8. Use and abuse of 'the right to consent'
Forum shopping between *shimgilinna* and state courts among the Amhara of Ankober, northcentral Ethiopia

Desalegn Amsalu

Introduction

This study examines how the local community in Ankober handles its right to consent to enter into customary court or switch to the formal one. The only condition attached to resolving disputes through customary court is that both parties in the conflict should agree to it. This sounds like a fair arrangement. But, as there are no laws that regulate how consent, already given, should be sustained or terminated, the right to choose and shift between courts is open to abuse.[1]

Article 34(5) of the 1995 Federal Democratic Republic of Ethiopia (FDRE 1995) Constitution stipulates that disputes relating to personal and family laws can be dealt with in accordance with customary or religious laws 'with the consent of parties to the dispute'. Article 34(5) of the 2001 Revised Constitution of the Amhara National Regional State (ANRS 2001) is a verbatim copy of the analogous provisions of the FDRE Constitution. However, neither the constitutions nor any of the subsidiary laws give any details on how to apply the constitutional notion of consent. Both constitutions stipulate that 'Particulars shall be determined by law', but this has not been done so far.

1 The idea for this paper came in February 2012 when I was doing a research in Ankober on traditional mechanisms of conflict resolution, with particular reference to *shimgilinna* (conflict resolution through elders). It is commonly known that local institutions enjoy respect among the Amhara people, but during my fieldwork, I noticed that people's obedience to *shimgilinna* had changed. What struck me was how people were manipulating the institution using the legal right of consent. After I received an offer to contribute a chapter to this book, I visited Ankober for a second time, from 12 June 2017 to 10 September 2017, to undertake more focused data collection. This time, I specifically looked at the use and abuse of consent in the community. I conducted several interviews with *shimagillés* (elders), disputants and judges at Ankober Woreda Court, women and youths. I attended court cases and organized focus group discussions with *shimagillés*. I also made use of my notes and interviews from my fieldwork in 2012.

Though there is an abundant literature relating to customary dispute resolution mechanisms (CDRMs) in Ethiopia since 1991, there is a dearth of research on the legal and practical role of 'consent' in CDRMs. Generally, the literature focuses on the legal framework for CDRMs (see for example, Tesfa 2009, Temesgen 2010, Tekle 2009) and case studies (see for example, Alemayehu 2009, Asnake 2010, Assefa 1995, Ayke and Mekonnen 2008, Pankhurst and Getachew 2008, Tarekegn and Tsadik 2008, Tolosa 2010, Wodisha 2010). An annotated bibliography edited by Fekade *et al.* (2011) listed 136 research outputs related to CDRMs, of which 19 were written in Amharic and 117 in English. Since the publication of this list, more researchers have written on the subject matter (Solomon 2014, Mekuanint 2015, Esayas 2015, Tasew 2016, Balew 2016). However, the relationship between customary law and formal law is not much discussed and no significant research is available on how 'consent' is being used to transfer a claim from one legal forum to another.

Conflict resolution among the Amhara of Ankober

Overview of the people and the area

In line with the state structure effective since 1995, most Amhara people live in Amhara National Regional State (ANRS), but many are found in other regions.[2] The Amhara of Ankober *Woreda*,[3] in particular, are found within a sub-regional division known as Semen Shewa Zone. The *woreda* (district) headquarters are in Gorebella town, some 172 kilometres away from Addis Ababa. The historic town of Ankober[4] lies three kilometres to the east of Gorebella.

According to the Ankober Woreda Government Communication Affairs Office (AWGCAO 2016), the population of Ankober *Woreda* in 2016 was 89,691. In its last census in 2007, the Central Statistics Agency determined that the population of Ankober was made up of Amhara people (92.77 per cent), the Argobba (7.04 per cent), and other ethnic groups (0.19 per cent). The census also shows that the Amhara are predominantly Orthodox Christians, while the Argobba and Afar are

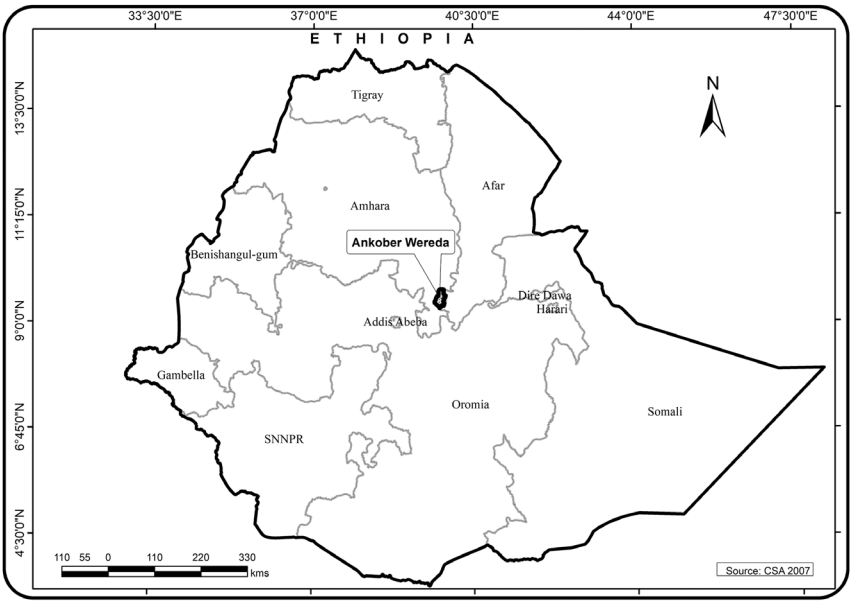
2 According to the 2007 national census of Ethiopia, the Amhara numbered 19,867,817 individuals, comprising 26.9 per cent of Ethiopia's population.

