁸ This article articulates that an amount of rural land exceeding thirty hectare of land to be subject matter of investment. The

¹⁸⁶ As the researcher has observed there are Practical scenarios where by peasants in Woreda kafta Humera holds beyond this legal limit, in some cases up to 100 hectare of land.

¹⁸⁷ Ataklti Fesha Vs Yemane Negash, file No_2616(Woreda Kafta Humera court) decided on 3/10/2003, G/krstos Wolde gebrael Vs Desta Embaye file no_ 2388(Woreda Kafta Humera court) decided on 6/8/2003, Frew Girmay VS Eshetu Alemu file no_ 2784 (Woreda Kafta Humera court) decided on 3/10/2004, Mulu Teshale VS Shaleka Hailu Negash file no_ 2750 (Woreda Kafta Humera court) decided on 3/10/2004

¹⁸⁸ Interview with Ato Abadi Wolday, judge of rural land judicial committee in Tabia My Kadra on may 20,2011 and an Interview with Ato Michael Hagos and W/ro Lemlem Kahase civil bench judges of Woreda Kafta Humera on may 17,2011

judges adopt a contrary interpretation and understood it as an amount of land less than thirty hectare is the subject matter of rural land disputes between peasants. But the first limb of the same article has already crystallized it that an amount of land occupied by a peasant exceeding the maximum legal limit should be reduced to the maximum legal limit, which is ten hectare as clearly provided in article 19.1.1 of the same directive.

Be that as it may, as per the cases that this researcher has collected both the rural land tribunal and Woreda Kafta Humera court are entertaining cases ranging from twelve to forty hectare of land.¹⁸⁹ Besides there are some letters which show the possibility of validating a holding capacity extending up to 29 hectare of land by the administration unit,¹⁹⁰ though the legal minimum is ten hectare. EPRLAUA of Woreda Kafta Humera did not consider a twenty nine or forty hectare land holder peasant as a squatter or a peasant holding land free of claim¹⁹¹, though the department head of land *Desk* told to the researcher that “the office will consider this squatters or *Wofri Zemet* in the future soon.¹⁹² Beyond this amount, i.e. land exceeding 30 hectares the rural land cannot be subject matter of peasant nor a house hold. It will be the subject matter of investment land; also the responsibility to administer is reserved to EPRLAUA of Western Zone. Investor can either be a small, medium and grand depending on the level of capital that he is to invest which will also determine the amount of land that he can hold via lease contract to be made with EPRLAUA at region level.¹⁹³

Coming back to article 19.1.1 of the Directive No 001 it sets ten hectare as an amount of land which will serve as demarcating line between an investor and peasant in Western Zone of Tigray regional state. Is this article in contradiction with any of higher laws, proclamation or directive? As we have seen above the proclamation sets only the minimum legal limit and does not limit the maximum. Rather it opens the room for an allocation of larger area of rural land as per sub article two of article

¹⁸⁹ Mulu Teshale VS Shaleka Hailu Negash file No 2750 (Woreda Kafta Humera court) decided on 3/10/2004, See also the Annex of *Balbal* which shows the holding of a [peasant up to 20 hectare.

¹⁹⁰ Letter no 50/400 /03-25,21/10/03

¹⁹¹ See the annexed *Balbal* issued by the competent authority that shows a peasants holding capacity i.e. twenty hectare.

¹⁹² Interview with Ato Berihun Kahsay, head of the Desk /Woreda of Rural land use and administration on 16 may, 2011.

¹⁹³ Environmental Protection, Rural land Administration and Usage Authority Investment and Rural Land Determining Manual in Western Zone Tigray, 2007, Article 3, Directive No 001

eighteen which paves for the allocation of large amount of rural land considering the situation of the area where the land is claimed.

So there is no legal contradiction or at least the directive is filling the gap that both the proclamation and the regulation have created. From the outset it is clear that Regional States are supposed to administer rural land in accordance with the federal rural land administration laws even though this is exceptioned, by the Federal Rural Land Administration Proclamations No 89/1997 and pro No 456/2005 as it empowers regional states to enact rural land laws under the guiding principles set by those enabling laws. But can a delegation of legislation go to the extent of empowering a mere administrative office which is determining the crucial aspect of rural land? Or is it the logical outcome of power of administration to determine the substance of every dimension of rural land matters?

Here the author is not obsessed about the extent of legal holding right of the peasants on rural land. Considering the situation there; that is the existence of large potential area and to prevent it from under utilization or tragedy of anti commons, also for a rather effective and efficient use of resources, the distribution of such excessive rural land can be tolerated. Even practically it may be impossible to the administration units and the government at large to snatch the holding right of the pre existing indigenous peoples or settlers of Walqayt area for the sake of redistributing it to investors. Besides it might have been issued to settle complains that have been raised in the aftermath of the resettlement program that the region has made, since the resettlement was made from all five zones of the region to the Western Zone only. Obviously any tenure system should device a mechanism to accommodate the interest of indigenous peoples in order to avoid inter tribal conflicts caused by such. It is with this objective that the directive also allows such excessive amount of land in Woreda Kafta Humera since the first beneficiaries are the peoples of Walqayt.

Irrespective of the speculated inspiring reasons for the permission of such amount of rural land to the localities; wouldn't this raise the worries of resource curse hypothesis and agency capture eyebrows concerning institutional efficiencies? Strong and competent institutions are supposed to administer the resources which are valuable in order to avoid corruption and problem of capturing the agency by the regulated public.

Setting aside the contention, a question posed here is that whether it is feasible to allocate such amount of rural land to peasants in Tigray region or not? Legally speaking it is crystal clear that it (bestowment of 10 hectare of rural land) is only likely in western part of the region. What about the practical feasibility of this article? Indisputably the western zone of Tigray¹⁹⁴ is large enough to mirror the implementation of such article and even beyond the said maximum. In this zone there are about four Woredas one of which is Woreda Kafta Humera the scope of this research covers. Recent data of the woreda indicate there is about 400,000¹⁹⁵ hectare of cultivable rural land in Woreda Kafta Humera whereas the total population of the woreda is about 96,000¹⁹⁶ only. So the practical implication of such article is not far from reality. As some books¹⁹⁷ have crystallized it the so called Setit Humera area was large enough to impress the attention of various investors and outsiders to use the land. So there is large amount of rural land in Humera,¹⁹⁸ if not there are large number of peasants that hold the maximum legal limit earlier who can validate their holding right both as per article 18(1)of the proclamation and the Directive No 001.

