

## **The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State**

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**Abstract:** Marriage is one of the essentials of society that forms the basis for family institution. Even though harmony and permanence are emphasized ideals in a marriage, spouses, however, enter into disputes due to various factors. In most part of Oromia region, family arbitrators play important role in settling disputes arising out of marriage though their previous power is detracted by the region's family law. Hence, this study investigates the actual roles of family arbitrators in settling disputes arising out of marriage, and the practical and legal challenges therein using a socio-legal approach. To this end, a descriptive cross-sectional qualitative research design was employed. The study used multi-stage and random sampling techniques to identify the study areas, and purposive sampling technique to select respondents. Data were collected through in-depth interview, focus group discussion, and key informant interview. Then, they were sorted out, categorized, and analyzed thematically. Despite the withering away of their power by the Oromia family law and other challenges they have, the study has revealed that family arbitrators still play a significant role in settling disputes arising out of marriage, particularly in the countryside. Besides, it is uncovered that the family law lacks a strong socio-cultural base during its enactment which in turn has led to its unsatisfactory implementation. To ensure the compatibility between the law and the culture, and make family arbitration effective, equitable and context sensitive, the study suggests the need for proper harmonization between the law and the culture of the society by concerned stakeholders.

**Keywords:** Arbitrators; Dispute; Family law; Marriage; Oromia

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## 1. Introduction

This article deals with the roles of family arbitrators in settling disputes arising out of marriage in Oromia region vis-à-vis the family law and the practice in the region. Needless to say, marriage, one of the basic foundations of family, is the primary institution and the building block of a society. It is obvious that disputes are universal social phenomena and marriage is not exception to this very fact. Disputes in a marriage could be settled either in a formal court or customarily. In the latter, elders play an immense role, particularly, in the context of the study area where marriage is given a special attention.

Marriage is one of the universally recognized social institutions. Given its contemporary and dynamic nature, marriage is defined differently by different authors. When it comes to Ethiopia, however, the family laws recognize marriage as a union only between a man and a woman. Regardless of competing definitions of marriage in the modern days, Russell (1929) indicates that marriage has social, religious and legal aspects.

Moreover, Wilson (2016) pointed out that there is no marriage free of conflicts. Majority of the disputes are related to management of money and kids, sex-related matters, work-life balance, third party intervention, misunderstanding mainly due to unclear communication, over expectations and harsh conversation. Besides, John (2017) indicated (among a number of factors) that alcoholism, domestic violence, unfaithfulness, educational and intellectual differences, differences in religious category, work choice, age at marriage, sexual challenges, premarital cohabitation, mismanagement of money, and social media misuse as causes for the occurrence of disputes in marriage. Similarly, in a study in Nigeria, Tolorunleke (2014) reported that marital conflicts were generally caused by physical, social, and economic factors. Chang and Barrett (2008: 12) also categorized the factors related to relationship quality in a marriage as “background (static) factors” and “relationship (dynamic) factors”. While the former category of factors includes poverty, early marriage, and wives’ employment and income, the latter deals with communication style, dissimilar attitudes, and defensive behavior among others.

Given the multifaceted causes of disputes in a marriage, the elderly often play a key role in settling marriage disputes, particularly in the developing world. In this connection, Stiegelbauer (1996) mentioned conflict settlement as one of the many societal roles of elders. The other roles could be acting as role models (exemplary) for others, teaching the new generation, advising, law-giving, and dispensing justice. In addition, Obioha and T’soeunyane (2012), being concerned about the effects of global changes and/or westernization on the roles of individuals and groups particularly in the Sotho family system (in Lesotho), emphasized on the vital roles of elders, especially in the extended family system. Elders also engage in a hierarchical structure of leadership, judiciary and kinship roles where patriarchy is commonly practiced. They make decisions regarding family matters, including marriage and the disputes arising in it. Elders are considered as specialists in settling disputes between spouses through wisdom, ample experience, patience, and fairly in most cases. They

appear in traditional courts and pronounce punishment to violators of norms both in the family and the society.