3 *Woreda* (English pl. *woredas*) is the third level administrative unit in the current state structure of Ethiopia. 'District' is often used in the literature as an English equivalent. The *woredas* are subdivided into several smallest units, *kebele* (English pl. *kebeles*). Several *woredas* form higher-level units known as zones, which in turn form regions (*kilil*).

4 Today's Ankober town was chosen as the royal place of the Kingdom of Shewa in the late eighteenth century for its strategic position as a border station. It was the base from which Nigus Sahala Sellase (r.1813–47) stretched his control over Argobba, Afar and Oromo. It also served as the seat for Emperor Menelik II (r. 1889–1913) when he was the king of Shewa (1866–1889).

entirely Muslim (CSA 2008). The Amhara predominantly live to the west of Ankober town, in the Amhara community of Shewa. To the east live the Argobba and Afar ethnic groups. The Amhara settlement area lies in the highland climatic zone, the Argobba in the midlands, and the Afar in the lowlands. In terms of subsistence, the Amhara are ox-plough agriculturalists, who produce highland crops like barley, peas, and teff. The Argobba are also cultivators but they also weave and trade. The Afar are pastoralists.

Figure 1: Location of Ankober Woreda (Desalegn 2018)[5]



Shimgilinna

Shimgilinna is the 'most common' CDRM among the Amhara people (Pankhurst and Getachew 2008:14). However, the local practices relating to this institution seem to vary from one area to another, and there are institutions particular to certain

5 The Central Statistics Agency (CSA) of Ethiopia provided GIS data, collected in 2007, for this map. Bamlaku Amente, an expert in GIS at Addis Ababa University, assisted me with mapping the data.

Amhara groups. For example *abegar*, a conflict resolution mechanism employing elders who claim to have hereditary divine power, is practised among the Amhara of Wollo (see Uthman 2008). Among the Amhara of North Shewa, people seek remedies to conflict before a *wofa legesse*, a spirit medium (see Melaku and Wubshet 2008). These and other CDRMs are traditionally used to resolve conflicts varying from simple interpersonal disputes to the most serious cases of homicide.

The terms *shimgilinna* and *shimagillé* carry two different meanings: biological and cultural. In the biological sense, *shimgilinna* (lit. 'aging') refers to getting old, that is growing grey hair, getting wrinkles and becoming weak. The term *shimagillé* (lit. 'old') refers to an aged person. *Shimgilinna* in the cultural sense refers to a CDRM institution while *shimagillé* (Amharic pl. *shimgilinna woch*; English pl. *shimagillés*) refers to a council of elders tasked with resolving conflicts for free. In this latter sense, *shimgilinna* is a wider institution that includes *shimagillé*.

Shimgilinna as a CDRM has normative and procedural aspects. The normative aspect refers to the long-established system of beliefs, values, and norms used for promoting peace and resolving conflicts. In the Amhara community, they are known as *ye'abatader hig* (lit. 'the laws of the fathers') (Yohannis 1998). The procedural aspect refers to the steps taken in the process of conflict resolution. Traditionally, conflict resolution through *shimgilinna* followed a certain procedure that began with identifying the causes of conflict and ended with the restoration of an amicable relationship between the disputants. In most cases, members of the council of elders are elderly people, although age is not an exclusive requirement: younger people can also be called *shimagillé* and assume a role in conciliation, for they are the 'wise of the young'. *Shimagillés* need the respect of the society in which they live in, wisdom, the oratory skills to convince people, and a sense of fairness in arbitration.

There are different types of *shimgilinna*. *Yegiligil shimgilinna* is conciliation between parties in an on-going disagreement. *Erq* refers to conciliation between disputants whose relationship had already broken down in an earlier conflict. There is also *dem adreq shimgilinna*, which usually refers to conciliation aimed at stopping a lengthy conflict between families, involving a cycle of retaliatory killings, hence *dem adreq* (lit. 'to stop bloodshed'). Finally, there is *yebetezemed guba'e* (lit. 'family council'), which settles disputes that arise between husbands and wives.

Shimgilinna is integrated into different levels of societal organization in Ankober. If a conflict occurs in a neighbourhood or village and is small in magnitude or relatively uncomplicated, elders in the village will handle the case. This type of conciliation is called *yesefer* (lit. 'village') *shimgilinna*. On the other hand, larger and more complicated conflicts are resolved by more influential elders selected from the wider community in what is called *yehager* (lit. 'country level') *shimgilinna*. There is also a version of *shimgilinna* that resolves conflicts between subscribers to the informal insurance arrangements known as *iddir*. Similarly,

yesebeka guba'e shimgilinna operates between church members. Each parish of the Ethiopian Orthodox Church has different committees, one of which is *yesebeka guba'e shimagillé* (lit. 'council of parish elders'), made up of respected members of the community and the Church. People sometimes prefer to bring disputes to the Church council of elders.

Shimgilinna in Ankober is and has always been male-dominated. First, there is no direct participation of women as *shimagillés*, since – as a well-known Amhara proverb says – 'Man (belongs to) to the public and woman to the kitchen'. Second, women's interests are suppressed when they are parties to a dispute. According to the head of Ankober Woreda Women's League, when a woman brings a case to *shimgilinna*, she will be told by the *shimagillés*: 'You are a woman, you need to tolerate this'; or 'You don't have to bring this case in public'; or, if a woman challenges a decision of *shimagillés*, 'You have to accept the decision because you are a woman'. In *shimgilinna*, conflict and its resolution is often seen from a male perspective.

