



Rural land arbitration elders: Composition, recruitment and their relation with regular court: the case of adami tullu jido kombolcha woreda (Ethiopia)

Solomon Dessalegn Dibaba

Lecturer, Department of Law, College of Law and Governance Oromia State University, Batu, Ethiopia

Abstract

This study is about rural land arbitration elders in Oromia (Adami Tulu Jido Kombolcha Wereda case) of Ethiopia. The federal and regional rural land administration and use law particularly that of Oromia recognizes rural land dispute settlement by local arbitration elders. The study is about composition, recruitment, relation with regular court and laws applied by local arbitration elders (Jaarsa Biyyaa), and the status of their decision. The FDRE Constitution and other laws recognize the applications of customary rules for land dispute settlement and other matters. But establishment and hence jurisdiction of local arbitration elders (Jaarsa Biyyaa) as customary dispute resolution institution is not regulated by both federal and regional rural land administration law. The Oromia rural land administration law not provides the status of local arbitration elders. The other point is as to values of arbitration elder's finding. The Oromia rural land administration law says nothing how elder's finding (which has become binding on parties) is enforced. The Oromia rural land administration law is silent as to which type of laws applied by arbitration elders but the finding shows as customary rules are applicable. The problem is these customary rules do not exist in written form but in the memory of individuals, as a result of this; there is high probability of variation, a possibility of arbitrariness and the danger of abuse. After addressing all these problems in the study area focusing Oromia rural land administration law, this study has given substantial recommendations for solving these problems.

Keywords: arbitration, court, dispute, elders, land, rural and law

1. Introduction

Land provides a major source of conflict in rural societies around the world ^[1]. Land disputes over inheritance, boundaries and holding rights between families, neighbors and communities are common in many parts of the world. All societies have developed different methods of resolution of such disputes. Land disputes constitute the bulk of cases being handled in the informal, quasi-formal and formal or regular dispute resolution institutions ^[2].

Formal as well as informal dispute resolution institutions can have a big impact on reducing land related disputes depending, of course, on how efficiently or effectively they manage to operate.

Oromia rural land administration proclamation ^[3] provides that where disputes on rural land arise the parties are required to try to settle the dispute through negotiation and mutual agreement. Where this is not possible, they are required to try settling through arbitration or compromise. The land administration and use proclamation of Oromia provides for mandatory arbitration regarding land disputes. When land related disputes arise, the practices in the study area shows disputants take the matter to informal resolution institutions such as family and kin group councils, elder's councils and local conflict mediators.

Therefore, this paper investigates composition of local

arbitration elders, standard for recruitment of local arbitration elders, the type of laws and mechanisms local arbitration elders employed to settle land disputes, their knowledge of land laws and their relation with regular courts. This paper is only limited to Oromia rural land administration proclamation No 130/2007 in light of alternative dispute settlement.

To address these issues and to have strong evidence based claims as to local arbitration elders with regard to land dispute settlement qualitative research method which is interview and personal observation collected and used for this study.

2. The study area

Adami Tulu Jido Kombolcha is one of the woreda in the Oromia region of Ethiopia. Part of the East Shewa Zone located in the Great Rift Valley. Adami Tulu Jido Kombolcha bordered in the South by West Arsi Zone with which it shares the shore of Lake Abijata and Langano, in the West by the Southern Nation Nationalities and Peoples of the region, in the North by Dugda Bora, in the North East by Lake Batu and in the East by Arsi Zone. The 2007 national census reported a total population of this Woreda 141, 405 of 71, 167 were men and 70,238 were women; 20, 923 or 14.8% of its population were urban dwellers ^[4].

3. Legislation on rural land administration and use

The Federal Democratic Republic of Ethiopia (FDRE) Constitution was enacted in 1995. The constituent assembly

¹ Dispute settlement is not the same thing as conflict resolution. One is a temporary settlement of an immediate problem; the other is a long term settlement of an underlying long running conflict.

² USAID-supported project Ethiopia- strengthening land tenure and administration program (ELTAP): A consultancy report on situation assessment on land dispute resolution in four regional states of Ethiopia (Amhara, Tigray, Oromia and SNNP) 2012, p 51

³ The Oromia rural land administration and use proclamation No. 130/2007

⁴ The 2007 population and housing census of Ethiopia

[5] when it was drafting the constitution called for a huge debate on the land issues. The debate focused on two extreme positions, one position advocating the ownership of the state [6]. The transitional government by then claimed the land issues would have to be solved by the newly forthcoming constitution. In August 1995, the constitution went into operation incorporating Article 40, which ruled over the matter, and apparently ending the dead lock. Article 40 (3) of the FDRE constitution states that:

The right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the state and the people of Ethiopia. Land is a common property of the Nation, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of transfer.