Besides, Tafesse (2015) discussed the important role of indigenous family arbitration and elders therein in maintaining social stability in Ethiopia. He indicated that elders have been key actors in resolving disputes in a marriage until their power is being revoked and/or weakened (particularly in urban and semi-urban areas) by stated made laws. They create a conducive environment for spouses in a dispute to discuss their problems openly and improve their relationships. They also advise the spouses to renounce their request for divorce (if submitted to the court) and save the marriage from divorce. Similarly, Mohammed (2018), mentioning the current weakened power and eroded status of elders in South Wollo, identified various roles of elders. Among these, he stated that elders orient the family members on how to live together harmoniously, involve in settling disputes at various levels, and serve as a bridge between the community and God through prayer.

This study is informed by Structural Functionalist Perspective (Functionalism), one of the dominant theoretical perspectives in sociology. Functionalism makes an organic analogy between society and a human body. It sees society, like a human body, as a complex system whose different (but interrelated) parts work together to help the whole system function properly. In this regard, the family performs a wide variety of important roles. Of these, procreation and socialization of children are central to a society. The theory argues that the failure of a part in a system negatively affects the proper functioning of the whole system. Generally, it emphasizes on the positive contributions of the various social structures (Parsons, 1951; Kingsbury and Scanzoni, 1993; Zgourides and Zgourides, 2000). As part of the social system, family arbitration plays an important role in a society.

Despite the aforementioned roles of elders, Hammond and Cheney (2010) indicated that modernization seems to reduce the power, value, and influence that elders had in the past and resulted in the larger exclusion of them from community roles, including settling marriage disputes.

Similarly, the roles of family arbitrators in entertaining disputes arising out of marriage are severely reduced by the Family Codes in Ethiopia. Before the repeal of the family law in the Ethiopian Civil Code of 1960, family arbitration was given the utmost attention. Family arbitrators were at the center of deciding over disputes that arose out of marital relationship, including on divorce and its effects. It can be gathered from the relevant provisions of the Civil Code that disputes arising out of marriage were left to arbitrators who had both discretionary and mandatory powers in entertaining family disputes.

In the course of amending the Civil Code and drafting the existing federal family law, the power of family arbitrators was one among the debated issues (Redai, 2000). As Redai put, the participants in the amending and drafting process and who contended that the institution of family arbitration shall be avoided argued that it failed to serve its purposes under the Civil Code. They claimed that, especially in the urban areas, its disadvantages outweigh its advantages. According to them, due to mobility of persons, it was not easy to get those persons who witnessed the

conclusion of a marriage. As a result, disputing spouses were exposed to professional arbitrators who did arbitration as a business and, as such, they could not have the moral to give the required attention to the problem of the spouses. In addition, they alleged that family arbitration could not be the right mechanism to keep marital secrets since it was conducted in public places like in churches. The legal knowledge of the arbitrators, which did not enable them to decide according to the laws, was also another ground to criticize the then system of family arbitration. These persons also claimed that family arbitration is an institution which unduly took judicial power from regular courts. On the basis of these and others, the contenders suggested that the institution of family arbitration shall be totally eliminated.

On the other hand, another group of persons among the amending and drafting process strongly opposed the abolition of the institution of family arbitration. In support of their position, they argued that family arbitration is not from the very beginning the creation of the Civil Code as it had a long history in Ethiopia. This should force Ethiopia to maintain this esteemed culture. They added that it is not possible to conclude that the institution does not work at all merely because it failed in the urban areas. They argued that family arbitration is effectively working among rural communities and that there should be a distinction between the institution of family arbitration and arbitrators who could commit mistakes. Regarding their legal knowledge, they also said that it is not mandatory for arbitrators to be lawyers as, if they commit mistake of law, it could be remedied through appeal to regular courts. As to the question to the constitutionality of the institution, these group of people mentioned that the constitution has given adjudicatory power to court of law or any other competent body with judicial power. By this, they seem to refer to Article 37 of the Ethiopian Constitution (1995) since it envisions that any justiciable matter can be brought before a court of law or any other competent body with judicial power. Finally, they alleged that family arbitration can play significant roles in reducing case loads of courts and delays in entertaining family disputes (Redai, 2000).

Though strong arguments were forwarded in favor of mobilizing the influential roles of family arbitrators, it was finally decided by the legislature that this power of family arbitrators should be substantially withered away. The regional governments have also pursued the same approach in restricting the roles of family arbitrators in settling conjugal disputes. Compared to the Revised (Federal) Family Code of 2000, the Oromia Family Code takes an extreme position in restricting the powers of arbitrators in resolving family related disputes which at times could be in contradiction with the *Gadaa* system of the Oromo that confers significant power to elders.