Co-existence of *shimgilinna* and the formal justice system

For each tier of administration in Ethiopia's regional states, there is a corresponding tier of court. The regional states have a supreme court, the zonal administrations have high courts, and the *woredas* have a first instance court. This means that the entire *woreda* of Ankober has one *woreda* court. *Woreda* courts are located in towns that are usually administrative centres and are thus more accessible to urban than rural residents.

However, there are also *kebele* level social courts[6] that deliver justice at the lowest level of the community. In Ankober *Woreda*, there are twenty-two *kebeles*, each with a social court. The jurisdiction of the social courts in Amhara Region in August 2017, according to the presiding judge of a *kebele* social court in Gorebella town, was over civil matters whose value is not more than 1,500 Ethiopian Birr (ETB). The maximum punishment social courts can impose is 300 ETB or one month's imprisonment. The courts cover small-scale crime such as minor theft and insult, but they do not resolve disputes involving bodily injury or bleeding. Any party dissatisfied with the decision of the social courts can appeal to a committee of three *shimagillés*,

6 *Social courts* are *kebele*-level courts in Ethiopia that address minor claims at the grassroots level. Each of the nine regional states and the two city states (Addis Ababa and Dire Dawa) determine the jurisdiction of social courts, hence their competence differs slightly from state to state. For example, according to Article 9(3)(d) of Proclamation No. 361/2003 (The Addis Ababa City Government Revised Charter Proclamation), Addis Ababa City's social courts have jurisdiction over disputes whose monetary value is not over 5,000 ETB (Art. 50(1)), while the jurisdiction of Amhara Regional State social courts at the time of this research covered cases not over 1,500 ETB. A *kebele* social court has usually three judges, one presiding judge, one secretary and one member.

selected and appointed by the community. If they are then not satisfied with the committee's decision, they can file their claim with the *woreda* court.

As well as working with the courts, *shimagillés* work with the *kebele*s quasi-formal, state-initiated conflict resolution institutions known as *gichit aswegaj* committees (lit. 'conflict prevention/resolution committee'), which consist of approximately seven members.[7] The committees are a common platform for the community police, security and administration office, and the community. Members are drawn from *shimagillés* and representatives of government offices. After the community policing officers report a case to the *kebele* police, the latter determine which organ should handle the conflict. If it falls under their jurisdiction, cases are forwarded to the *gichit aswegaj* committee.

Manipulation of consent

Giving and withdrawing consent at different stages of dispute resolution

In Ankober, dispute resolution through *shimgilinna* can be initiated by the court, by the disputants, or by *shimagillés*. According to judges at Ankober Woreda Court, the court encourages parties to settle personal or family cases through *shimgilinna* because it reduces the burden on the court and also restores good relationships between the disputants. Disputants themselves may also direct their case to *shimgilinna* immediately, or after the case has been filed with the court. In the latter case, they simply have to inform the court of their decision and then the court authorizes the request. Finally, *shimagillés* themselves may initiate a dispute resolution by indicating their willingness to arbitrate either to the conflicting parties or to the court. In all cases, the results of the conciliation have to be reported to, and approved by, the court.

However, cases from Ankober show that the sustaining of consent for cases to be brought before the *shimagillé* is uncertain and slightly depends on who initiated a case. If the court initiates *shimgilinna*, either or both parties in a dispute can discontinue the process at any stage. Either party can also refuse to comply with any agreement reached. This means that there is no end to the use of consent to initiate or end a *shimgilinna* process and its outcome. The only limit is the formal submission of a decision in writing to the court, on the basis of which the court will give its judgment. Both parties then have to fill in and sign a form from the court, confirming that their dispute has been resolved. As a judge from Ankober

7 Directives of Operation of Committee of Peace, No. 001/2002, The Amhara National Regional State Administration and Security Affairs Office, Bahir Dar, document in Amharic.

Woreda Court explained, after the signed form has been submitted to the court, the parties cannot invoke consent to reverse the decision either jointly or severally.

When *shimgilinna* is invoked locally, without the prior authorization of the court, the situation is slightly different. Even though parties can revoke their consent at any stage of the conciliation process, they are obliged to abide to the agreed decision of the *shimagillé*, which can be fixed either orally or in writing. The decision is binding, without any form having to be signed and submitted to the court. However, the Ankober Woreda Court judges have different views on the legal enforceability of decisions of this type in cases where one of the parties disagrees with the outcome. Some judges apply principles of general contract (see Articles 1696–1710 of the 1960 Civil Code) and argue that, as long as the dispute resolution is duly made and consent for conciliation was given by both parties, the decisions of the *shimagillés* should be endorsed by the court. Any party who rejects the decision should be forced to comply. Other judges say that the validity of such contracts should be proved through new litigation if one of the parties denies its performance by withdrawing consent to an agreement already reached or refusing to give consent in the first place. There is no uniform practice among the judges in the Woreda Court and each judge follows what he or she believes is right.

Reasons for and mechanisms of giving or withdrawing 'consent'

Parties in a dispute use their right to give or withdraw consent to control the *shimgilinna*/court process and/or results: (1) for their own personal benefit; (2) for the benefit of others; (3) to harm others; or (4) to avoid a negative outcome when they are uncertain of the decision that will be made. In the following, some of the mechanisms of such an abuse are discussed.

Exploitation of chances from missing evidence

The principle of consent can be manipulated in order to take advantage of someone who is unable to produce the required evidence to prove their claim in court. This may occur when an agreement, such as a contract, has not been made in a valid form, or when one party has failed to preserve evidence relating to a given dispute. Let us consider the following case, obtained from an interview of two informants who were *shimagillés* in the case.

