



The Role of *Shimglina* Customary Conflict Resolution Mechanism in Rural Land Disputes in Amhara People of Ethiopia

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Abstract:

The objective of this paper is to find out *shimglina* customary conflict resolution mechanism in rural land dispute in Bahir Dar Zuria Woreda of Amhara people. The researcher used Qualitative research methodology with case study research design. It is found that *shimglina* customary conflict resolution mechanism used to land dispute resolution. In addition, the Study revealed, using the various forms of *shimglina* in land dispute resolution gave benefits for the community to reconcile and heal the grievances and the negative psychological wounds of the disputants by attaching *shimglina* to the living God. The strengths of using the various forms of *shimglina* customary conflict resolution mechanism in land dispute is timeliness, accessibility, restoring the broken peaceful relationship, respect, participatory, flexibility and the complimentary service for the economically poor community. The actors of *shimglina* customary conflict resolution in land dispute are local elders, religious leaders, relatives of the disputants, and members of spiritual associations. The regional government of Amhara should work to the development of the various forms of *shimglina* customary conflict resolution mechanism for rural land disputes.

Keywords: Rural Land, Peaceful co-existence, Rural land disputes, Shimglina, Customary Conflict resolution, Amhara People

INTRODUCTION

Customary mechanisms are grass root approaches to solve conflicts based on the values, norms, and rituals of the society (Zartman, 2000). Conflict resolution in traditional Africa is geared towards reconciliation, maintenance and improvement of social relationships. The significance and efficacy of the processes lie in the fact that they strive to restore a balance, to settle conflict and eliminate disputes (Ahmad and Ademowo, 2017). In addition, traditional societies in Africa and elsewhere are believed to hold secrets of peacemaking locked in their ways that are formed from centuries of custom before the disruption of colonization (Zartman, 2005).

Customary conflict resolution mechanisms comprise social, economic, cultural and religious-spiritual dimension (Nwolise, 2005). Ethiopia is a country for different ethnic groups with different customary conflict resolution mechanisms (Esayas, 2015, Gonfa, 2014, and Regassa, 2008). Customary conflict resolution mechanism institutions of various ethnic groups were the main body of customary law in Ethiopia for centuries that are deeply rooted in their cultures and traditions which could contribute in settling conflicts or disputes (Jembere, 2000). As Kelemework (2011), stated that customary conflict resolution mechanisms are the normative frameworks that the people are referring to control misbehaviors in the society. In addition, Fekadu, (2007)

indicated that normative character of customary institutions based on norms, promises and moral rules that can reduce the cost of conflict and prevent it from escalating into destructive violence. The customary conflict resolution practices of Ethiopia are mostly used in rural areas where the formal legal system is unable to penetrate because of lack of resources, infrastructure and legal personnel as well as a lack of legitimacy, for the modern law is seen as unfamiliar, imposed, and ignorant of the cultural realities on the ground to settle disputes, and not considering the influence of decisions in the relationships of disputant parties (Endalew, 2014). The community is making innovative use of these institutions to resolve disputes on land and other natural resources (Haftom, 2011 and Kassa, 2020). The most acceptable rural land dispute settlement mechanisms in Ethiopia are informal dispute resolution mechanisms (Ashenafi, 2013). In Ethiopia, the customary mechanisms of disputes resolution in rural land and rural land related disputes are functional and effective in spite of the position of the formal mechanism. This glaring factual reality calls for a new legal regime on conflict or dispute resolution that recognizes the importance of local values and customary institutions (Kassa, 2020). The Amhara people used *Shimglina* customary mechanism to resolve land disputes. It is the foremost mechanism of dispute resolution in the region and about 80% of the rural community takes their land dispute cases to customary dispute resolution mechanisms through *shimageles* (village elders and religious leaders) (WB, 2012b). In Amhara people, the procedure and practices of *shimglina* (elderliness), elders work with reference to orally transmitted customary norms referred to as *Yeabat ager hig* (the law of the land of the fathers) (Yoseph, 2006). Another important institution in Amhara community is *Yezemed Dagna* (family arbitrator). The arbitrators are family members (Tefera, and Mulugeta, 2009).