Accordingly, the debates and the deadlocks prevalent before the enactment of the constitution were wrapped up to the dismay of the private property adherents.

The Federal Democratic Republic of Ethiopia Constitution (FDRE 1995) empowers regional governments to administer land and other natural resources in accordance of federal laws (i.e. Federal Constitution and Federal Land Administration and Use Proclamation No. 456/2007). The first federal rural land administration and use proclamation No. 89 was promulgated in 1997 to provide an umbrella frame work for regional state in enacting rural land administration laws to which the four regional states Amhara, Oromia, SNNP and Tigray complied. This was followed in 2005 by the land mark revised federal rural land administration and use proclamation No. 456/2005 that clarified rural land use rights and obligations that abolished forced redistribution of land which was the major source of tenure insecurity among the rural population. Oromia rural land administration and use proclamation No. 130/2007 it provides that any peasant farmers who have the right to use rural land shall have the right to use and lease on his/her land holding, transfer to his family member and disposes property produced there on and to sell, exchange, transfer the same without time bound. Any peasant farmers shall not be evicted from his holding right and his/her holding shall not be transferred to anybody or organization due to any liability or execution of judgment [7]. Any holder of rural land shall be given a life holding certificate by Oromia agriculture and rural development bureau describing the size of holding, usage and coverage, fertility status and boundary, and also the right and obligation of the holder.

4. Causes and types of rural land disputes in adami tulu and jido kombolcha

Disputes are unavoidable instance of human life especially since after the introduction of the concept of private property right [8]. This is true for land since the 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.

As some researches disclosed causes of land dispute in a comprehensive manner are boundary conflicts, ownership conflict between state and private/collective/ common 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 [9].

The types of rural land dispute frequent in the study are private and government. Disputes that are categorized as private are clash of interests between private parties as regards 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 [10]. Most of the time what is frequently brought and seen by arbitration elders elected by parties under the guidance and supervision of local kebele administration with regard to land disputes in the study area are boundary conflict [11]. The other private land disputes are claims over land possessory rights, divorce related land disputes and land transfers on donation [12]. Expropriation of land holdings which belong to individuals or communities by federal or regional government agency without payment of adequate compensation and replacement land categorized as government land dispute. For instance, as result of interview with peasant farmers in the study area indicates for private (foreign and domestic) large scale investments the government expropriated their land without paid adequate compensation and granted replacement land to them [13].

5. Informal dispute resolution mechanisms

In general, informal institutions have traditionally played important role in the settlement of disputes involving rural land, among many disagreements emanating from a wide variety of causal factors. The designation and composition of these traditional/informal conflict mediation institutions may slightly vary around the regions. In any, case the individuals that wield greater influence and manage to bring pressures to bear up on disputing parties are those who win the trust and respect of community members, and enjoy the confidence and acceptance of both sides of the conflict. Informal way of rural land dispute resolution mechanisms in its pervasive sense is referring to three types. First, the so called alternative dispute resolution mechanisms which believed to be the mirror image of the laissez faire thinking of litigation with a confidential character. Second customary or traditional dispute resolution mechanism or often termed as CDR shares much similarity with ADR but very tradition and local based. Parties obliged to comply with the decision

⁵ The assembly was one of the organs established during the transitional period (1991-1994) to draft, adopt, and approve the constitution along with the drafting commission, the council of transitional government.

⁶ Daniel Behailu, *Transfer of Land Rights in Ethiopia Towards a Sustainable Policy Framework* (Eleven International Publishing, 2015) p. 29

⁷ Article 6 (5) of Oromia Rural Land Administration and Use Proclamation 130/2007

⁸ Demstz a famous economist asserts land become 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.