> Nesibu,[8] 65, hereafter creditor, gave a loan of 5000 ETB to his friend, Asaminew, 54, hereafter debtor, in May 2010. According to the creditor, the debtor borrowed the money from him to cover the wedding expenses of his two children, a son and a daughter, who got married in a joint ceremony. The debtor promised to return

8 The names mentioned in this paper are all pseudonyms.

> the money by the next harvest season. However, in the end, he refused to repay the loan, denying he had received any money at all from the creditor. The creditor approached *shimagillés* to resolve the case peacefully. The *shimagillés* managed to persuade the debtor to enter into arbitration. In the course of the arbitration, the debtor's statements varied. At first, he admitted to having received money, yet a smaller amount than the creditor claimed to have given him. At another time, he denied having received any money at all. In the end, the debtor withdrew his consent to be arbitrated by *shimagillés*. When the creditor took the case to court, the court required written contractual evidence to prove the loan, which the creditor did not have. Thus, in the end, the creditor lost the court case. According to the *shimagillés*, this kind of case has become common (summary of an interview with two elders, February 2012).

According to Article 2472 of the 1960 Civil Code, contracts for loans for sums over 500 ETB have to be made in writing. Moreover, Article 1727(1) provides that any contract required to be made in writing 'shall be of no effect unless it is attested by two witnesses', so that if the evidence is lost, witnesses to the written contract can testify to prove a claim. In the above case, however, as there was no written contract, no witness could be adduced to the court, including the *shimagillés* who had attempted to resolve the case and before whom the debtor had admitted taking the loan. In cases like the above, the involvement of *shimagillés* is often more successful as they do not rely only on evidence to prove a case. They use different techniques, such as oratorical skills of persuasion, demanding oaths and threatening with curses, to convince the conflicting parties to come to an agreement. Therefore, from the perspective of the debtor, it was to his advantage to have the case handled in the formal court, where disputes are won or lost on the basis of evidence.

Exploitation of chances from an adversary's level of social standing

Some disputants file their case with either the customary or formal court with the intention of hearing the case from their adversary's perspective in order to assess the level of evidence he or she can produce. Someone who sees that their adversary is more competent in the formal court may suggest moving the case to the customary court. They may lobby or even force, by exerting social pressure – as shown in the next paragraph – the other party to give consent for *shimgilinna*. If, on the other hand, an adversary's standing is strong in the customary court, the other party can thwart *shimgilinna* by withdrawing consent and moving the case to the formal court. The consent of both parties is required to enter *shimgilinna*, but the withdrawal of one is enough to end it.

As mentioned in the preceding paragraph, an adversary's level of social standing, by which I mean the ability to exert social pressure on an opponent, also deter-

mines the provision and maintenance of consent to a particular legal forum. One elder I interviewed remembered the following case, where one party maintained control over a dispute resolution.

> In June 2016, a dispute occurred between Sergew, 45, hereafter plaintiff, and Yihalem, 32, hereafter defendant, when the defendant damaged some of the plaintiff's crops while the latter was ploughing on a bordering land with the former. The plaintiff who had more family members than the defendant took the case to *shimgilinna*. He exaggerated the loss and demanded compensation from the defendant. Some of the shimagillés were the plaintiff's supporters and the defendant knew the decision would be made against him. Moreover, the defendant was scared of the opponent's aggressive family members. Thus, at first, he rejected the *shimgilinna* saying that the plaintiff can take the case to the court. However, the plaintiff pressurized the defendant to give his consent to the *shimgilinna*. As expected, the plaintiff was compensated with 1.200 ETB for his loss, a sum much higher than the damage he had incurred. (Summary of an interview with an elder, June 2017)

The above case illustrates that consent is used as a weapon by socially powerful disputants, who employ their local connections by taking the case to the *shimgilinna* at the expense of weaker adversaries. It shows that as much as socially powerful parties benefit from the right to give and withdraw consent, those in weaker positions may suffer through it.

Use and abuse of *shimagillés* as witnesses in the court

Some disputants enter *shimgilinna* intending to prepare the ground by using the *shimagillés* as witnesses when the case is later taken to court. This may happen with or without the knowledge of the *shimagillés*. Sometimes, one party may even bribe *shimagillés* and misuse their influence. Such *shimagillés* may misguide other *shimagillés* or the other party in the dispute during *shimgilinna,* and they may trick them into exposing issues that can be later used as evidence against them in the court. Though the *shimagillés* I talked to were not willing to give me concrete examples, they expressed a belief that it was becoming common for *shimagillés* to be partisan and to serve as false witnesses in court.

Breaking agreements on the choice of a forum

When two parties enter a contract, they sometimes agree on a legal forum to which they will turn if dispute arises. Sometimes, they agree to use *shimgilinna* only. However, one party may bring an action in the court, betraying the terms of the agreement and leaving the *shimgilinna* aside, if things turn out to be less favourable. In the existing practice, there are no ways to enforce parties to use the legal forum

agreed beforehand. Many of the *shimagillés* I talked to stated that they had experienced this kind of cheating.

Effects on justice delivery and conflict resolution culture

The unrestricted freedom to use consent in forum shopping has consequences for justice delivery and the conflict resolution culture of the people. Dispensation of justice is often delayed as cases transfer to *shimgilinna* and return without resolution, or as they are transferred between the two forums more than once. Moreover, the manipulation of consent and the position of adversaries lead to unfair results, which in turn lead to secondary conflicts between disputants. It has also affected the values and procedures of *shimgilinna*.

Delay in justice delivery

An examination of Ankober Woreda Court records shows that the court transfers many cases to the *shimgilinna* whenever the parties involved agree. There are no restrictions on this and sending cases to the *shimgilinna* means that, in theory, the burden on the court is reduced. However, a major problem is that many cases return to the court without having been resolved. The *shimagillés*' efforts are rendered futile and become an extra burden on the court. As the table below shows, between 2011/2012 and 2016/2017, the number of cases transferred to the *shimagillés* increased, while the number of cases settled by them decreased. According to a judge in Ankober *Woreda*, despite the judges' efforts to keep disputes related to personal and family matters out of the court, many of them return without getting resolved.