Now let us see the ramification of such articulation. As per this article of the directive and the factual power of the institution, 10 hectare of rural land can be allotted to a peasant and that peasant can hold this for a life time without the need to be a lessee.¹⁹⁹ He will not be also under the duty of introducing technology nor will he bear any of the obligations that above 30 hectares holder investor may bear.²⁰⁰Is this limitation in line with the principle set by the federal rural land administration proclamation laws? This proclamation allows the holding right of peasants mainly for the sake of fulfilling the family interests and hence the name households. Would not this pose the question of equitable income? As will be stated in the upcoming section²⁰¹how can a

¹⁹⁴ The largest Woreda in Western Zone is Woreda Kafta Humera followed by Woreda Tsegede, Woreda Walqayt and Woreda Setit Humera.

¹⁹⁵ See the annexed table ,amount of land sawed in 2002/2003,398,487 hectare as can be inferred from the table the cultivatable land in Woreda Kafta Humera increases annually and the total cultivatable land is yet to be identified.

¹⁹⁶ As posted in Tabia My Kadra and Woreda Kafta Humera council office

¹⁹⁷ Supra note 179

¹⁹⁸ See the table below

¹⁹⁹ As the researcher observed there are even farmers who actually hold beyond the legal maximum having their own tractors and other necessary agricultural equipments

²⁰⁰ Article 21.3 of the Directive No 001/2000 of some of the duties that the investors obliged to fulfill during the 25 years is duty to hire an agriculture expert, a nurse and others as indicated in the contract of Lease that between EPRLAUA and rural land investors of the region.

²⁰¹ The analysis of the table showing the crop type in woreda kafta humera

farmer earning around 100,000 ETB and above per annum be considered as a peasant when seen in light of the average per capital income of the nation and peasants in particular?²⁰²

Not only this, institution wise which is also more appropriate to this research, it is the *Tabia* level along with the desk of the *woreda* which will administer the rural land. It is this institution which will issue certificate and demarcate the rural land as per the provisions of the proclamation and the directive. More importantly, it is the rural land judicial committee which will entertain disputes over the land to the extent 10 hectares *de jure* and 40 hectares *de facto*.²⁰³ To make things worse rural land in Humera is used mainly to produce a lion share of cash the nation's crop items²⁰⁴ most notably sesame, cotton and others.²⁰⁵ In effect the rural land dispute settling tribunal is having a first instance jurisdiction over area of land, that is very large and purely cash crop growing.

Would the aforementioned institutions be in a position to attain the level of administration that the constitution wants? Efficiency and proximity of rural lands are the main inspiring reasons for the constitution to give the power of administration to the regions under the guidance of federal laws.

How can one reasonably expect a rural land dispute judicial committee to dispose such highly valued rural land cases prudently, only at 10 birr per day allowance?

For better explanation the research has collected data/figure from EPRLAUA at *Woreda* level, showing how much amount a peasant in *Woreda Kafta Humera* can earn per hectare.²⁰⁶ The data are general and show not exclusively the production of a peasant as separate from an investor. As per the interview that the researcher has made none of the investors are better producing than that of peasants. Similar amount of production is collected, in some circumstance the peasants' harvests go to the

²⁰² These issues of economic development as a sum total of growth and equity though is not the main theme of this research it held's an attention of mine and remains contestable. It can even raise a constitutionality and legality seeing the matter from the principles of federalism. The rural land laws are the principal power of the federal government for the sake of bringing a harmonization and uniformity across the nation.

²⁰³ Mulu Teshale VS Shaleka Hailu Negash file No 2750 (*Woreda Kafta Humera court*) decided on 3/10/2004,

²⁰⁴ See the table below for detail

²⁰⁵ Historically shifting cultivation was practiced an attempted to s a settled farming was made in 1930's but only to produce grain. See also *Supra* note 180

²⁰⁶ See the table as annexed in the appendix

extent of 10 quintals per hectare as it is easy to manage less hectare of land unless a different technology is employed. Plus the investors on the ground do not employ a unique technology rather some of them illegally sub lease it to other persons.²⁰⁷

As one can clearly observe from the aforementioned data six quintals is the average product that a hectare of land in Humera could provide as far as sesame is concerned, which is by large the most cultivated cash crop type about 260,562 hectares. So a peasant holding 10 or 40 hectares of land can collect an average of 60 or 240 quintals of sesame. Taking the average selling price of the ECX²⁰⁸, 2000 ETH *Birr*, the selling total will be 120,000 or 480,000 and by decreasing the costs of production it may reach about 100,000 or 400,000 respectively. So is it appropriate for a person to hold rural land for a life time earning such amount of money within a couple of months only? Even for noncash crop products like sorghum the average harvest is 31.5 per hectare multiplied by 10 or 40 hectares will be 315 or 1260 quintals again multiplied by an average or market value that is 400 birr it will be 126,000 or 504,000 birr reducing the costs of production it will proximate around 100,000 or 400,000 ETH *Birr*.

From the perspective of administrating institutions would *Tabias* be prudent enough to administer such large area of rural land? One of the powers that the rural land administration unit at *Tabia* level can function is registration of the clearly demarcated land either traditionally or using technology.²⁰⁹ This power is essential and can determine the level of disputes that may arise. The better and clear demarcation we have the more clear will they be to dispute settlement institutions and to land holders too.

It is wise to question who will settle dispute of the same land. The best of the proclamation indicates that the power lies with *ad hoc* and handful rural land tribunal committees. Would someone expect fair and impartial and uncorrupted decision from

²⁰⁷ Interview with Ato Daniel Aukbay head of the department of Complaint and Grievance Hearing in the Bureau of Environmental Protection and Rural Land Use and Administration at zonal level may 16 2011

²⁰⁸ ECX (Ethiopian Commodity Exchange) sells sesame in its trading floor at price of 1900-2050 Eth Birr.