⁹ W. Babette, *Land conflicts a practical guide to dealing with land disputes*, Escoborn GTZ land management, 2008 www.landcoalition.org/pdf/08_GTZ_land_conflicts.pdf

¹⁰ An interview conducted with Gamadi Dabi, *et al.*, Head of Anano rural kebele administration, Adami Tulu Jido Kombolcha, May 12, 2019

¹¹ An interview conducted with Kedir Namu, *et al.*, (peasant farmers) Anano rural kebele, Adami Tulu Jido Kombolcha, May 12, 2019

¹² Id n(10)

¹³ Id

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 the 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.

6. Land dispute arbitration elders

Under Oromia rural administration and use law ^[14] the land dispute arbitration elders are quasi formal dispute resolution institution. As a part of the formalization of the grass roots conflict mediation mechanisms local arbitration elders were instituted to deal with land related disputes. These structures are different from Kebele Social Courts in that they are authorized exclusively to handle land disputes. Land issues being complex and wide ranging, these institutions are deemed essential in a view of the need for independent grass roots structure to handle the disputes.

In light of this, the arbitration elders expected to deliver the following advantages:

Local people sitting on these disputes are widely familiar with the community and the rural land itself. They are closely acquainted with issues related to land disputes. These structures guarantee community members easy access to land dispute resolution within their Kebele, which will relieve them of the difficulties associated with having to travel long distances to the Woreda center. Their time, labour and finance are thus saved or minimized. Since a large volume of disputes thus get resolved at grass roots level, the burden on regular court will greatly be reduced. In case of Oromia rural land administration and use law, article 16 ^[15] is the only provision that discuss about land dispute settlement mechanism by local arbitration elders. When a dispute over a rural land arises, according to this provision, an application must first be submitted to the local kebele administration ^[16]. Then the disputing parties must appoint two elders each ^[17]. The elders will have a chairperson who is appointed by themselves, parties or the kebele administrator. Of course, the kebele administrator appoints a chairperson when both parties and then elders are not able to reach an agreement to appoint one.

Once the elders are composed this then they must report the result of arbitration to the kebele administrator within 15 days. It is the responsibility of the kebele administration to make the elders observe this time line. The reported findings of elders then must be registered by the kebele administration. The kebele administration is also required to put its seal on the copy of elders' finding and hand over it to the parties. A party who is not happy with the result reported by the elders can initiate a proceeding over the

dispute in a woreda court within 30 days of the registration of the result in the kebele administration. The party must attach the findings of the elders with their application to the court as the courts must not accept the application without the findings being attached there to.

A party who is not satisfied with the decision of the Woreda court can take an appeal from its decision to a high court. If the high court reverses the decision of the woreda court, an appeal lies to the Supreme Court. The decision in Supreme Court will be final.

6.1. The role of arbitration elders and value of their findings

The role of arbitration elders under Oromia rural land administration and use law is not intended to be that of arbitrators as can be understood from (Arts. 3325-3346) of the 1960 civil code and (Arts. 315-319, & 350-357) of the 1965 civil procedure code ^[18].

The decisions of arbitrators (it is called award) is as enforceable in the court of law as court judgments are. This is unequivocally stated under article 319 of Ethiopia civil procedure code. Once arbitrators pass their decision on a dispute, the dispute cannot be entertained subsequently by courts. The only ways that put courts in contact with arbitrators' decision are the procedure of appeal (Arts. 350-354 of civil procedure code), setting aside (Arts. 355-357 of civil procedure code) and the exhaustion of awards (Art. 319 of civil procedure).

The elders' findings in the proclamation have none of the qualities of the award as explained in the above paragraph. In this proclamation it is clearly stated that any party dissatisfied with the elder's finding can start a fresh proceeding in the woreda court. Thus it is possible to conclude that elders are not intended to do arbitration as it is clear what arbitration is in both civil code and civil procedure code. Unlike the codes, the proclamation does not give the elders' finding the effect of *res Judicata* ^[19].

Coming to arbitration elders' findings is not given any effect particularly when one of the parties dissatisfied with the decision of the elders. In such cases, the case will be submitted for adjudication to the woreda court in its first instance jurisdiction although the English version of article 16 uses the terms "arbitration" and "arbitrators", it does not seem the case the law intends to refer to arbitration of rural land disputes for the procedures adhered to in the land law are quite different from the procedures of arbitration in the civil code and the civil procedure code of Ethiopia. The Amharic version, however, employs the terms "Yeerk Shimagilewoch" and "Yeerk Wutet" which is literally equivalent to "conciliating elders" and "outcome of conciliation". Therefore, there is some kind of ambiguity as to which alternative dispute settlement mechanism is selected for resolution of land disputes other than adjudication by regular courts of law.