Table 1: The transfer and resolution of cases between court and shimagillés, 2011–17 (Desalegn 2018) [9]

Year		Cases filed with the court	Cases transferred to *shimagillés*	%		Settled by *shimagillés*	Returned to court	%
2011/2012		693	28	4		28	-	0
2012/2013		592	145	24		95	50	35
2013/2014		791	221	28		67	154	70
2014/2015		779	104	13		69	35	34
2015/2016		1175	405	34		187	218	54
2016/2017		1377	475	34		120	355	75

9 Data was compiled from Ankober Woreda Court record management office.

Justice delivery is further prolonged since there is no limit, at least theoretically, to the number of times a case can be moved between the formal and customary courts. As one judge stated, the same case can move back and forth between the two fora up to ten times. A judge for over fifteen years, he had observed that the time needed to resolve certain cases had increased due to their movement between the two fora. There is no law that defines how many times a case can be transferred to *shimgilinna*. Judges send cases back to *shimgilinna* several times because of the right of the parties to give, refuse and withdraw their consent to have them handled through customary mechanisms. Judges may refer a case to *shimgilinna*, disregarding the number of times they have already done so, when they believe, for example, it is more just to do so, or when the nature of the case means it can be better resolved through *shimgilinna*. The following case over marital property division serves as a good example of a single case moving between the two legal forums several times.

> Plaintiff: Mebrat Ayele, wife
> Defendant: Asaminew Demisse, husband
> On 18 June 2017, the plaintiff filed a claim over a partition of marital property. The court scheduled an appointment for both, the plaintiff and the defendant, to appear ten days later. The court examined both the claim and the defence. At this first appointment, the court advised the parties to end their dispute through *shimgilinna*. It selected five *shimagillés* (names omitted) and, if they proved successful in settling the dispute, ordered them to submit their decision in writing. The court scheduled another appointment after three weeks, when it anticipated it would receive the *shimagillés*' decision. But in that time, the parties failed to agree. Thus, at that second appointment, the court continued to hear the plaintiff's case.
> The plaintiff's argument was as follows: 'Regarding the steel house mentioned in the suit, I have contributed 7.450 ETB from my own separate property. Our common property is 22.550 ETB. I ask the court to order the defendant to pay my share from this sum. We also have a hop garden. The defendant falsely said we used up the garden. But, the garden I am talking about is a different one. Even from the one he said we had used it up, our agreement was that he would give me 400 ETB since he sold the hops without my knowledge. Thirdly, he borrowed 2.100 ETB from me while we were still living together, so he should return the loan to me. Fourthly, the defendant claims to have a separate land of his own, which is true. But he 'sold' that land to a third party, and I bought it back. Now, I ask the court to

order the defendant to pay to me 1.000 ETB to cover the expenses I incurred when I reclaimed the land'.

The defendant's argument was as follows: 'Firstly, yes, when we constructed the house of corrugated iron sheets, the sheets were bought by the plaintiff's separate money of 7,450 ETB. The rest of the money was on an equal share. Thus, I will give her the 7,450 ETB and will equally share the common expenses. Secondly, regarding the hops, I sold the hops leaves for 800 ETB, and I agreed to pay the plaintiff 400 ETB. The other hop garden she mentioned was estimated to be worth 300 ETB and I already agreed to pay the plaintiff half of that, 150 ETB. Bringing this case to the court is not appropriate. Thirdly, she did not give me a loan of 2,100 ETB, that money was used for common marital matters, so she should not ask me to pay that back. Fourthly, it is true that she spent 1,000 ETB to reclaim the land I sold, but, after that, we used the land in common for three years, so she should not ask that money from me.

The court scheduled the next appointment for eleven days later, but when both of them appeared on that day, the court said the case had not yet been decided. The two parties then asked the court to authorize them for a second time to end their dispute through *shimgilinna*. The court allowed them to do so and authorized them to come with a decision two weeks later. When they came back to the court on the appointed day, the two parties reported that they had still been unable to agree, so the court gave them another appointment another two weeks later. By that day, again, they had not been able to resolve their dispute.

This time, the *shimagillés* themselves came and asked the court to extend their deadline for the third time; they were given one more week. When they came to that last appointment, the parties said they were not able to agree through *shimgilinna*, so the court dismissed the case for another two weeks so the judges could make a final judgment.

