



Chapter four

- Rural land dispute resolution mechanisms

- Why do we need to learn about rural land dispute settlement mechanisms ??

- Implication on:
 - Human rights
 - Land tenure security
 - Land productivity

- Definition
- Types
- Causes
- Prevalence in Ethiopia
- Settlement mechanism
- Types of settlement mechanisms
- Merits and demerits of each
- Mixed
- Comparison of rural land dispute

Definition

- Rural land dispute is a dispute arose over rural land use, expropriation, compensation and etc
- Types:

It may happen

- between peasants, pastoralists
- Peasants Vs investors
- Peasants Vs, administrative body

- Causes of rural land dispute

1. Institutional related causes

- Lack of title deed or certificate
- Lack of clarity in the title deed
- Inappropriate documentation of the title
- Incompleteness of the demarcation in reality
- Absence of and limited role of some, institutions
- Lack of clarity in the land laws

- 2. Private causes
 - Emanates due to clashes of interests between the private parties.
 - Succession
 - Post-divorce Matrimonial property dispute
 - Dispute with creditors (collateral)

The modalities of rural land dispute resolution

- These modalities vary from society to society
- Each should mirror the culture of the society and must bring the desired outcome of a land policy
- Spatially and temporally effectiveness in producing non violent outcomes to disputes, cost, speed, accessibility and etc. are determinants of individuals relative preference for one among a range of available mechanisms.

- The dispute resolution mechanism can generally be categorized in to two as;

1. Formal

2. Informal

- This classification is based on the nature and means of the dispute settlement not the outcome of the settlement.

1. Formal

- Also called judicial dispute resolution mechanisms
- Hosted by state institutions
- Not necessarily regular courts (administrative bodies)

2. Informal

- Hosted by customary, religious institutions
- Includes the alternative dispute resolution mechanisms, customary and religious dispute settlement mechanisms

The judicial system

- regular courts
- Specialized courts (administrative units)

Advantages:

- Professionals and experts
- enforceability (execution)

Disadvantage:

- Inaccessible (are established in urban areas where infrastructure is fulfilled)
- Costs: (court fee, lawyer fee, transportation court_
- Corruption
- Delay (case load)
- Win lose outcome

Informal mechanism

- ADR (global and western oriented systems)
- Customary dispute resolution(CDR) localized.
- Mixed; ADR and CDR under the guidance of rural land administrative unit or any other appropriate body.

Advantages

- Accessible
- Less costly
- Not vulnerable for corruption
- Speedy (CDR relatively takes longer time)
- Participatory (starting from the appointment of the third party)
- Win-win outcome

Disadvantages:

- Lack of experts /professionals
- They lack the necessary knowledge of some universal rights like: women, children and indigenous peoples right

NB. these drawbacks can be solved through short training

Three choices!

- Recognize the formal and reject the informal
- Recognize the informal and reject the formal
- Recognize both

The third one is a plausible choice.

But, how should they work is a question?

- Exhaustion of informal as a mandatory prerequisite or
- As an alternative forum based on the consent of disputants?

Which approach is adopted by the Ethiopian legal system?

Comparative analysis of regional laws

- Oromia:
 - Article 16
 - Informal mechanism is recognized: special emphasis is given to arbitration
 - Disputants are allowed to use any other private manner.
 - The kebele authority intervene particularly to ensure speedy disposition of the case (maximum of 15 days)
 - Then any aggrieved party can go to court but, the arbitral decision must be attached.

- SNNPR
 - Article 12
 - The parties need to submit their dispute to kebele land administration committee
 - It facilitates the settlement of dispute by negotiation or arbitration to be formed by the parties
 - The does not fix the maximum time
 - A party aggrieved by the decision of the arbitration can only go to courts in the form of appeal.
 - No regular court has a first instance jurisdiction over land dispute hence they cannot entertain factual matters. See it inline with article 78 (4) and 78 (5) of the FDRE constitution.

Update!!

- What is the current status of informal rural land dispute settlement mechanisms in Ethiopia?
- Are they mandatory or alternative ??

FDRE supreme court cassation divisions
decision volume 24 file no. 169648

- Solving land dispute through kebele administration or through amicable mechanisms by the will of the parties is not mandatory.

- Read volume 21 file no. 102406