The Federal Family Code requires disputes arising out of marriage (except decision on divorce and its effect) to be first decided by arbitrators chosen by the spouses (Revised Family Code, Article 117 & 118 (1)). On such disputes, the court can entertain the case through an appeal by which the court may approve, reverse or amend the decision of the arbitrators (Revised Family Code, Article 118 (2&3)). When it comes to the Oromia family law, it is true that it does not prohibit the spouses to submit their cases to arbitrators. Unlike the Revised Family Code,

however, Article 94 of Oromia Family Code permits spouses to petition to the court about any dispute within marriage without going first to family arbitrators. The court may then send the spouses to arbitrators after it attempts to reconcile them and if it is of the opinion that arbitrators could solve the matter (Oromia Family Code, Article 95). This, however, does not consider the place of arbitration in many areas in the region particularly in the countryside and even the time and resource that the court would lose since the matter has not been submitted to arbitrators.

Contrary to the position of the family laws, the existing reality in Ethiopia in general and in Oromia region in particular, indicates that elders still play important roles in settling disputes arising out of marriage especially in the countryside. Despite this, there is dearth of studies conducted specifically on family arbitration regarding the law and the practice using a socio-legal approach. Hence, what is in the law and what actually exists on the ground regarding family arbitration needs a critical investigation.

In this study, it should be noted, under the Family Codes in Ethiopia (Federal and Oromia), that disputes arising out of marriage may include disputes within marriage, during divorce and following divorce (liquidation of property, custody, and maintenance of children). The study, therefore, aims to assess the roles of family arbitrators (elders) in settling disputes arising out of marriage in Oromia region vis-à-vis the Oromia Family Code, identify the challenges faced in establishing fair and effective family arbitration system, and come up with possible recommendations in this regard.

## **2. Research Methods**

### **2.1. Description of the Study Area**

The study area, Oromia, is one of the nine national regional states of Ethiopia. In terms of its population size and land area, the region is the most populous and the largest of all other regions. According to the projections for 2019, the population of Oromia is estimated to be around 37.27 million. The projected proportion of male and female population is almost equal (around 18 million each). Large majority (around 31.3 million) of the population lives in rural area (CSA, 2013). According to CSA (2007), Oromia region has 26,739,289 households. Of the total number of male and female who were ten years old and above (17,873,625), 297,341 were divorced, 9,368,539 were currently married, and 7,276,604 were never married.

### **2.2. Research Design**

To assess the roles of family arbitrators vis-à-vis the Family Code of Oromia region, the study employed descriptive cross-sectional research design along with a qualitative research approach. As Creswell (2003) indicates, this type of research design enables to get a deep insight of subjective understandings of people, their shared values, beliefs, and attitudes about a phenomenon at one point in time.

### 2.3. Data Sources

The study employed data both from primary and secondary sources. With regard to primary sources, the researchers conducted in-depth interview with information-rich and experienced community elders and divorcees who were available for interview, focus group discussions (FGDs) with selected community members, and key informant interviews with concerned office holders in the study area. In addition, secondary data were obtained through a thorough review of relevant documents.

### 2.4. Sampling Techniques, Sample Size, and Data Collection

Based on the socio-economic and cultural features of the study area, vast geographic coverage of the study, and the administrative structure of the region, multi-stage sampling technique was employed to draw sample zones, districts/*weredas*, and *kebeles* (the lowest administrative unit). At the first stage, from a total of 20 zones that Oromia has (divided into five cluster zones<sup>1</sup>), the researchers selected 12 zones (60%) by lot/randomly, believing that taking more than half of the total number of zones would increase the representativeness of the sample. Next, from the total (153) districts/*weredas* in the selected zones, 21 (13.7%) districts/*weredas* were taken by lot due to financial constraints and security concerns during the study period. Following this, out of the total 530 *kebeles* in the selected districts, 60 sample *kebeles* (around 11.3%) were taken randomly/by lot. Table 1 indicates the zones, districts, and *kebeles* addressed by the study.

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<sup>1</sup> The Oromia justice sector professionals' training and legal research institute divided the whole region (for study purpose) into five cluster zones based on the social, cultural, and economic aspects of the people.