²⁰⁹ Tigray Regional State Amendment on Rural Land Use and Administration, 2007 art 13(1) Reg.No 48 Tigray Neg. Gaz. , Year 16. There are about 16 exhaustive lists of powers of the Kebele rural land administration in this article apart from the general power that the proclamation has endowed to it in artic 20.

an *ad hoc* tribunal committee without a salary, save for the 10 birr per day allowance? They are not, even tenured employees earning uninterrupted income, nor they are legal or land experts.²¹⁰ Most of them lead their life on the basis of daily income that they earn, such as a broker, guard.....²¹¹ The rural land tribunal committee as per Directive No 004²¹², Proclamation No 136/2007 and Regulation No 48/2007, shall have a first instance jurisdiction almost in every possible disputes of rural land, like on disputes between peasants, between a peasant and administration unit. To all intents and purposes, the tribunal can entertain rural land disputes extending up to 10 hectares of land with whatsoever cause of action as per the grounds of material jurisdiction set by the directive. The tribunal is not prudent at performance neither at conformance, not to mention the opportunity that the nature of the land in Humera opens to conspiracy and corruption.

Analyzing the matter from that perspective will cast a doubt and raise an eyebrow of a reasonable person who comes across with rural land areas like in Humera Woreda. But as the annexed table indicates the entire land of Woreda Kafta Humera is not only growing cash crops nor will it tell you that there is no any other area in Tigray which can give much more output like in Humera.²¹³ Crops like *Teff, Finger Millet, Maize, Lin Seed*, and other *Grains* though they are harvested and sawed in my research area none of them are as fruitful as cotton, sesame and sorghum. For practical reasons they may not even constitute 5% of the cultivated area that Woreda Kafta Humera is sawed every year.²¹⁴ So the institutions may not be inadequate to administer this mini area nor would the dispute settlement organs power be questioned, save for the general recommendation that the research has made (the first part of the research drastically challenges the necessity and desirability of rural land judicial committee across the region weighting against the inherent benefits of alternative dispute resolution mechanisms and CDR). So as we shall see later from the point of view of resource curse theory these crops are not in a position to defy the administration system and

²¹⁰ Supra note 188

²¹¹ Ibid

²¹² Environmental Protection, Rural land administration and use Authority on The Procedure and Capacity Building of Rural Land Use and Administration Dispute Among Peasants ,articles 16,17 Directive, No 004

²¹³ The southern zone of the region also commonly known as the *Raya* region is capable of growing almost equal amount with humera as far as sorghum is concerned.

²¹⁴ See table as annexed showing the total amount of cultivatable land that produces Teff, lin seed and barley

other channels of rural land by taking due regard to the size of the area that they cover and the possibility of gaining the maximum limit i.e. 10 hectare.

Turning our attention to the land administration units and the cash crop products of Woreda Kafta Humera the following point is evident.

Basically the power to issue a valid and permanent certificate of rural land holding is given to the woreda desk of land. But as per the authorization by the proclamation, regulation and the *de facto* power, the *Tabia* rural land use and administration unit is issuing a temporary certificate. This temporary certificate is meant to fill the possible gaps to peasants who have not obtained a certificate earlier and to new holders as well. It contains only the signature of the *Tabia* rural land administrator along with the stamp of the *Tabia*. Locally it is known as “*Balbal*.”²¹⁵ The issuance of temporary certificate in Humera is not unprecedented phenomenon. As mentioned above locally respected and elderly peoples of the woreda originally from the Walqayt were issuing the certificate in the 1980’s. As per the interview that the researcher has made with the woreda desk of rural land²¹⁶ up until the implementation of the declarations and policy of the region on the use and administration of rural land a power was given to the *Tabias* in order to issue temporary certificates also known as “*Balbal*”. Nonetheless no attempt has been made ever after to replace the temporary certificate, even though three and more years have already gone since the declaration of the policy via Proclamation No 136/2007. *Balbal*, on top of its simplicity is also easily exposed to forgery, fraud, and manipulation. There are some ongoing criminal cases concerning this manipulation. Woreda Public Prosecutor has instituted criminal charge against some staffs of *Tabia* May Kadra rural land administration unit, that are suspected of issuing about 136 forged “*Balbal*” by simply imitating the signature of the rural land *tabia* administrator.²¹⁷ Not only this even the *Tabia* rural land administrator themselves were easily corrupted to issue such kind of temporary certificate.²¹⁸ An administrator will resign from the power by withholding the stamp of the *Tabia* and continue to issue the “*Balbal*” by adjusting the time of such certificate so that it would synchronize with the currency of his term of office. This is

²¹⁵ See the model as annexed in the annex part III

²¹⁶ Supra note 178

²¹⁷ Ato Fisha Gidey and Ato Araya Asgodom V Public Prosecutor, File no 08017(Western Tigray High court) or Woreda Kafta Humera Public Prosecutor, criminal File No 1503/2003 Plaintiff Public Prosecutor Defendants Ato Fisha Gidey and Ato Araya Asgodom

²¹⁸ Ibid

more frequent to the squatters or peasants that hold the rural land without any prior authorization also known as 'Wofri Zemet'. They imitate the *Balbal* and put their name, copy the signature and stamp when made by the squatters themselves and bribe the recording officer to record their forged '*Balbal*' in the office.²¹⁹ The action of those squatters may have undesired impact in sustainable human development and rule of law, since the occupation is made at the expense of the environment and without any authorization. Moreover the committee did not employ any technology to demarcate and issue "*Balbal*" and emphasize on the mere proposal of the claimants, a proposal that states the borders of the land usually in four directions.²²⁰

In short this short-term remedy, even though was supposed to simplify the matter, it has complicated and defeated the purported objective of the law. This problem is more frequent in Woreda Kafta Humera for the following two reasons.

First the rural land in Woreda Kafta Humera is suitable largely for cash crop items or commercial farming by its nature. In plain English a hectare land in Humera cannot have an equivalent economic value with an identical hectare of land in other part of Tigray, growing a subsistence crop like maize or Teff. Because 12²²¹ quintals of sesame that may be gained from 2 hectares of rural land in Woreda Kafta Humera will worth about 24,000 ETH Birr, minus the expenses a net income of about 18,000ETH *Birr* will be the average income of a peasant in Woreda Kafta Humera.²²² This amount of income from other part of the region will place a peasant in the category of "Model *Gebere*," So the inherent nature of the crop accompanied with the size of holding, is the cause for the existence of maladministration and rent seeking culture of the area. Even theoretically the theory of resource curse hypothesis,²²³ which is skeptical about the institutions of land administration units of a valuable land, anticipates rent seeking and mediocrity to triumph over the good manners of administration. According to a certain research the following has been suggested.

²¹⁹ Goitom Teame, Getnet Eyasu, and Shambel Asmelash V Public Prosecutor, File No 08018(Western Zone Tigray High Court) or Woreda Kafta Humera Public Prosecutor, criminal File No 1504/2003

²²⁰ See the annexed *Balbal* at the end of the paper.