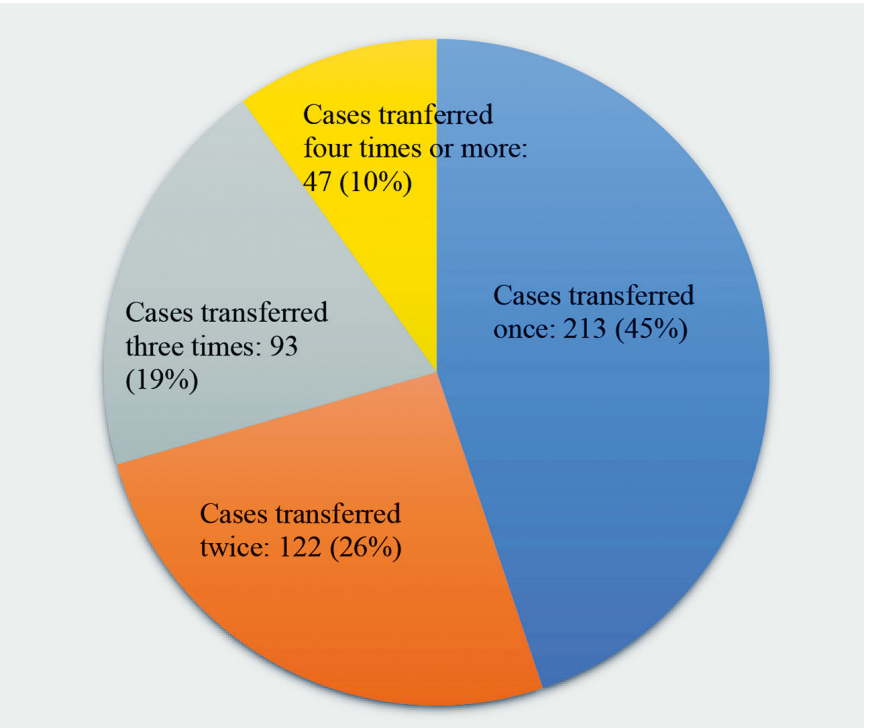
While the court was preparing its final decision, the parties involved were working on their own resolution to the dispute. On the day the judges expected to give their verdict, they were presented with a written agreement by the parties involved. The judge made sure the agreement was made with the full consent of both parties and that the decision did not contradict morality. With this, the case ended (Summary of interview with a judge from Ankober Woreda Court July 2017 and Ankober Woreda Court File Number 011/985).

Neither the case notes nor my informant spelled out the reasons behind the failure of the *shimagillés* to resolve the case, or the parties' motives for the case. However, when talked to the *shimagillés* involved, they told me that the two parties were not convinced of the need to dissolve their marriage. One of the *shimagillés* stated: 'We

knew of this and we tried to repair their relationship. However, having agreed to our proposal in one moment, they refused in another.' According to the *shimagillé's* view, by changing their minds many times, the parties bought themselves time in which to decide whether or not they should divorce.

The Ankober Woreda Court does not keep records of the transfer history of each case, aside from the initial transfer. Even if a case is transferred to *shimgilinna* three or four times, this information is not recorded. An archivist in the court, who I interviewed in July 2017, told me that although they report the court's performance to the zonal court, the reporting format does not require the history of each case to be recorded. However, by investigating each record with the help of some assistants, I attempted to reconstruct the history of 475 cases that were transferred to *shimagillés* in 2016/2017 (see Table 1 above). The results are as follows.[10]

Figure 2: Transfer frequency of individual cases (2016/2017) (Desalegn 2018)



It was not possible to disaggregate cases for previous years in order to get a comparative insight because it was unfeasible to deal with all the files in the time

10 Data has been compiled from Ankober Woreda Court record management office.

available. However, the judges agreed that not only the number of cases transferred (as shown on Table 1) but also the number of times they are transferred is increasing.

Secondary conflicts

The number of secondary conflicts is recorded neither by the *woreda* nor the social courts. However, many informants, including *shimagillés*, disputants, and judges, believe that secondary disputes are often created or aggravated by the manipulation of the right to give or withdraw consent. The following case, narrated to me by one of the *shimagillé* involved in 2017, is an example of one such conflict.

> On 3 December 2015, the cattle of Taddesse had trespassed onto Gezmu's field and damaged some of his crops. Two weeks later, a *shimgilinna* was organized to bring the two parties to peace. After almost half a day of deliberations, the elders decided that Taddesse should pay 1,000 Birr for damage. Taddesse, unhappy with the result, withdrew from the *shimgilinna*. When Gezmu then filed the case with the court, Taddesse immediately expressed his willingness to end the case again through *shimgilinna*.
>
> Following this, another conciliation event was organized by elders almost a year later. Before the *shimgilinna* started, Gezmu is said to have spoken directly to Taddesse, saying: 'From the day of your birth, you are not bound by your words. You are not reliable and have the character of the wicked since the wicked do not respect *shimagillés*.' The situation changed and the two parties could not go to a *shimgilinna* at that day. After the conciliation was interrupted this time, the two men started to seek to physically attack each other. On one day when Tadesse was coming home from town late in the evening, Gezmu and some friends waited for him and beat him up. Taddesse, who was severely injured by the attack, could not take any legal action since he did not have witnesses. Instead, he took revenge by beating Gezmu almost to death. Again there were no witnesses to this. The situation escalated into a group dispute when each of them mobilized more and more supporters. The matter ended only in July 2017 when the *shimagillés* intervened for a third time. Then, Taddesse paid Gezmu 800 Birr for the damages on the field and loss of crops, and both men forgave each other for the beating (summary of an interview July 2017).

So, we see that manipulation of consent can lead to secondary conflict and sometimes to verbal and/or physical confrontation when one of the parties feels manipulated, betrayed, or unfairly treated by the other. Such conflicts can arise at the

individual level or between groups. Some people also resort to sorcery to take revenge when they feel unfairly treated.[11]

Loss of the culture of respect for shimgilinna

Elders and judges also outlined their view that the lack of restrictions on consent in forum shopping has caused or exacerbated the loss of the conflict resolution culture among the youth and the community at large in Ankober. The elders characterize such changes as a 'dilution of culture' (*yebahil meberez*). The following section outlines the loss of the culture of respect toward *shimgilinna* and *shimagillés* in conflict resolution.

The youth

The youth's[12] loyalty to *shimgilinna* decreased as a result of the latter's attempts to resolve conflicts over resources, particularly land. The youth strive for access to land by every possible means. However, what used to work in more stable, peaceful, earlier times, many stated, no longer works. Elders also complained that the youth act selfishly in land disputes: they do not respect their parents and do not respect each other with other family members. A priest who is also a *shimagillé* told me: 'Nowadays, it is common to observe family members fighting with each other. We have even seen a youth who killed his father over a land dispute.' Other researchers (e.g. Balew 2016) have also shown that land is the leading cause of dispute among the Amhara today.