6.2. Composition, standard for recruitment, their relation with regular courts and laws they employ to settle disputes related to land.

This paper mainly focuses on institutions that settle land disputes in Adami Tulu Jido Kombolcha. As per the

¹⁴ Article 16 of Oromia rural land administration and use proclamation No 130/2007

¹⁵ Article 16 of Oromia rural land administration and use proclamation No 130/2007

¹⁶ Article 16 (1) (a) of proclamation No 130/2007

¹⁷ Article 16 (1) (b), Id

¹⁸ Note here that the arbitration laws which are currently in use in both federal and state jurisdiction are found in these codes.

¹⁹ As to the *res Judicata* effect of awards, see art. 244 (2) (g) of the civil procedure code

direction provided by Ethiopian government at kebele level, hierarchical there are three organized groups. These are Garee (Literally mean group) that consists of thirty persons and in one kebele the groups (Garee) range from 20-25, the second is called zone that includes these groups (Garee) in one kebele. The third is kebele administration which consists of head, vice head of the kebele, secretary of the kebele, manager of the kebele and head of security of the kebele. Here those who listed above to carry on administration matters are assigned not because of their merit but because of loyalty to politics of the governing body. The Group (Garee) and zone have their own chairperson that follows each and every movement of his/her members in any aspect especial those who are threat to security of the governing body (Ethiopia People's Revolutionary Democratic Front). That mean the ultimate purpose of having such structure is nothing else for the concerned peasant farmers than protecting integrity of the governing body.

6.2.1. Composition of local arbitration elder's

This sub topic focuses on the composition of local arbitration elders in the study area referring Oromia rural land administration and use law, and customary rules of the communities of the study area. The composition of land dispute settling bodies varies from kebele to kebele in the study area. As provided under article 16 of Oromia rural land administration and use law in all kebele those who take part in dispute settlement process are elders who live in the area for long time, widely familiar with the community and the rural land, and closely acquainted with issues related to land disputes. But in some kebele of the study area the arbitration elders recruited were not qualified as to their age, knowledge about the community, the rural land and issues related to land dispute finally which even aggravate the difference between disputing parties.

In addition to arbitration elders expert from the wereda land and environmental bureaus takes part fully in dispute settlement^[20]. But as understood from the interview the experts' profession was not relevant to issues related to land dispute. That mean they have no knowledge of laws or they have no quality of cadastre and cadastral surveying that helps them to identify parcels of the land subject of dispute and also the real possessor of the land. At the same time those professionals have no knowledge about the community, the rural land and the issues related to land disputes. As the result of interview also indicates these experts were most of the times victim of abuse especial materially that fully raise doubt to their impartiality and objectivity. This problem from the side of arbitration elders including these experts aggravates the difference among disputing parties than settling their differences. Such ineffective and inefficient system of land disputes settlement significantly affects secured rights over land which is vital elements for productive and efficient utilization of land. Also, it may result in too many plots of land not tilled or harvested in the right season due to ongoing dispute, and end up creating hostilities between the disputants rather allowing creative solutions, which can satisfy all parties to the dispute. Obviously, a peasant farmer whose land (that

means his livelihood, to say the least) is taken away in an environment of such hostility may resort to self-help that definitely creates disorder in the rural communities.

The other problem the interview with peasant farmers of the study area, disclosed that, the arbitration elders used to hear one of the party and his witnesses, and pass decision against the other party without giving him an opportunity to be heard and present his side of the case through calling his witnesses. There are also instance whereby arbitration elders render inconsistent decision in such a way that they decide in favor of the plaintiff and simultaneously in favor of the defendant at times. There is no way to establish the accountability of arbitration elders for their wrong decision that emanates from abuse, or taking side of one party, ill-understanding of law and ethical problems.

The other issues with regard to composition of arbitration elders, the practice in the study area clearly indicates that members of arbitrations elders are fully males dominated. On the other side it completely excludes women's from participation. As understood from interviewees in the study area the reason for the exclusion of women's, still community attitudes towards women's that they have no potential to properly understand the dispute that helps them to render fair and just decision. Or the community believes that women's have no knowledge about the community in which they belong, rural land and the dispute itself than male. The result of the interview also shows that majority of husband not wants their wife to take part in arbitration process because of the belief that they consume most of their time in arbitration process than spending in the house hold work. That means still there is community attitudes towards gender division of labor (i.e., believe of house hold works are for women only) which is against the constitution and international human right treaties signed and ratified by the state. This clearly shows as still the community in the study area is patriarchal and that the laws in force including the constitution, and both governmental and non-governmental institutions that works on equality of both sex failed to curb the problem, which mean they were not properly implemented in the study area.