²²¹ As per the table 6 quintal was the average per quintal but the harvest may go to the extent of 15 quintal per hectare without forgetting the reward less rare circumstances.

²²² The amount of claim made in the case of Ato Hagos Berhe VS Solomon G/wahid file no 2497in 2 hectare of land was 19,800 ETB Retrieved on 14 May, 2011

²²³ The Resource Curse theory which was formed in 1990's its core idea is that natural endowment and economic growth are negatively related; even from the domestic provincial level is true. See also supra note 2

*“Natural resources have unenthusiastic ramification on development if measured in isolation, but a positive undeviating implication on development if additional illuminating variables, such as corruption, investment, openness terms of trade, and schooling, are included.”*²²⁴

So by equating the highly valuable and demanded rural land of Woreda Kafta Humera with other Woredas of the region the proclamation fails to serve its end.

Second and most importantly, the possibility of gaining the maximum hectare of rural land in Humera is high. So if a farmer can gain such amount of land flavored with sparkling and precious fruit that it will bring about, merely from a *Tabia* administrator of rural land he or she will pay the maximum sacrifice to that effect.

The situation turns out to be unbearable en route for women since the temporary certificates were being issued in a number of instances only in the name of the husband, whilst the involvement of women in increasing the fertility of the land is equally important with that of husbands.²²⁵ Woreda Kafta Humera Women Affair Office does not have any plan of assisting the rural land dwelling women.²²⁶ On top of this, the office has never collaborated with the rural land administration unit regarding the temporary certificate that they are issuing²²⁷ even if most certificates of holding are being issued only in the name of the husband.²²⁸ The issue is not as such for those have resettled and the repatriated as the two groups have gotten a valid and permanent certificate of land holding issued earlier.²²⁹ But for the newly issued temporary certificates particularly in the aftermath of the Proclamation No 136/2007 as multiplicity of a temporary certificate was the bone of contention no man was asked to bring a proof of unmarried status from the social courts.²³⁰ As per the interview that the researcher has made, the Women Affairs Office has neither made endeavor to scrutinize the matter and to see the repercussion on women nor the office

²²⁴ Papyrakis et al, E., “The Resource Curse Hypothesis and Its Transmission Channels ,”*Journal of comparative economics* ,IVM Institute of Environmental Studies Vrije University Amsterdam De Boolean (2004) 181-193 www.elsevier.com/locate/jce Retrieved on 14 May, 2011

²²⁵ Interview with W/ro Yeshe Abrha the chair women of the Women Affair of Western Zone on May 17 2011.

²²⁶ Ibid

²²⁷ Ibid.

²²⁸ Supra note 193 Plus the researcher own observation further see the annexed *Balbal*.

²²⁹ Ibid

²³⁰ Residents of the *Tabias* are occupying the rural land without gaining any prior authorization from the competent organ and latter verify their act by issuing an invalid *Balbal* from the authorities.

has contacted the rural land administration *Desk* of the woreda or the *Tabia* level rural land use and administration units regarding permanent or temporary certificate.²³¹ Apart from this the office had never assisted the women that struggle for their right in a battle of court of law. Even though the office has received a number of grievances from women that the life has provided them the exact opposite in store of their imagination and expectation on their holding right, there are no significant moves that the office has made to solve the problem and provide feasible legal aid in judicial dispute resolution mechanism.²³²

Further it is worth to note that, the implication is not only for an academic purpose. Even practically the Kebele rural land administration institutions that were meant to administer such special and valuable rural land are paralyzed. The officials almost all have been ousted from office and sent to jail. They are all accused of abuse of power mainly due to the multiple temporary certificates that they issued for a single land and the forged Balbal that they have issued to squatters.²³³ Fresh cases have been instituted against the Mayor of Tabia May Kadra. And in some instances the researcher finds it very difficult to interview the officials as all of them are in bailment custody. The Public Prosecutor Office instituted an action against the officials on multiple offence particularly offences based on articles 375(1) (a), 407(1) (c), 411(2), 408(2) and 407(2) of the 2005 Ethiopian Criminal Code. Though, the cases are pending; the institutional efficiency theory that the researcher uses to strength its hypothesis, mainly that of the resource curse and agency capture theory turnout to be viable in reality. Most of the Criminal Code articles that the public prosecutor has cited in the criminal charge have a lot to do with abuse of power and corruption. Particularly the Mayor of Tabia May Kadra despite his little income owns

²³¹ Supra note 226.

²³² Ibid

²³³ Goitom Teame, Getnet Eyasu, and Shambel Asmelash V Public Prosecutor, File No 08018(Western Zone Tigray High Court) or Woreda Kafta Humera Public Prosecutor, criminal File No 1504/2003 Plaintiff Public Prosecutor Defendants Goitom Teame, Getnet Eyasu, and Shambel Asmelash and Ato Gebre Kidan Gebremichael V Public Prosecutor, File No 08015(Western Zone Tigray High Court) or Woreda Kafta Humera Public Prosecutor, criminal File No 1505/2003 Plaintiff Public Prosecutor Defendants Ato Gebre Kidan Gebremichael

high valued residential houses. Basically leader of any *Tabia* is not tenured nor did he/she has uninterrupted income save for the allowance that they may receive.²³⁴

To sum up rural land disputes in Woreda Kafta Humera are increasing dramatically due to lack of good, competent and effective administrative units. This negligence is attributable to the rural land Proclamation and Directive No 001. These laws give immense power of administration to rural administration unit at *Tabia* level. Officials of the *Tabias* are not tenured nor are they competent enough to administer the land. Because the rural land in Woreda Kafta Humera is valuable and the holding right can also go to the extent of ten hectare *de jure*. *De facto* the peasants' land holdings go to the extent of forty hectares of land. Often times rural land disputes in Woreda Kafta Humera are between parties without any legitimate holding right (between squatters) which shows the incompetence of the land administration unit to manage the land. Similarly the rural land tribunal committee is also entertaining disputes of rural land up to 10 hectares (*de jure*) and greater than that *defacto*. So the main causes of land disputes in Woreda Kafta Humera can be categorized under the institutional problem from the universal causes of rural land disputes that the researcher has considered in chapter two.