Table 1. Selected zones, districts, and kebeles

No.	Selected zone	Selected district	Selected kebele (urban, rural)
1.	East Hararghe	Babile Meta	Babile town kebele 01, Bisidimo: Ifa Diin kebele Chelenko town kebele 02, Ifa Jalala, Dhoqe, Bikiye 1
2.	West Hararghe	Boke Tulo	Boke Tiko-Town Kebele 01, Mayu Hirna town kebele 02, Oda Nagaya, Buraysa
3.	West Guji	Dugda Dawa Bule Hora	Kebele 02 (urban), Burkitu Megada Kebele 01 (urban), Kilenso, Ebala, Gerba
4.	East Guji	Shakiso	Kebele 02 (urban), Dhiba Bate, Reji
5.	West Arsi	Shashemene town (special wereda) Kofele Arsi Negele	Kebele 07/burka gudina (urban) Kebele 01 (urban), Germama Shinato, Koma Mamo, Robe Ashoka Kebele 03/melka shayiti (urban), Meko Oda, Edo Jiges, Kersa Meja
6.	West Shoa	Ambo Elfata Toke Kutaye (Guder)	Kebele 01/meti (urban), Elamu Goromti, Diki (wedesa part) Bake 01 (urban), Dhaba Medihanealem Kebele 02 (urban), Naga File, Birbirs, Dogoma
7.	East Shoa	Adama	Awash Melka Sa'a (urban), Bato Degaga, Adulala Hate Haroreti, Wakemiya Tiyo
8.	Jimma	Bora Mana Kersa	Kebele 02/Doro Manekia (urban), Kenteri (Malima Beri) Yabu (urban), Gudeta Bula, Haroo Omo Ticho/Serbo (urban), Marawa, Tikur Balto
9.	Ilu Aba Bora	Metu	Kebele 03 (urban), Burusa Badiya, Gaba Guddaa
10.	Bedelle	Chewaka	Chokorsa (urban), Mirgisa, Siree Guddoo
11.	Kelem Wollega	Sayo	Kebele 03/Dollo (urban), Mata, Tabor
12.	Horro Guguru Wollega	Jima Geneti	Kebele 01/Hunde Harato (urban), Hagaya
Total	12	21	60

In-depth interviews were conducted (using guide questions) in the selected *kebeles* with 60 information-rich and experienced community elders and 159 divorcees who were willing for an interview. These respondents were contacted purposively. In each *kebele*, one Focus Group Discussion (total 60) was conducted with community elders composed of relatively similar socio-demographic characteristics. Though there was a slight variation, the average number of participants in each FGD was 7. Furthermore, a total of 89 key informants from all the selected districts and regional concerned offices, and Oromia Regional State Council were identified purposively and interviewed. These include Courts (district level 21, regional level 1), Women and Children Affairs Offices (district level 21, regional level 1), Labor and Social Affairs Offices (district level 21, regional level 1), Prosecution Offices (district level 21, regional level 1), and Oromia Regional State Council (1). Besides the extensively taken field notes, some interviews and FGDs were tape-recorded based on the willingness of the respondents.

The data were collected in three rounds: November 2016, February-March, 2017, and July 2017.

## **2.5. Data Analysis**

To get in-depth understanding of the issue under consideration, data were transcribed verbatim, sorted out and categorized, coded and analyzed thematically in which related/similar and unrelated/dissimilar concepts were sorted out.

## **2.6. Data Validation Mechanism**

In order to maintain validity, data were triangulated from different sources. Besides, the researchers checked the quality of the collected data at the end of every data collection day.

## **3. Results and Discussion**

### **3.1. Practical Roles of Family Arbitrators in Resolving Disputes Arising out of Marriage in Oromia**

No doubt, elders/arbitrators have significant roles in Oromia and they can play pivotal roles in the effective implementation of the family law of the region if they are properly used. It was uncovered that in most of the study areas (especially in the rural areas), family arbitration is more preferable than court litigation. In almost all of the study areas, the respondents stated that the community has positive attitude toward family arbitration. In relation to this, an in-depth interviewee precisely stated: "A society without elders cannot be peaceful. Since elders entertain disputes from its root, they are respected in our society."