Many elders complained that the problem with the youth goes beyond the manipulation of consent in resource disputes, claiming that they are abandoning their culture. The change is so strong that families are not able to influence the youth anymore. Informants expressed their discontent with the modern education system, which does not teach children enough about respecting their own culture, including *shimgilinna*. Instead, students have an incomplete notion that being modern means disrespecting their own culture. The community is also critical of the influence of mass and social media. Elders also criticized modern law since it allows the youth to leave *shimgilinna* any time, thus rendering the elders powerless.

11 One informant told me how, after he had moved his own case between the court and the *shimagillés* and finally got a favourable decision from the court, his adversary threatened him. One day he found blood had been sprinkled over his cattle in the night. He was convinced that this was the work of the adversary who intended to kill his cattle or make them unproductive. He removed the alleged spell by sprinkling holy water over the animals.

12 The definition of 'young' and 'youth' differs based on who defines it. The Federal Ministry of Youth, Sport and Culture, 2004, used the term 'youth' for individuals between 15 and 29 years of age. The view of Ankober people suggests youth can also refer to a particular mind-set of being educated and having a different style of hairdo, dressing and the like.

Exploitation of the right to consent by other community members

Unreasonable exploitation of chances by giving and withdrawing consent can also be observed among other age groups. According to judges in Ankober Woreda Court, disputes often arise and are filed with the court over the dissolution of marriage, inheritance, and breaches of fraudulent contracts. Disputants in these matters enter a win–lose suit by using the freedom of consent to move cases between the two legal forums.

Corruption among elders

Some elders and members of the community complained about the *shimagillés* themselves. One elder with experience in *shimgilinna* since the regime of Haile Selassie I (r. 1931–1974) said that, in the past, there were many trustworthy *shimagillés* in every village who worked for free. Nowadays, he complained, the spirit of economic benefit is influencing *shimagillés*: less and less of them are willing to serve for free. There are even several rumours about *shimagillés* being bribed to influence the process or outcome of *shimgilinna* in favour of one of the parties. Corruption and nepotism are increasingly interfering with the fairness of *shimagillés*, and it is reported that unrestricted use of consent provides one loophole through which they can operate.

Loyalty towards elders in urban and rural communities Disadvantage to women

Interviews with judges and *shimagillés* suggested that loyalty to *shimgilinna* varies between *urban* and *rural communities*. Rural people seem more likely to be loyal to *shimgilinna*, *while* urban and more educated disputants often give more value to economic rather than cultural issues. In Ankober Woreda, there are twenty-two rural *kebeles*, while Gorebella and Ankober are labelled as towns. People's loyalty to *shimgilinna* seems to increase the further away from the towns they live. Access to the Woreda Court also determines parties' loyalty to *shimgilinna*. As an elder informant who lives in a remote village said: 'The Woreda Court is very far from our village and *shimgilinna* is still our security.' Rural communities' preference for traditional institutions and urban communities' preference for the court is documented in several case studies though at various levels of emphasis (see for example, Meron 2010, Demissie 2005, Fekade *et al.* 2011, Pankhurst and Getachew 2008, and Tarekegn and Hannah 2008).

The disadvantage of women in *shimgilinna* has also been documented in many studies. The studies show that women are not allowed to be *shimagillés*, and that the decisions of *shimagillés* are more favourable to men (see for example Mekuanint

2015, Tarekegn and Hannah 2008).[13] What has not been discussed, however, is the role played by the right to give and withdraw consent on the ability to exert pressure on women and other weak members of the society. Interviews with the head of the Women's Office in Ankober and the heads of other women's associations in the area showed that, although women today are asserting their legal rights increasingly, they are still less influential than men. When men want to present a case to the *shimagillés*, they often force women to accept and give their consent to resolve the issue through customary law. In this way, there is an unfair treatment of cases, for example, between divorcees. The head of Ankober Woreda Women's Federation expressed her feeling that the government's enacted laws on equality for women have still not been fully implemented. According to her, 'You can discover many horrible things made to women in villages as the result of them being exploited in the name of consent!'

Changes in *shimgilinna*

The abuse of consent in *shimgilinna* has evoked changes in certain dimensions of the institution itself. *Shimagillés* have begun to follow traditional procedure a bit differently and some normative aspects of the process have become less accepted. In what follows, I will discuss selective acceptance of cases by *shimagillés*, changes in the mode of hearing parties during conflict resolution, and the role of guarantors, witnesses and coercive mechanisms in conflict resolution.

Selective acceptance of cases by *shimagillés*

When the parties in a dispute decide to resolve it through *shimgilinna*, they must, in the first place, choose *shimagillés* on whom they both agree. Some *shimagillés* have a better reputation in the community than others and thus receive more requests to sit for *shimgilinna*. However, they do not accept all invitations. They first collect information about any disputes they are requested to resolve, about the parties involved, and about their co-*shimagillés*. If they believe that there are bad motives behind the *shimgilinna*, they may reject the offer.

One *shimagillé* I interviewed in August 2017 claimed that, on average, he received five offers per month. Of these, he rejected about two per month on the basis that he suspected dishonest motives or felt that either or both parties would give up the arbitration at some stage if they feared an unwanted outcome. When he believed his efforts would be fruitful, he would follow the disputants into the court and suggest the latter send the case to *shimgilinna*, where he would serve as a *shimagillé*. Conflicting parties rejected by him either approached other *shimagillés*

13 Many case studies in the edited volume by Tarekegn and Hannah (2008) identified that women's participation in the CDRMs of different ethnic groups is not active.

or went to the court. As he stated, the selective acceptance of cases by elders is becoming common due to an increased risk of manipulation of consent.