4.5.2 A study of Woreda Kafta Humera Court

Judges in Woreda Kafta Humera have almost in all cases referred land disputes to be settled by the disputant parties themselves peacefully even after the rural land judicial committee has rendered decision on the dispute.²³⁵The reiterated but most complicated cases that the woreda Kafta Humera has entertained include the rural land disputes with a multiplicity of temporary certificate and disputes over rural land that ultimately turned out without a lawful holder.

²³⁴ Ato Gebre Kidan Gebremichael V Public Prosecutor, File No 08015(Western Zone Tigray High Court) or Woreda Kafta Humera Public Prosecutor, criminal File No 1505/2003 Plaintiff Public Prosecutor Defendants Ato Gebre Kidan Gebremichael

²³⁵ *Supra* note 174 Interview with Ato Gashaw Tsedeke, president of Woreda Kafta Humera court on may 18 2011.re affirms the position of the author as president of the court clarifies his position

For the latter cases one of the judges of the Woreda Kafta Humera Court²³⁶ opts to call interested rural land administrative unit in order to attend the case as per article 13(1) (p) of the regulation in case if both claimants fail to have a valid legal claim upon the rural land.²³⁷ Basically it was the judicial committee that was supposed to relieve the land freely and struck out the case since there is no valid cause of action or at least vested interest.²³⁸

As to cases involving multiplicity of temporary certificate the judge/woreda courts give priority in principle to the temporary certificate that has been issued first. Though this is not without limitation, it is the best worst decision that the court could give. Because the chronology of time does not exactly represent the date that the certificate was issued, by bribing the Kebele rural land administration it is not impossible for the land holders to fictionalize the date and make it the earliest of all that has been issued on the same plot of rural land.²³⁹

Moreover, as mentioned earlier women were the victims of this corrupted justice system more often than any other groups.

Generally the impact of an effective and efficient certification of rural land on dispute is positive.²⁴⁰ Certifying the rights arising out of rural land will create tenure security which will lead to the reduction of disputes if not effective and fair justice system. Because the dispute settling organ will not have a problem in disposing cases in so far as they can demonstrate their decision via the certificate supplied by the appropriate authority other than cross referring to any other form of demonstrative or oral evidence.

Unfortunately, the temporary certificate that the Tabias were issuing in Humera woreda resulted in the exact opposite in store of the aforesaid hypothesis. The

²³⁶ Interview with Ato Michael, Civil Bench Judge of Woreda Kafta Humera Court on 18 May, 2011.

²³⁷ Legally speaking the committee was supposed to properly follow the rural land including the land which the committee has not issue a *Balbal* or not distributed it legally.

²³⁸ The Civil Code of the Empire of Ethiopia, 1960, art 280 Proc No 165, *Neg.Gaz.* Year 19.no.3.

²³⁹ Interview with Ato Berhane H/slassie former civil bench judge at Woreda Kafta Humera court currently president of Hagere selam woreda court in South Eastern Zone of the region on may 14 2011As per the interview there are instances where the rural land administration units were ordered to a bench to clarify the matter and think their act as legal, further convinced the act of clarifying the issue as a task left to the courts.

²⁴⁰ Stein Holden et al ,Can Land Certification and Registration Reduce Land Border Conflicts, worldbank.org/EXTRAD/Resources/336681/.../holden.pdffile:///D:/collection%20of%20materials/lanl itigation.htm, Retrieved on 23 March, 2011

disputes on rural land are overloading the woreda court since after the temporary certificate started to be issued by the *Tabia* level.²⁴¹

In fact the most onerous task that the woreda courts are facing with currently relate to rural land disputes. Factually they are obliged to see the case from the scratch and a maximum effort is exerted by the Woreda court judges to clarify the matter. The decisions of the rural land judicial committee in most cases are not readable and quite complicated to understand the issue.²⁴²The Directive No 004 of the region articulates to the effect of capacity building of the committee judges. On top of this it tries to set the accountability of the committee in article 23 which shall be to the *Desk*, established at *Woreda* to administer the use of rural land, the *Tabia* council plus the Woreda court. Despite all of these efforts of the directive the committee located in Humera woreda particularly in *Tabia* Maykadra²⁴³ is facing hard realities due to the aforementioned reasons, mainly the resource curse hypothesis theory and ineffectiveness of the rural land administration unit of the *Tabia* in providing a clear certificate (whether temporary or permanent).

Eventually it is the law particularly Directive No 001, which shadows mist on matter since it considers a farmer holding 10 hectares as mere peasant. More than any other thing the problem is due to the gap in the proclamation to the extent it suggests similar rural land committee to administer any peasants holding evenly across the region. This affects the setting of dispute settlement, fertility and equitable income of the region ultimately. In addition, sustainable human development and rule of law are at stake since squatters/*Wofri Zemet* are encouraged to bring their case before land tribunals and Woreda courts. Squatters are expanding their holding beyond the holding legal maximum without any authorization which is also at the expense of environmental protection. These squatters are simply deforesting the jungle, continue to hold and legitimize their illegal holding by bringing it before the dispute settling institutions.

²⁴¹ Interview with Ato Berihun Kahsay the head of the Desk /Woreda of Rural land use and administration 16 May, 2011, Interview with Ato Gashaw Tsedeke, president of Woreda Kafta Humera court on 18 May, 2011, and Interview with Ato Michael Hagos Civil Bench Judge of Woreda Kafta Humera Court on 18 May, 2011..

²⁴² Supra note 236, even the researchers' own observation is similar.

²⁴³ This *Tabia* is the largest of all and the farm land of the woreda are there in this *tabia* by large, including *Bahre selam, Meshach, Gelae Zeraf, Bewal, Shelela,*

To sum up considering the large and unmanageable rural land in Western Zone of region and with an intention of benefiting the indigenous peoples whose rural land is allocated for an investment purpose to outsiders, Directives No 001 tries to deal with the situation in Humera as a special by fixing the maximum legal as 10 hectares in article 19.1.1. But the oversight here is one of those laws, either the directive, the proclamation or the regulation should have envisaged special administration units including a dispute settling institutions for Western Zone of the region, including Woreda Kafta Humera, equally to the extent it has separated the mentioned zone from the region. In other words, it is the incompetence of those institutions/rural land administration units of Humera Woreda that by and large exacerbates the problems regarding rural land disputes in the area. Thus, burdened the role of Woreda Kafta Humera Court while entertaining rural land disputes in its' appellate jurisdiction. This is more frequent while the court entertains cases between squatters, cases involving multiplicity of certificate and without forgetting the ambiguous and unreadable decisions of the land tribunal in Woreda Kafta Humera *Tabias*.