6.2.2. Recruitment of local arbitration elder's

This sub topic is about recruitment and standards for recruitment of local arbitration elders in the study area referring Oromia rural land administration and use law in one hand, and customary rule of the communities of the study area on the other hand.

As to recruitment of arbitration elders a minimum set of limit is not clearly provided in Oromia rural land administration and use law. The silence of the law causes for abuses as to the appointment of arbitration elders. The practice in this Wereda shows that most of arbitrations elders are those in old age with good name and social standing, that mean they were recruited as per the customary rules of the concerned community but sometimes the arbitrators are elected from persons aged that mean those from the age of 25-35. At the same time these elders are not person of good name or person of public knowledge in the community they belong.

Even the result of the interview shows that these elders are relatives or friends of one of parties to the dispute or they already predetermined the case to either of the party. And this completely influences them not to see and decide the land dispute objectively and impartially, and further causes

²⁰ An interview conducted with Bude Gona (General Manager of Galo Rapi rural kebele administration), et al., Adami Tulu Jido Kombolcha Wereda, May 14, 2019

differences between the disputing parties. As a result of this, the interviewees said that they have no confidence for their case being tried before arbitration elders. And this fosters mistrust among the farmers in the dispute settlement scheme. In case tried and decided by these arbitration elders, the interviewees alleged that they were not volunteer to respect and enforce their decision instead they take their dispute to formal courts of law. That means one of the disputants take their case before arbitration elders only for the purpose of undergone formality procedure that finally helps them to reach courts of law. This means simply waste of time and their resources, also it affects the disadvantaged or victim not to get speedy and just decisions. Or such dispute settlement procedure prolongs and multiplies litigations. In the absence of clear rule on the status of elders' findings, no body settles down until all available ways are exhausted.

Some writers ^[21] explain such situations by comparing such situation to betting on sporting event. When the outcome of the game is certain, as when a powerful team is scheduled to play a weak one, the lack of uncertainty generates less interest in the game among the bettors. When there is great uncertainty in the outcome, however, bettors are more likely to gamble. So the uncertainty of the value of the findings and the role of elders makes it more likely for the parties to engage in litigations after litigations. In general, these evils resulting from the controversies denies the rural land dispute settlement from having fundamental elements of an effective dispute settlement system such as efficiency, fairness and user's vote of confidence.

6.2.3. Laws applied by local arbitration elder's

Before discussing directly the finding as to laws applied by those arbitration elders from the study area, better to discuss generally rules applied by arbitration elders (Jaarsa biyyaa) at Oromia level. It is widely held that the origins of most of the rules traditionally in use by this institution are those developed by the Gadaa. The Oromo have unwritten but well organized body of laws called Seera Oromo (Oromo Law). The seera comprise of Murtii (literally judgment). Murtii was a foundation on which all socio political conditions of Oromo were based. It deals with all aspects of life. The institution of Jaarsa biyyaa uses the murtii (laws) while they handle disputes and pass decisions. The first Murtii was said to have been drawn up during the heyday of the Gadaa system, by unknown Oromo elders to be used by Oromo clans as a whole. However, as Oromo people split up and over the years, each tribe developed and improved the Murtii to be applied to its daily life and activities. This diversified body of rules covers pretty much all area of dispute: civil, criminal and commercial as well as collective disputes.

So based on this, interview with the concerned peasant farmers in the study area discloses that in majority of land dispute cases tried and settled, the arbitration elders have no knowledge of land laws. Actually they are not required to know the state land laws even though Oromia rural land administration and use law recognizes land issues or disputes being investigated and settled by local arbitration elders. Article 16 of Oromia rural land administration and use proclamation provides as land dispute first tried by local

arbitration elders before taken to regular courts of law. But the provisions of article 16 of this proclamation say nothing about which type of laws the local arbitration elders required to apply for settling land disputes.