In the Amhara Regional State, the Revised Amhara National Regional State Rural Land Administration and Use Proclamation, deal with Rural Land Dispute Settlement Mechanism in Proclamation No.133/2006. Specifically, it is Article 29 of the Proclamation that deals with the resolution of disputes relating to rural land issue. In the Region, no civil dispute arising from the holding or use of rural land submitted to a regular court before it is submitted to customary based dispute resolution mechanism and the result of such resolution mechanism is known (Mequanent, 2016 and Shewakena, 2007). A body which is responsible and established by the government for land and land related disputes is the elders' arbitration committee (EAC), locally known as "*ye-shemaglewoch shengo*" that are supported by the rural land administration unit in the kebele and run by a land administration expert at the local level (Gashu and Amsalu, 2017) for the resolution of land and land related disputes in the kebele community.

Based the works of Solomon (1992), Yohannes (2003), and Yoseph (2006), online sources and based on researcher information; the strength of the customary law of Shimgelina is not studied. Accordingly, an in-depth investigation of the strength of shimglina customary conflict resolution mechanism in relation to land dispute is found to be important.

EMPIRICAL LITERATURE REVIEW

This part indicated major findings obtained from different studies related to the practices and challenges of customary conflict resolution mechanisms in rural land disputes. Muigua (2019) conducted a study on effective application of traditional dispute resolution mechanisms in the management of land conflicts in Kenya and he points out; traditional or customary disputes resolution mechanisms are associated with many advantages when appropriately used in management of land and other natural resource conflicts. The mechanism has many intrinsic values that make them preferable to the formal mechanisms in management of land conflicts and

disputes; and there are procedural and appropriateness challenges that should be addressed to make them legally and practically applicable.

In this regard, the challenges are the enforcement of their outcome or decision is prove difficult due to the non-binding nature of the mechanism and determination of the expertise of practitioners are also challenge to the government to use the mechanism by harmonizing in the state legal system in which it is difficult to know elders who have the knowledge and competence of traditional dispute resolution and the modern legal system altogether due to that most elders cannot read and write. He also added that, effective application of traditional disputes resolution mechanisms in the management of land conflicts and disputes is possible and effective.

Berhanu (2018), assessed rural land disputes resolution mechanisms in Oromia regional state and his work indicated that village elders played higher role in land dispute resolution than the courts but he did not examine the challenges of it. In addition to this, Musto (2018) studied on the influence of indigenous conflict resolution mechanism on land use management in pokot central sub-county, Kenya and his findings shows customary conflict resolution in land is practiced from neighbors' conciliation up to council of elders and it is effective in resolving land and land related disputes. He also identified some challenges that the customary system is faced which include: non recognition by the government and also some members of the community, Christianity, conflicts between modern and justice systems among others. These challenges hindered the performance of the indigenous mechanism.

Moreover, Hebo (2005), studied on land disputes settlement in a plural institutional setting. He stated, the customary dispute settlement institutions are vastly practiced in the resolution of land and land related disputes in the community and the peoples are more interested in it rather than taking land issues to courts and the land administration and use institutions. Also, Mequanent (2016) assessed on the application of traditional dispute resolution in land administration in Amhara region and finds out that the application of traditional community-based dispute resolution mechanisms is contributed a lot to resolve disputes at the local level.