4.5.3 Jurisdiction over Fruits

As per Proclamation No 136/2007 and Regulation No 48/2007 plus Directive No 004 rural land tribunal will have a first instance jurisdiction only on the civil dimension of disputes over rural land.

Here jurisdiction over the fruit of the land as per the provisions of article 1170ff of the Civil Code is referring to fruits like crops,²⁴⁴ and planted trees,²⁴⁵ that can be made on the contested rural land.²⁴⁶ Particularly the judgment creditor as per the final decision of any competent judicial organ is a party who is not actually holding the rural land for various reasons, though capable of objecting plantation or sawing. The value addition might have been detrimental to his interest however, the severity and amount of compensation depends on his prior reaction to the action of judgment debtor.

²⁴⁴ Supra note 238, art 1172-1174 any of the increments made by the sawer may be against the clear will of the land holder or not, the effect will not obviously be similar.

²⁴⁵ Id, articles 1175-1176.

²⁴⁶ At this juncture the author is citing the provisions as the room for the application of such articles to holding rights is the frequent practice of courts albeit ownership of land reserved to the public than individuals as clearly envisaged in article 40(3) of the FDRE constitution.

Practically if subject matter of the rural land dispute relates to fruits of the land woreda court entertains the dispute as a first instance jurisdiction. This is because the issue of fruit involves several and more complex legal matters than factual issues hence no place for rural land judicial committee that resolve factual issues of rural land disputes in most cases.²⁴⁷ Here one may argue favoring judicial committees' power of entertaining rural land disputes to the extent they are excluded from entertaining disputes regarding fruits of the rural land, which desperately demands an organ considerably accessible and able to understand the matter easily.²⁴⁸

But the researcher rather raise a diametrically opposite question, i.e. will assignment of rural land disputes other than dispute over fruit of the land to judicial committee reduce the value of the land which is subject of the dispute? Definitely not, rather it will be a matter of life and death for parties to win in the legal battle in front of judicial committee to secure their holding right particularly for highly valued rural land which is also the case in Humera. As a matter of fact losing a case concerning fruit of the rural land cannot have equal and far reaching implication as losing cases regarding holding right, in which case the jurisdiction will be the first instance jurisdiction of judicial committee. Because in the latter cases peasant will not only lose the single annual effort that he has made to saw or to plant trees on the land but also the holder status forever. This will affect the justice system and the confidence of the public since the jurisdiction of Woreda Kafta Humera court is only in the form of appellate jurisdiction least legally speaking.

Material jurisdiction of courts is determined by taking due regard to severity of an offence for criminal matters and the amount of claim for civil matters.²⁴⁹ Article 10 of the regulation enumerates about 13 basis of material jurisdiction of the tribunal. Border conflict with among peasants, disputes regarding the use of the holding right, including succession, gift, and others, issues regarding the use right, issues regarding forests in a ploughed land and others are to be entertained by the first instance

²⁴⁷Supra note 238 Articles 1170-1177, this part addresses accession as one means of acquisition of ownership particularly on crops, trees and plants plus buildings. So these provisions are too technical calls for a legal expert and are applicable currently analogically. In addition none of the grounds of material jurisdiction in the Directive No 004 empowers the rural land tribunal to have a first instance jurisdiction regarding the fruit or increases made over the rural land.

²⁴⁸ See the discussion on section 4.4 and the stand of the author regarding this question.

²⁴⁹ The Civil Procedure Code of the Empire of Ethiopia, art 13(b), 1965, Dec. No 52 Neg.Gaz., Year 25, no.3. And the recently implemented BPR (Business Process Re engineering) of the region.

jurisdiction of the tribunal. This being the legal framework there are some issues that need to be raised here, like should the tribunal have a jurisdiction over fruits/increases made on land? Next if the tribunal shall not have a jurisdiction on such issues who will order the stay of execution or order of execution if the dispute stays long enough until the fruit ripped where as an appeal is not made to the woreda court? If the tribunal is not having a jurisdiction, how can it order stay of sale of the fruits/increases made on the land regarding ongoing dispute that it is entertaining?

This research has found that the jurisdiction over fruits of the land is the exclusive jurisdiction of the regular courts most notably the woreda courts, though there were some tendencies by the rural land tribunals to entertain such issues at the beginning.²⁵⁰

But how can the tribunal order a stay of execution on the sale of the fruits of the rural land the holding and use right of which has been contested before it? This was one of the tricky tasks that the tribunal was facing. If it is the woreda court that will order the stay of execution; would not this be a burden to the justice system? Does the jurisdiction over the fruits of rural land exclude any other incidental jurisdictions like order of stay of execution

²⁵⁰ See Supra notes 174, and interview with Ato Abadi a judge in Tabia My Kadra rural land judicial committee.

Chapter Five

Conclusions, Findings and Recommendations

5.1 Conclusions and findings

This research is based on the hypothesis that effective rural land administration institutions and laws positively affect dispute over rural lands and rural land dispute settling institutions. Particularly effective rural land registration, dispute settling institutions and laws, including proclamation, regulation and directive play a significant role in avoiding unnecessary disputes on rural land and provide effective justice system when disputes become unavoidable.

The most acceptable rural land dispute settlement mode is informal dispute resolution, particularly in some developing nations alternative along with the customary, the Ethiopian tenure system also favors this trend. Notwithstanding the historical inconsistency chiefly in the era of derg régime, as it established a special rural land tribunals under the peasant association, the Federal Rural Land Administration Proclamation No 89/1997, Federal Rural Land Administration and Use Proclamation No 456/2005 and the rural land use and administration laws of the Federal units particularly that of Oromiya and SNNP opts alternative dispute settlement a bit modified and contextualized with the customary dispute settlement mechanism.

The researcher has found out inappropriate rural land dispute resolution mechanism in Tigray region and such improper mechanism is attributable to such region`s current Rural Land Use and Administration laws.

This region`s rural land law creates a dispute settling institution under the expansive construction of administration unit, i.e. committee, structurally within the executive organ of the region. It is the only region that launches two rural land dispute settlement mechanisms other than the regular courts i.e. rural land tribunal and alternative dispute resolution mechanism. Particularly the rural land tribunal consumes its own resource of implementation including implementation of directives, like Directive No 004, that was meant to regulate the working procedures of the same.