The society accepts the arbitrators' decision than court due to its various socio-economic benefits to the spouses, their children, and the community as a whole. In connection with this, interviewed married couples preferred to entertain their disputes before family arbitrators. In support of this, an in-depth interviewee stated: "Family arbitration has no corruption, cost, and hassle. The elders have detail knowledge of



the spouses in dispute, and are able to solve the problem peacefully and maintain the marriage.”

The respondents generally pointed out various reasons as to why the society prefers family arbitration over court litigation. Among others, the presence of open discussion in family arbitration makes family arbitration more desirable. It solves the dispute from its root and reduces divorce that would occur due to some trivial reasons. This can happen without the parties incurring cost of litigation as it saves time, money and energy of the disputants.

The above findings go in line with Stiegelbauer’s (1996) study that revealed the crucial role of elders in settling various disputes arising in a society in general. More specifically, Obioha and T’soeunyane (2012) indicated the crucial role that elders play particularly in the extended family system. They are effective in solving disputes between spouses amicably. Similarly, in his study conducted on the Revised Family Code of Ethiopia, Tadesse (2008) pinpointed that arbitration is preferred by majority of the people (mainly in the countryside) due to its uncomplicated nature, ease of access, and resolving the dispute meaningfully.

Moreover, as the findings of the study indicated, submitting family disputes to family arbitration would help spouses avoid a sense of animosity by focusing on truth than entertaining false evidence. Family arbitrators resolve the problem with relative permanence as they follow a win-win approach. This is highly guided by social norms and values that are acceptable by both spouses. Since arbitrators are very close to the disputants and have a better knowledge of the reality in the community, they arbitrate based on truth. In almost all the study areas, relatives, religious fathers, and *yaa’ii jaarsaa* (council of elders) are commonly used for arbitrating the spouses. As an in-depth interviewee precisely described “The *Gadaa* system is everything for the Oromo. It has full package of rules and principles for all issues including dispute settlement arising out of marriage. The core principles in dealing with disputes are truth and fairness.”

In support of this finding, Jalata (2012) asserted that *Gadaa* is an ‘Oromo democracy’ that structured the Oromo society around socio-cultural, economic, political and religious institutions with important principles pertaining to each institution. Among its all-rounded functions, the *Gadaa* system has a democratic means of dispute settlement both in a marriage and outside. He also indicated the important place this system has among the Oromo though there is a slight decline in terms of its influence in urban areas.

In the study areas, there are several cases where already divorced spouses (upon court decision) start to live together since family arbitrators continually discuss with the spouses to resolve their crisis. This is particularly true when the spouses have given birth to children. Supporting this, a divorcee but reunified interviewee mentioned:

I submitted a request for divorce to the court due to the demanding behavior of my husband. Since I was in a problem and emotional at that time, the court also decided the divorce within a short period of time. However, after a serious of advices to and discussions with me and my husband by elders, we came to change

our minds and restarted our life together. As a result, we saved our children from crisis. I know many spouses having a similar story in our area.

In a more similar fashion with the aforementioned finding, Tafesse (2015), in his study in Boloso Sore *woreda*/district, and Mohammed (2018), in a study in South Wollo, highlighting the reduced power of family arbitrators, indicated the key roles of elders (family arbitrators) in facilitating free discussion between spouses in a dispute and thereby solving their problem, and advising them to live together in peace.

In fact, reconciliations like the above case may create a problem when the spouses decided to break their relation again. The family arbitrators and the spouses consider this kind of reunification as marriage. Legally speaking, this is not, however, a marriage since it does not fulfill any of the modes of conclusion of marriage in the law (Oromia Family Code, Articles 19-23 and Hirko, 2014). This happens mainly because of lack of legal knowledge on the part of the arbitrators and the spouses.

It has also been common to hear from many of the respondents that the age, experience and marital status (married or not) of the judges entertaining family cases are very crucial. When the judges are young, less experienced, and unmarried, they are less likely to seriously consider the cases of the disputants. It means, for instance, they usually do not seriously follow the procedural requirements before pronouncing divorce. As such, the family arbitrators can be the right actors to fill such a vacuum and reunify the divorcees. But the problem, as said above, is that such reunification may not be legally considered as marriage.

Above all, respondents mentioned that family arbitration has significant roles to keep children safe and protect them from multiple problems. Generally speaking, this is true when the arbitrators manage to prevent the family from being broken. Specifically, it is indicated that family arbitrators are essential in securing maintenance when fathers refuse to maintain their children after divorce. Besides, they settle disputes between divorcees arising out of child custody. For instance, they convince the parent having custody of children to allow visitation right to the other parent.