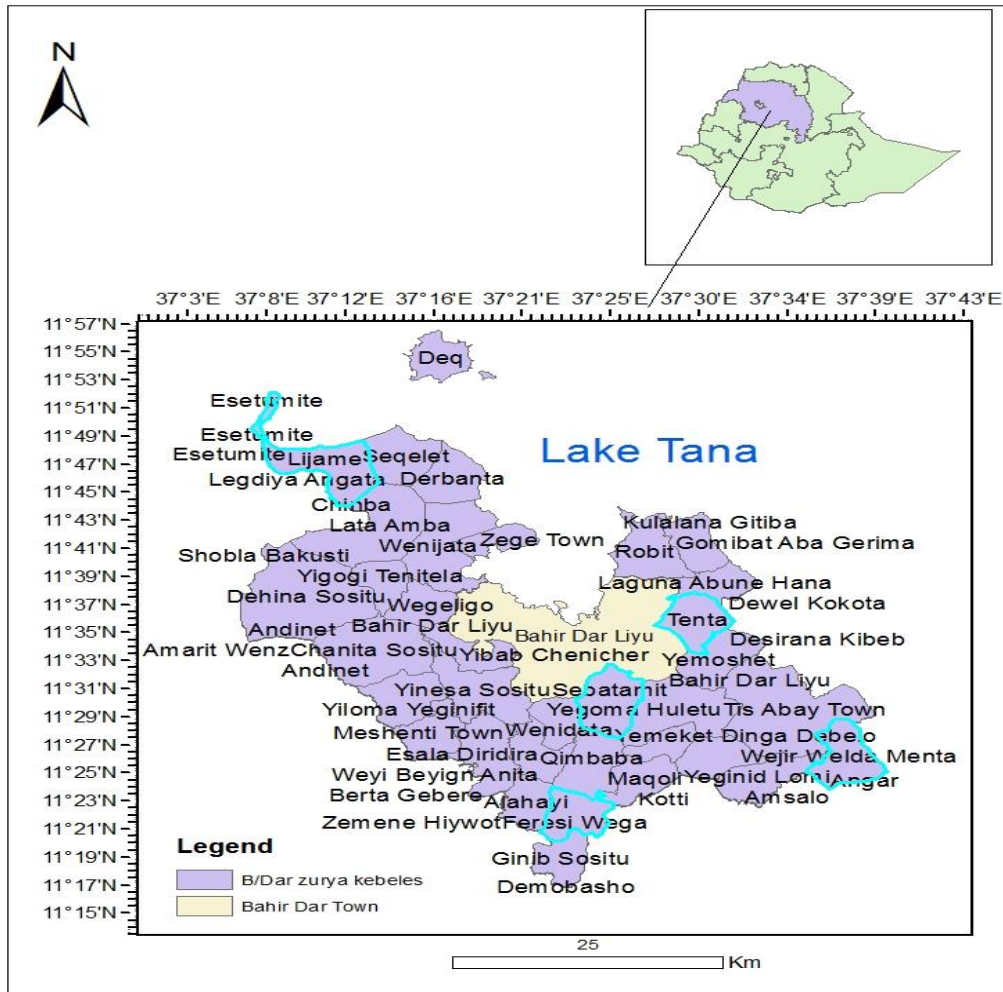
Furthermore, the WB (2012b), survey report shows that eighty percent of the people in Amhara regions take their land and land related disputes cases to customary conflict resolution institutions and the institutions are efficient to settle the issue. Gashu and Amsalu (2017) also studied decentralised rural land administration in Ethiopia: the case of Amhara region and explained in his findings in which the elderly arbitration committee is established by the government for the resolution of land and land related disputes at the local level.

The above researchers studied the role of customary conflict resolution mechanisms in rural land disputes. However, they did not study and identify the strengths of *shimglina* customary mechanisms in the resolution of rural land disputes. Therefore, this study was analyzed and identified the strengths of *shimglina* customary conflict resolution mechanisms in rural land disputes in Bahir Dar *Zuria Woreda*.

DESCRIPTION OF THE STUDY AREA

Bahir Dar *Zuria Woreda* is found in the previous west Gojjam Administrative Zone of Amhara National Regional State of Ethiopia and currently it is found in the new administrative zone of North Gojjam Zone. The *Woreda*, shared boundaries with Lake Tana in north, Achefir *Woreda* in the east, Dera *Woreda* in the east, and Yilmana Densa *Woreda* in the south. It has 36 rural kebeles.

The people in the study area largely practiced crop and, in some level, they practiced livestock production for their livelihood.



*The above picture is the Map of the study area

METHODOLOGICAL APPROACHES AND METHODS OF THE STUDY

This Study used qualitative research approach. According to King, Keohane and Verba (1994) the qualitative approach enables a researcher to unearth an immense amount of information for a study. The researcher also used case study research method. This study is conducted in the farming rural areas of five kebeles of Bahir dar Zuria Woreda, and based on empirical researches. Primary data were collected through in-depth interview, FGD and non-participant observation. 106 participants were purposively selected and key informants comprised elders, religious leaders, rural land administration experts, and community members. This study also used secondary sources of data such as from online sources, books, published journals, working papers and other unpublished written works. Data were analyzed qualitatively by organizing the data's in to themes and contents.