The other basic finding of this research is the fact that the proclamation establishes similar rural land administration units at *Tabia* level though the proclamation leaves open as to the maximum holding right of peasant to be determined as per the areal

capacity of the zones.. It explicitly institutes land administration units including dispute settlement committee's uniform across the region.

Another finding which has a lot to do with the second finding is the fact that Directive No 001 set ten hectares as maximum hectare of land that a farmers or residents of the area may maintain plus the fact that a farmer can even hold up to 40 hectare of land *de facto* in Woreda Kafta Humera.

Further the research has found out the practical implications of the above 2 consecutive findings in Woreda Kafta Humera. Multiplicity of temporary certificates were/are being issued by *Tabias* administration units (which is more frequent in *Tabia* May-kadra).

Besides, the susceptibility of such certificate to be forged easily without mentioning the implication on the administration of justice system in determining who deserves the land and to whom did the land rightly belongs.

Above all such system also encourages the squatters/ 'Wofri Zemet' to expand their holding both above the legal limit and to hold free rural land at one's own motion without any authorization. The headache worsens since the first instance jurisdiction on rural land disputes has been given to the rural land judicial committee.

Moreover, neither *Tabia* nor Woreda level rural land administration units are issuing a certificate that takes in to account the interest of women in woreda kafta Humera nor did the women affair office strive to overcome such misfortunes of women in woreda kafta humera.

Akin to this the research finds out some ambiguity regarding the jurisdiction of the tribunal and the woreda court. Particularly on who shall have the jurisdiction over the fruit of the land and the order of the stay of execution over the fruits of the rural land? the dilemma of which affects negatively the poor rural peasants while they are litigating.

5.2 Recommendations

One of the crucial problems that this research finds out is the power that the proclamation and the regulation of the region have empowered to the committee i.e. judicial power. It is the stand of the researcher that the power should be reconsidered also snatched from them.

Accordingly priority should be given to the parties' interest in solving their dispute amicably, most notably through reconciliation or negotiation.

If the first means fails to settle the dispute; parties may resolve their dispute with the help of mediators well known for their knack of reconciling irreconcilable interests.

If not channel should be established representing mediators of each of the parties to the dispute under the office of rural land administration unit. To make the number odd a third/fifth neutral, elderly, respected, and honored mediator shall be elected by the mutual consent of the parties. In case if the parties to the dispute fail to nominate a mediator, the rural land administration unit shall suggest a third party local mediator on top of the local mediators that the parties have suggested.

The venue should be at the place where the rural land administration unit is located. Here the channel, financed and work under the umbrella of the land administration office shall exert a maximum effort to manage the dispute like mediators do. Decision shall be rendered as a last resort. This decision is appealable to a court of law.

But no dispute will be entertained unless it exhausted the mandated local mediation first. This unit is there to approve the mediated agreement of the parties, if any (in which case will also be appealable to woreda court equally as a decision of the channel), or to mediate for disputes not resolved via mandated mediation, if not to render decisions. The maximum time that this channel needs to render an award should be fifteen days plus maximum of one holiday. Parties shall have 30 maximum days to bring their appeal to woreda courts.

The rural land administration unit shall arrange training to this mixed dispute settling body in Human Right areas particularly those of Women, Children and Indigenous people's right. To avoid some constitutionality issues the procedure for capacity

building of the elderly mediators should be declared by the appropriate organ, EPRLAUA.

EPRLAUA should issue a directive regulating the procedural matters of this ADR and CDR dispute settling unit. The directive will deal about procedures other than procedures of the CDR. It shall particularly set procedural rights that relate to; women, children, indigenous peoples, plus some efficiency issues.

In remaining cases the mediators will follow their own procedure which should not necessary be reduced in writing, is also, informal, flexible, provide equal opportunity that usually declares both parties as winners. Their rating/decision may base on evidences like customary certificate, oral examination of the parties or any other evidence.

Concerning the problem in Woreda Kafta Humera the research recommends the following points;

Let the maximum holding right of the peasants extends up to ten hectares. But these peasants at least for the sake of good land administration and administration of justice should not be treated as peasants and EPRLAUA shall take the following legal reform.

For the sake of administration a farmer that holds beyond two hectares but less than ten hectare of rural land shall be considered a special peasant the matter of use and administration of which should be the exclusive matter of the *Desk*, at woreda level. Particularly no *Tabia* should involve in rural lands exceeding two hectare of rural land nor should a temporary certificate be issued by the *Tabia* even by *Desk*.

The *Desk* of Woreda Humera shall immediately enter into the demarcation process and the temporary certificate that has been issued shall be replaced thereby.

It shall use GIS in order to appropriately demarcate the border and reduce the illegal holdings to the legal maximum.

In addition the Desk shall determine the fate of illegitimate holders/Wofri Zemet/squatters as soon as possible i.e. either it should snatch or validate their holding.

Regarding the multiplicity of temporary certificate that have been issued earlier the *Desk*, woreda level rural land administration unit, should give the rural land to peasants who claim the right based on decisions of Woreda Kafta Humera Court.

The Desk, woreda level rural land administration unit, shall never consider any right, that may be claimed based on the decisions of rural land tribunals of the different *Tabia's* unless the potential claimers right to appeal to Woreda Kafta Humera court is lapsed, as per the decision of the competent organ/be it the woreda or the state supreme court.

In addition Women Affair Office of Woreda Kafta Humera should work in synergy with EPRLAUA whilst a prior certificate of holding is re assured, or new certificate is issued.

Besides woreda courts should dismiss disputes between squatters or peasants holding the land free of claims illegally and without any prior authorization, citing article 280 of the Ethiopian Civil Procedure Code for disputes.

Dispute settlement wise it is in line of the first recommendation that I have made; that is the regulated or mixes of both CDR and ADR unit shall have a first instance jurisdiction regarding disputes of rural land less than 2 hectare. Whereas for dispute of rural land exceeding 2 hectare but less than 10 hectares, the jurisdiction should be the first instance jurisdiction of Woreda Kafta Humera court. This shall also apply to ongoing or pending cases.

If the region continues to stick to the rural land judicial and administration committees that it has established equally across the region, EPRLAUA shall enact directive governing rural land disputes in Humera.

Accordingly in rural land disputes ranging from two to ten hectares, one judge shall have a sit with the judicial committee in order to clarify the legal matters. In effect the judicial committee should serve as a jury whereas the decision and judgment should be made by the judge. The President of Woreda Humera court should assign judges whenever there is a call from any of the *Tabias* of Humera rural land judicial committee. The assignment should be confidential and shall also be made as a matter of surprise to any of the woreda judges.