Another significant role of family arbitrators is partition of marital property once divorce is pronounced. The respondents almost unanimously mentioned that once the spouses appear before a court to divorce, their relation becomes hostile. Due to this, one of them, usually the wife (in rural areas), leaves their common abode though it is the court that has the power to decide as to who should leave the common abode. This would in turn create a fertile environment for the husband to hide common properties. If the case is under the control of family arbitrators, a spouse usually does not go to the extent of affecting the right of the other spouse. Many of the interviewed judges agree on the reduction of the power of family arbitrators, but not to the extent it is now. In some areas like Hararghe where relatives hold land communally, the judges asserted that the roles of family arbitrators shall be supported. The judges further added that arbitrators could play a pivotal role during division of properties following the dissolution of marriage. Some properties like

*Maarii*<sup>2</sup> are difficult to be classified as either personal or common property. In such cases, the arbitrators, based on their long-lived custom, know what constitutes common or personal properties and divide them accordingly. Though this is the case, the majority of women respondents in Hararghe mentioned that the parents of the husband intervene during the court litigation and influence the decision of the court toward their son (the husband) arguing that the *Maarii* belongs to his parents. Regarding this, a divorced woman briefly stated:

Most of the time, the rights of women in divorce proceeding are not respected in our area, especially during division of property. The parents of the husband intervened in the court proceeding through a locally known practice called *giddu-lixa*<sup>3</sup> (intervention) claiming that the *Maarii* belongs to the parents of the husband and not to the wife or both spouses. At the end, the woman leaves the house with empty hand.

Be the above as they may, it cannot be alleged that family arbitration has always positive roles. Though all the respondents agree on average that family arbitration is important, some of them have indicated the negative roles family arbitrators are playing in some areas. For instance, the interviewed judges, prosecutors and key informants from women and children affairs office mentioned that the interference of family arbitrators to settle the dispute that arise because of conclusion of invalid marriage exacerbates the problem related to violation of essential conditions of marriage. Besides, it is indicated that there are some corrupt arbitrators who are biased to one of the parties in the dispute, mostly in favor of the male.

Overall, though the power of family arbitrators has been extremely restricted by the Family Code of Oromia region, it could be inferred from the above that family arbitration is still playing critical roles in settling disputes arising out of marriage in the study area, particularly in rural areas. Yet, it could be also fair to note that family arbitration is less acknowledged in some areas due to various reasons.

## **3.2. Constraints to Build Fair and Effective System of Family Arbitration in Oromia**

### **3.2.1. Excessive restriction on powers of family arbitrators and misuse of rights by women**

Despite the fact that family arbitration is crucial to reaching a peaceful settlement of family disputes, this study has revealed that there are legal and practical constraints to the system. As already discussed, the law has overly restricted the roles of family arbitrators. Any party who may want to avoid the decision of arbitrators may go to court even on trivial grounds or false evidences. It is known that family is considered as the natural and fundamental unit of society and is entitled to protection by the society and the State (Constitution of the Federal Democratic Republic of Ethiopia, Article 34 (3)). And it can be argued that one way the society can protect family is through its system of arbitration. The prohibition of any meaningful role of family

<sup>2</sup> It is a gift of property to the wife by her husband.

<sup>3</sup> It is a condition in which the parents of the husband intervene in the litigation process and influence the decision of the court.

arbitration, particularly by Oromia Family Code, could prevent the society from giving protection to the family in its own way as envisaged under the Ethiopian Constitution.

Based on their experiences, key informants from labour and social affairs office mentioned that the law gives excessive rights to women (though respondents from women and children affairs office do not agree) and extremely reduced powers of family arbitrators. This adversely affects the living condition of women and children in particular and the whole family in general. This is because women usually go to court, for trivial cases that arbitrators could solve, which would worsen the relationship between the spouses. Both judges and interviewees from the community shared the above views. A key informant from labor and social affairs office has described the condition as follow:

Some women do not clearly know their rights and responsibilities. They are abusing the rights they are granted. Some of them think that they can do whatever they want to do. In most cases, they become emotional for minor issues and go to court immediately, disregarding family arbitrators. Some inexperienced, young, and mostly unmarried judges pronounce divorce within short period of time, without looking for other possible options of saving the marriage from demise.