Hearing parties separately

There are two procedures for hearing disputants' statements in *shimgilinna*: face to face and separately. In a face-to-face hearing, the oratorical and persuasive skills of the plaintiffs and respondents play a major role. The main characteristic of this procedure is its adversarial nature, so the ability to succeed depends on the ability to persuade the *shimagillés*. However, cautious *shimagillés* no longer follow, or follow carefully, this procedure since it may allow one disputant to make another expose evidence that may later be used in court. Hearing disputants separately is becoming more common, and the alleged wrongdoer is kept away until the victim's statements have been heard. The *shimagillés* weigh the two parties' statements and identify the relevant points, based on which they can resolve the dispute.

Another significant change is that the role of oral witnesses in *shimgilinna* is becoming unimportant. In the past, *shimagillés* required both parties to bring individuals who would testify in a case. However, the credibility of witnesses is declining nowadays. As one *shimagillé* said: 'Today, false witnesses are ruining the country.' Judges in Ankober Woreda Court also complained that it is a growing problem.

Lack or unimportance of guarantors

One stage of *shimgilinna* is when disputants choose *yezemed dagna* (lit. 'judge of the relatives'), who serves as a chairperson of the conflict resolution process. Though the name seems to imply this, a *yezemed dagna* need not be a blood relative of any of the parties or other *shimagillés*. The title has to be understood as a metaphor, referring to the hopefully positive outcome of the arbitration, which ideally transforms the hostile parties into relatives. A *yezemed dagna* is expected to be reputable, impartial, and considered as trustworthy by the other *shimagillés* involved in the case. If the parties do not reach a consensus with the *yezemed dagna*, the *shimagillés* themselves can choose one from amongst themselves.

Traditionally, a *yezemed dagna* asked each party to name a guarantor of their obedience to *shimgilinna*. But today, the *shimgilinna* functions only as long as the consent of parties exists, thus, there is neither a need to name a guarantor nor to penalize the parties if either breaches the agreed decision. People do not want to act as guarantors anymore since the disputants can withdraw from *shimgilinna*. The guarantors also know that they are responsible for ensuring payment of any fines arising from the conciliation. One informant, who acted as a guarantor in 2015, told me he was forced to buy five litres of local liquor (*araqé*) for the *shimagillés* and pay 1,000 ETB to the disputant who had remained loyal to *shimgilinna*. Once a guarantor enters an agreement, he explained, he remains bound by the obligation,

while the original debtor can go free by invoking consent. He told me: 'It was my naivety to take the role as a guarantor. Now, people do not commit themselves to this obligation.'

Social pressure and supernatural forces becoming less important

In the past, *shimagillés* could impose various social, moral or religious sanctions on disputants and give weight to the conflict resolution through ritual ceremonies. For example, after an elaborate conflict resolution process, one final ceremony traditionally involved stepping over guns. A gun or guns, preferably ones used in a conflict, were placed on the ground and the disputants were made to jump over them while making an oath to end the dispute. The disputants would say: 'If I break the oath, let the guns not miss their target on me. If one misses, let another not!'

Such oath-taking ceremonies were common in conflicts between the Amhara and the Argobba/Afar, who follow different religions. If both disputants were Christians, a church ceremony was alternatively made. Disputants made an oath while carrying a cross or opening a church door; to break the oath would be a sin and meant being struck by an ailment called *mushro*. This disease begins as a tiny wound somewhere on the body, usually on a finger, and then expands rapidly to all parts and eventually kills the person. According to one *shimagillé*: 'This is the disease God created for oath breakers.'

However, neither the gun nor the church ceremonies are nowadays as effective as they used to be. One *shimagillé* explained: 'Nowadays, the notion of sanctity is decreasing; certain oaths said out loud during or at the end of a conflict resolution can be denied later when a disputant goes to court, rejecting progress made through *shimgilinna*.' *Shimagillés* cannot force parties to make an oath since they can discontinue the settlement process at any time or simply ignore its result.

Conclusion

Since 1995, when the Federal Constitution and state constitutions have outlined similar stipulations about consent as a pre-requisite for entering and staying in CDRMs, *shimgilinna* has turned into a consensual transaction. Consent plays a key role in a practical thinking of gain or loss that uses or abuses *shimgilinna*, impacting the prompt dispensation of justice and changing the customary dispute resolution culture of the people. This suggests the need for the regulative laws promised by the federal and regional constitution. Several questions need to be answered, including whether, once given, consent to dispute resolution through *shimgilinna* can be withdrawn and, if yes, at what level of the conflict resolution spectrum. What kind of test can we use to distinguish honest discontinuation of consent from dishonest? Should determination of whether consent has been given be left to the *shimgilinna*

itself, or should there be detailed legal provision? The application of consent in the religious courts of Sharia could provide an example. Article 5(4) of Proclamation No. 188/1999 on Federal Courts of Sharia states that 'under no circumstance shall a case brought before a court of Sharia the jurisdiction of which has been consented to, be transferred to a regular court; nor shall a case before a regular court be transferred to a court of Sharia'. Parties dissatisfied with a decision can appeal to the next level of the Sharia Court, structured from lowest to highest: Federal First Instance Court of Sharia, Federal High Court of Sharia, and Federal Supreme Court of Sharia (see Article 3). The law also seems to create a hard line by which a party aggrieved by the decision of a Sharia Court cannot appeal to regular courts. Whether or not the Sharia courts can set a good example needs further investigation, but, one thing that clearly emerges from the experiences of the community among the Ankober Woreda is that there should be a law to reduce the negative effects associated with the arbitrary giving and withdrawal of consent to *shimgilinna* and perhaps other institutions in other parts of the country.

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