When we see the overall spirit of this law as to composition, standard for recruitment, working duration and other of local arbitration elders say nothing. Based on this possible to take inferences that all these are governed by custom or customary practice of the concerned community in which the disputing parties belongs or live. That mean the arbitration elders apply Murtii (laws) to handle these land disputes. At the same time article 16 of Oromia rural land administration and use proclamation silent as to the status of these local arbitration elders which mean as to their age, knowledge about the community, knowledge as to the land and as to the dispute. It seems that the law left this matter for the custom or customary practice of the concerned community in which the disputing parties belongs or lives.

From the interview it was understood that in the majority of cases investigated and settled by local arbitration elders, these local arbitration elders, they were not well equipped with the custom or customary practice of the concerned community in which the disputing parties belongs or live. That means local arbitration elders essential focus on settling the controversies by whatever mechanisms than keeping the procedures expected in the custom or customary practices. And this clearly paves the way in majority of such cases for abuse that mean not to render impartial and objective decision.

It is difficult to hold some body accountable in the presence of such vague rules. So, local arbitration elders can switch from one role to other to unduly benefit one of the disputants. Even judges may totally ignore or seriously look at elder's finding depending on the side they want to unduly benefit. When any claim against them is brought, they may defend themselves arguing that what they did was what they think the right thing to do. When the rules cannot be determined objectively, then subjectivity prevails. This makes the holding of elders and judges accountable a very tough job. This, in turn, emboldens unethical elders and judges abuse their power.

Asked the interviewees whether these selected as arbitration elders have knowledge of these customs or customary practices or why they failed to respect or keeps the procedures of that community customs or customary practices, majority of the interviewee responded as these arbitration elders have no knowledge of these customs or customary practices well (i.e., the traditional mechanisms of resolving land disputes derived from the Oromo institutions of gadaa, aadaa, seera and safuu, and associated cultural administrative structure) or even if they have partial or full knowledge of these customs or customary practices they don't want to observe and apply them because of external factors. Like personal which mean when one of the party to the case is either friend or relative of the arbitration elders, or when one of the arbitration elders abused materially by one of the party to the case.

6.2.4. Linkage of local arbitration elder's with regular courts of law

The FDER Constitution, under Articles 34 (5) and 78(5), recognizes the application of customary and religious laws in civil and personal matters provided that the parties to the dispute agree to the jurisdiction of the customary or

²¹ George L. Priest and Benjamin Klein, The selection of disputes for litigation, 13 J. LEGAL STUD.1, 16-17 (1984).

religious court and law in question. But establishment and hence jurisdiction of local arbitration elders (Jaarsa Biyyaa tribunal) as a customary dispute resolution institution is not regulated by federal or regional in the absence of a legislation to detail the jurisdiction as well as other matters in relation to customary law and courts, it would be difficult to authoritatively speak their place in the official state institutions of the country, be it federal or regional level. The only point provided under Oromia rural land administration and use law is in case one of the parties dissatisfied and wants to complain before regular courts, he/she should attach the finding of arbitration elders to his claim^[22]. But the law does not give any effect to the finding of arbitration elders as the party dissatisfied with the finding can lodge complain for adjudication to Wereda court in its first instance jurisdiction. That means the courts is not obliged to refer or to use the finding of arbitration elders. In such case the judges may totally ignore or seriously look at elder's finding depending on the side they want to unduly benefit. This in turn emboldens unethical judges' abuse their authority for their interest than serving to achieve justice and fairness.

The other point is that the arbitration elders (Jaarsa Biyyaa) exists in full swing and handle considerable number of cases of civil in nature (i.e. land disputes). According to Wereda judges and Wereda police in the study area, a large number of land cases are settled by local arbitration elders (Jaarsa Biyyaa tribunals) than by regular courts. It is therefore believed that a detailed regulatory legal regime would be necessary to institutionalize the local arbitration elders (Jaarsa Biyyaa institution and to work out its relations with formal institutions of administration of justice.

7. Conclusion and Recommendation

7.1 Conclusion

The Oromia rural land administration and use proclamation as set out under Article 16 expressly provides that land related disputes are first be submitted to local arbitration elders before taken to regular courts of law. However, the law not clearly provided whether the arbitration elders need to approach the dispute as arbitrators or conciliators or in any other capacity.