### **3.2.2. Biased and/or corrupt family arbitrators**

Besides the problem in the law, there exist other practical problems that affect the fairness and effectiveness of family arbitration in the study area. In this regard, there are even cases (in areas like Chewaka district of Buno Bedelle zone) where family arbitrators are not favored as such. In such areas, spouses in dispute (particularly women) prefer the court to traditional arbitrators. Respondents in the study areas pointed out that the fairness and effectiveness of family arbitration depends on the ethical and moral quality, and integrity of arbitrators and the particular situation of the disputants. It is mentioned that some family arbitrators are biased (may also receive money) and may force the wife to tolerate and accept the situation. This has mainly been raised by the key informants from women and children affairs office.

### **3.2.3. Community values and beliefs**

In some cases, the values and beliefs of the communities in which the arbitrators live affect the fairness of their decisions. For instance, in cases where the family arbitrators are to entertain dispute of the spouses due to conclusion of bigamous marriage, the family arbitrators usually decide against the women as bigamy is a generally accepted practice (religiously or customarily supported) in most of the study areas. In such cases, it may be naïve to expect arbitrators to decide against commonly accepted norms and values.

### **3.2.4. Arbitrators' lack of awareness about the family law and procedural matters**

It is commonly stated by respondents that arbitrators do not have awareness of the family law and other procedural rules that apply in the region. A case in point could be that of family arbitrators reunifying divorcees without letting them conclude

marriage in accordance with the requirements of the law. Lack of awareness about the family law is almost the same in both rural and urban areas (with a slight improvement in urban areas) covered by this study. There have been no systematically organized programs to help this important section of the society know about Oromia Family Code and other relevant laws. In this regard, it is uncovered that awareness creation campaigns are limited and those attempted were also shallow. In those sporadic campaigns, there is no proper coordination between organs (like prosecution offices, women and children affairs offices or NGOs) that are involved directly or indirectly in the implementation of the family law in the region. Owing to this, the study has revealed that there are cases where family arbitrators have given unfair decisions. This would also affect the effectiveness of the system.

### **3.2.5. Disproportionate sex composition of family arbitrators**

Another constraint that hinders family arbitration from being fair and effective in the study areas emanate from the defect in the sex composition of family arbitrators. In majority of the cases, as respondents mentioned, female arbitrators are not or less involved which is said to affect the interest of women in disputes. In this regard, majority of the courts do not encourage/insist the disputing spouses to involve women while selecting arbitrators.

### **3.2.6. Decreasing respect for arbitrators in some places**

Apart from the above constraints, elders who participated in the FGD reiterated that the old days respect for arbitrators is decreasing recently in some places. This is especially the case among the new generation and in urban areas. In this connection, Hammond and Cheney (2010) indicated that the decrease in the power, value, and influence of arbitrators seems a worldwide trend primarily caused by modernization and globalization.

Almost all the arbitrators unequivocally blame the law which reduces their power in dealing with marriage related disputes. They alleged that it is common that one of the disputants could take his/her case (which is resolved by arbitrators) before court. For them, this is mainly because the law recklessly permits to disregard such decisions of elders. Connected to this, one of the participants in one of the FGDs has the following to say:

Our respect is taken away from us not by our community but by the law which is alien to our society and culture. This time, people have started to disregard us and go to court to use false evidence. I can say the law has destroyed our long-established culture of telling truth which is highly valued by the *Gadaa* system. If this trend continues unabated, many families could be broken due to divorce for trivial issues and pose risks especially to the lives of children and women. Ultimately, the country becomes a loser and suffers from its own action.

By and large, it is identified that family arbitration is able to play a pivotal role in amicably solving family disputes though there are obvious limitations. Hence, it suffices to state that family arbitration plays positive roles in dealing with family related matters. From the findings of the study, one thing, however, should be noted here regarding family arbitration. While there is a large section of the population in

favor of family arbitration, there is another relatively smaller section (commonly in urban areas) against family arbitration. What the respondents commonly suggest is that the above limitations shall be avoided rather than disabling the active involvement of family arbitrators in the settlement of family disputes. Related to this, an in-depth interviewee in West Guji zone said:

Since majority of the population of our region lives in rural areas and closer to the influence of the *Gadaa* system, it is not possible to completely get rid of the roles of elders in family matters, including dispute. Rather, the government should look for feasible mechanism of integrating the system of arbitration into the formal system.