Regarding the jurisdiction of order of stay of execution the author in principle suggests the power to be the power of dispute settling organ having first instance jurisdiction in rural land disputes. In effect no party should go to woreda court from any *Tabia* while s/he is litigating in the rural land judicial committee regarding holding right or any other ground, merely seeking order of stay of sale of fruits or execution on fruits of the contested rural land.

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5.4 APPENDIX I TABLE

Type of crop	1998/1999		1999/2000		2000/2001		2001/2002		2002/2003		Average production per hectare
	Amount of hectares sowed	Amount of harvested in quintals	Amount of hectares sowed	Amount of harvested in quintals	Amount of hectares sowed	Amount of harvested in quintals	Amount of hectares sowed	Amount of harvested in quintals	Amount of hectares sowed	Amount of harvested in quintals	
Sesame	135604	660763	203107	998071	223071	1403648.6	226788.2	1428955.3	260562	1584477.6	6
Sorghum	41565	580509	90441	1989617	129952	3108126	125579.6	2704558.4	110305	3478127.8	31.5
Cotton	12774	168910	15739	166720	13027	180498	3121.8	49959.6	359	4711	13
Finger millet	954	9802	1276	13845	855	7160	3099.2	37190	4750	716445.5	15
Teff	1081	6879	5451	38431	1427	12376	1505	20159	1700	20653	12
Maize	1081	22236	1588	39854	1823	55380	8976	278265	9042	366626	40
Nug	506	2530	587	2957	549	3314	1487	7438	2449	13472	6
Lin seed	29	116	7	35	6.5	42	53	318	36	216	6
Bean	23	387	---	---	50	820	223	3570	59	1006	16
Bultug	---	---	60	960	40	720	297	2975	53	1008	13
Beans	443	7378	173	3486	404	5987	203	2772	202	3286	14-16
Total	194,060	1,439,510	318,429	3,253,946	371,204.5	4,778,071	371,332	4,486,200	389,547	5,545,277	

Five consecutive year data showing sowed in and harvested product at Woreda Kafta Humera per quintal:

SOURCE: Woreda Kafta Humera Environmental Protection and Rural Land Usage and Administration Authority, as translated by the author.

6 How many hectare of land can you issue certificate? (maximum extent of hectare of land that the office can administer and issue certificate?)

7 Was there an informal way of registration ever before? How do you consider it while you are issuing?

8 Is there a change or a substantial deviation from that?

9 Is there a sufficient safeguard to prevent fraud, manipulation and loss certificates?

10 How many copies did the office keep?

Part one: personal information

Sex Male

Name of the office Woreda Kafta Humera Court

Position President and other 2 Civil Bench Judges

Qualification LLB, LLB, LLB

Year of service 8 Years, 7 Years, 2 Years

Age between 22-35

Part Two: Interview

Were there disputes over rural land before the institutionalization of rural land administration units and dispute settling committees at lowest and accessible level i.e. *TABIA* level? Is there a significant change in the aftermath of certification?

2 How many cases did the court refer it to be settled by alternative dispute resolution mechanism?

3 How is the accountability of the committee judges ensured on top of the appellate jurisdiction that the regular courts have?

4 Do you really think that the paradigm/allowance paid as per the proclamation (i.e. ten birr per session) to the humera woreda tabia's rural land committee judges which are also equal to the rest of the tigray region rural land committee judges that entertain subsistence farming rural land case, is sufficient enough to avoid corruption?

5 Are there a special group of people that lose their cases more often than others? Like resettles, women or indigenous Peoples?

6 Is every decision of the Tabia committee brought to the woreda courts in the form of appeal? Could the scenario be different had the power been given to the ADR/CDR units?

7 How did the court consider the multiple certificates that appear in a court as documentary evidence over the same plot of land? Is there a tendency of considering oral evidence and other evidences?

8 What is the stand of the judicial organ on the ad hoc committees and the tabias rural land administration units? Would it suggest a special institution to the peasants of the woreda kafta humera as opposed to the other part of tigray?

9 How will the regular court decide on disputes of land that turns out without a legal holder? (a land without owner or a land to be allocated yet legally/dejure but exploited factually by either of the litigants)?

Part one: personal information

Sex-Male

Name of the office Tabia May Kadra Judicial Committee

Position- judge

Qualification Grade 8

Year of service One Year

Age between 22-35

Part Two: Interview

1 Do you exactly know the jurisdiction that you have on rural land disputes? How much hectare of rural land dispute can you entertain and dispose it? Have you ever seen a land dispute beyond the maximum legal limit that you were supposed to see (like disputes of investors)? (NB the jurisdiction of the committee has been specified

in the directive no 004 that deals the procedural matters of rural land dispute settling committee across the Tigray region)

2 Do you entertain every dispute relating to rural land including disputes over the fruits of the rural land?

3 How long will it take you to dispose a single case?

4 Who orders the stay of execution in case if the dispute is not settled up until the fruit is collected?

5 Have you ever had take training on land policy of the nation and mechanisms of dispute settlement?

6 Do you have another source of income or not?

Part one: personal information

Sex	Female
Name of the office	Women Affair Office of Western Zoba
Position	Chair Person
Qualification	BA
Year of service	10 Years
Age	between 22-35

Part Two: Interview

1 Did the office appreciate the rural land administration unit tasks?

2 Did it consult or work in synergy with land administration units while a certificate was issued?

3 Was there complains/roars from women residents of the zone regarding their right on rural land?

4 Did the office represent or has hired lawyers for poor women on disputes rural land that flaws as an effect of post divorce, or appeared as a third party by any means?

Interviews

1. Interview with Ato Gashaw Tsedeke, President of Woreda Kafta Humera Court, on 18 May, 2011
2. Interview with Ato Michael Hagos, Judge of Woreda Kafta Humera Court, on 18 May, 2011
3. Interview with Ato Berihun Kahsay , Head of land/Desk at EPRLAUA in Woreda Kafta Humera on 16 May, 2011
4. Interview with W/ro Yeshe Abrha Chair women of Woreda Kafta Humera Women Affair Office, on 17 May, 2011
5. Interview with Ato Abadi Wolday, Member of Rural Land Tribunal at Tabia My Kadra on 20 May, 2011