Coming to composition of arbitration elders, the selection of arbitration elders should be based on customary rules of community in which the disputant belongs. That means selection of arbitration elders based on his good reputation, his extensive and good knowledge of the aadaa and seera (custom and law) of the Oromo. Individual talent and experience in dealing with conflict, altruism and willingness to give his time to reconcile the parties in the dispute are also important factor for selection. From the study as the result of the interview shows selection of the arbitration elders is based on kinship or friendship that cause for abuse and disrespect the finding of elders. Expert from Wereda environmental and land bureaus participate with selected arbitration elders but the problem is that their profession is not relevant to settle the dispute. They have no knowledge of laws or cadastre and cadastral surveying that help them to identify parcels of the land subject of dispute and also the real possessor of the land.

The other point with respect to composition of arbitration

elder's women's were not allowed to take part in dispute settlement because of community attitudes towards them. That means customary rules and procedures of such community are against basic norms. They violate basic principles of law, such as the right to equality before the law because the customary rules are gender biased and hence discriminatory.

The other point is as to values of arbitration elder's finding. The Oromia rural land administration law says nothing how elder's finding (which has become binding on parties) is enforced. Not mentioned whether it is to be enforced in the same way as contract or court judgment. If parties oppose the findings and start proceedings in a court, the scheme gives no idea how the court needs to treat the finding.

The Oromia rural land administration law says nothing as to which type of laws applied by arbitration elders to settle land disputes. But the result of the interview shows that they apply customary rules. The problem is these customary rules do not exist in written form but in the memory of individuals, as a result of this; there is high probability of variation, a possibility of arbitrariness and the danger of abuse.

The FDRE Constitution and other laws recognize the application of customary rules in personal, marital and family matters one of which is land issues. But establishment and hence jurisdiction of local arbitration elders (Jaarsa Biyyaa tribunal) as a customary dispute resolution institution is not regulated by federal or regional in the absence of a legislation to detail the jurisdiction as well as other matters in relation to customary law and courts, it would be difficult to authoritatively speak their place in the official state institutions of the country, be it federal or regional level.

7.2. Recommendation

The Oromia rural land administration and use law should be amended for the purpose of answering the following issues:

- The law should expressly provide the role of arbitration elder's as conciliation or arbitration or any other;
- The law should equip arbitration elder's through giving training in the basics of the regional land administration and use laws to make them more effective, particularly in resolution of land disputes;
- The law should provide detailed procedures or guidelines that elders must follow for settling land disputes;
- The law should regulate establishment and jurisdiction of arbitration elders (Jaarsa Biyyaa) as a customary dispute resolution then it is easy to authoritatively speak about their place in the official state institution of the country, be it at federal or regional level.
- The law should explicit in providing the objective of the dispute settlement procedure as that gives general directions where the procedure is intended to take us.

The expert from Wereda environmental and land bureau who take part in land dispute settlement with arbitration elders should be expert of land registration, cadastral surveying, land law, land use planning, communication, land valuation or compensation for efficient and effective settling of land disputes.

References

1. Daniel Behailu, Transfer of Land Rights in Ethiopia

²² Article 16 (1) (f) of Oromia rural administration and use proclamation No 130/2007

- Towards a Sustainable Policy Framework (Eleven International Publishing, 2015).
2. George L Priest, Benjamin Klein. The selection of disputes for litigation, 13 J. Legal Stud, 1984, 1.
 3. USAID-supported project Ethiopia- strengthening land tenure and administration program (ELTAP): A consultancy report on situation assessment on land dispute resolution in four regional states of Ethiopia (Amhara, Tigray, Oromia and SNNP), 2012.
 4. Babette W, Land conflicts a practical guide to dealing with land disputes, Escoborn GTZ land management, 2008.
 5. Proclamation. Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1995, (1):21
 6. Proclamation. Proclamation to provide for the Establishment of Oromia Bureau of Rural Land and Environmental Protection, Megeleta, 2009, (5):5.
 7. Proclamation No. 456/2005, Federal Democratic Republic of Ethiopia Rural Land Administration and Use Law, Federal Negarit Gazeta, 2005; 44(15):
 8. Proclamation. Oromia Rural Land Administration and Use Law made to Amend Proclamation No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Administration and Use, 2007, 130
 9. Proclamation. Oromia Rural Land Administration and Use, 2002, 56.
 10. Proclamation. Oromia Rural Land Administration and Use, 2003, 70.
 11. Proclamation. Oromia Rural Land Administration and Use, 2005, 130.