Similarly, the interviewed judges have suggested that rather than taking away the powers of the arbitrators in its entirety, it is better to institutionalize the practice to function well. The respondents believe that marriage is a result of the values and cultural aspiration of a certain society to have a good family which, in turn, requires intervention of its institutions (family arbitration) when it is in any trouble.

#### **4. Conclusions**

The objectives of the study were to assess the roles of family arbitrators/elders in the settlement of disputes arising out of marriage vis-à-vis the Oromia Family Code, identify the legal and practical constraints that affect the fairness and effectiveness of the family arbitration, and suggest possible recommendations on how to make use of family arbitration fairly and effectively. Even though family arbitrators' power is relegated to reconciliation, it has generally been identified that the community in the study area has positive attitude toward family arbitration and the institution has still indispensable roles in Oromia region. This is especially common in rural areas where there is less or no access to modern dispute settlement mechanism and where the *Gadaa* system has stronger influence. Family arbitration is preferred in the study areas over litigation for various reasons. It gives more chance for open discussion which eventually leads to reaching a peaceful settlement of the dispute by getting to the root of the problem to avoid any sense of animosity. Family arbitrators also play a vital role in solving/overcoming family disputes with relative permanence. Moreover, it is revealed that family arbitrators arbitrate the disputants based on truth as they have a better knowledge of the reality on the ground than courts which may be deceived by false evidence. There are even cases where family arbitrators are able to reunify already divorced spouses through their continuous attempt to bring about reconciliation. What is more, family arbitrators have significant roles in the protection of rights of children. In general, family arbitrators are crucial in reducing divorce, maintaining family, and protecting the interest of children.

In spite of the abovementioned pivotal roles, this study found out that there are constraints hindering the system of family arbitration from being fairer and more effective. The first, in this regard, is the fact that the Oromia Family Code has taken away the long-lived powers of family arbitrators in entertaining disputes out of marriage. This in turn affects the attitude of the community in relation to elders. Apart from the law, the arbitrators' awareness of the existing rules of the family law of the region is very low. There are also no meaningful awareness creation activities

designed to raise arbitrators legal knowledge. In addition, in some areas, the courts do not work closely with family arbitrators. Furthermore, the composition of arbitrators which does not usually involve women hinders the equitability of the system. On top of this, customs, beliefs, values, and religion, particularly in the case of bigamy, have their impact on the effectiveness and equitability of the family arbitration in the study areas as majority of elders are not able to oppose bigamy largely due to the influence of favorable societal values and beliefs towards it.

In sum, based on the findings of the study, it could be concluded that the Oromia Family Code seems to lack a strong societal base during its enactment and this has led to its unsatisfactory implementation in the region. As a result, the role of family arbitrators (elders) remains vital in the settlement of disputes in general and disputes out of marriage in particular, mainly in the rural areas to date. Besides, it can be argued that the Family Code of the region contradicts with the constitutional provision that gives the community the right to give protection to a family and marriage which can be made through its system of arbitration.

## **5. Recommendations**

Given the findings of the study, a blend of revisiting the existing law and other actions are expected of concerned governmental bodies to make the family arbitration in the region more effective, equitable, and context sensitive. In so doing, the government must ensure active and free participation of the people at grass root level in different ways.

Owing to the reality on the ground in the study area, the family law needs to give some power to family arbitrators, at least by expressly requiring spouses in dispute (other than on divorce and its effects) to refer their cases to arbitrators before going to courts. In a more similar fashion, Tadesse (2008: 26-27), calling for improvement of the power of arbitrators, suggested that since the Ethiopian society is highly familiar with 'traditional arbitration' that has an immense role in resolving disputes arising out of marriage, the court should not be overburdened with entertaining every sort of disputes between marital partners.

The concerned stakeholders should also give continuous awareness creation trainings about the relevant family laws to the community in general and the arbitrators in particular. It is also of paramount contribution if courts closely work with arbitrators to effectively resolve family disputes. Furthermore, to reduce biased judgment by some arbitrators, it would be advantageous if there would be adequate involvement of women when a group of arbitrators is to be constituted.

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