THEORETICAL GROUNDS FOR CONFLICT RESOLUTION BY THE VARIOUS FORMS SHINGELINA CUSTOMARY MECHANISMS AS A CULTURE OF PEACE

Social Capital Theory

Social capital theory can be defined as the shared norms, relationships, reciprocal obligations, trust, and the horizontal and vertical social networks that facilitate coordination and cooperation

for mutually beneficial collective action in the community is seen as an important asset and advantages that people use and depend on it to settle conflicts (Sanginga, et al. 2007). Theory can also explain the restorative nature of dispute resolution by elders in African societies. The elders target in restoring the broken social ties and relationships among and between the disputants (Kariuki, 2015). Moreover, the theory explains how the community and local elders resolve disputes and reestablish social ties. In addition to this, it also describes how social ties or social capital contributes and play role in the peaceful relationships and existence of the community (Ibid).

Social Solidarity Theory

The social solidarity theory explains the importance of dispute resolution by customary conflict resolution mechanisms through elders even in modern societies that have adopted the western legal systems as dispute resolution mechanism as the western legal system is not good for the future relationship of the parties in a conflict (Durkheim, 1984 and Kariuki, 2015). In a society, individual members are social actors who are controlled by social facts (values, norms, and social structures) in their life (Ibid). Using this theory for dispute resolution by elders is possible in which, dispute resolution by elders is viewed as a social fact from which society gains benefit from it. Furthermore Murithi, (2006:13) stated as follows: An integral part of the process of achieving positive peace is the need to promote social solidarity. Achieving social solidarity means that members of the society once again begin to recognize each other as fellow human beings and begin to share a concern in the common welfare and well-being of each other. Social solidarity makes sense because only by ensuring the security, safety, and well-being of other people, can we hope to secure our own security, safety, and well-being. To emphasize the need to foster social solidarity is to recognize the interconnectedness of each human being.

The social solidarity theory is essential to understand and explain the strength of *shimglina* customary conflict resolution in rural land disputes by *shimageles* (elders and religious leaders), relatives, the traditional social capital like mahiber (informal association for spiritual and self-help purposes) and how individuals and the community benefited from the *shimglina* customary conflict resolution mechanism within the resolution of their land disputes based up on their shared values and norms.

DISCUSSION AND FINDINGS OF THE STUDY

The Strength of the Various forms *Shimglina* Customary Conflict Resolution Mechanism as a Culture of Peace in Rural Land Disputes

Shimglina customary conflict resolution mechanism in rural land and rural land related disputes has its own strength in which the communities are benefited. According to Muiguana, (2015) the practice of customary dispute resolution in resolving disputes and access to justice in Africa is still important. In addition, Boege (2006: 11) identifies the following strength of customary conflict resolution mechanisms:

- Fit situations of state fragility and failure;
- Are not state-centric and hence credited with legitimacy;
- Take the time factor into due account and are process-oriented;
- Provide for comprehensive inclusion and participation;
- Focus on the psycho-social and spiritual dimension of conflict transformation.

These listed strengths are also found in the customary conflict and dispute resolution mechanisms of *shimglina*. The points are discussed below based on the collected data;

Rebuilds the Broken Relationships of the Disputants:

The informants asserted that, the natures and aim of customary conflict resolution mechanisms of *shimglina* is practiced in land disputes for the purpose of restoring broken relationships between or among the disputants by healing their issue from its sources (Interview with elder 1 at Wojer kebele, February 7th, 2022). In supporting this, Zehr, (1985) stated, customary or traditional restorative justice views criminal conflict as a violation of a relationship between or among victims, offenders and the community. In addition, the informants said; The practices of negotiation, mediation and reconciliation within *shimglina* institutions are mainly working to rebuild the broken peace and creating peaceful relations between or among the disputants through forgiveness, tolerance honesty, and faithfulness for settling the land and land related disputes based on forwarding a win-win solution to both parties of the disputes. Yet, the formal land disputes resolution system is adversarial to the disputant's future relationships and its approach to settle the dispute is mostly win-lose and cannot consider the effects of the decision in the future all over interaction of the parties (FGD1 with elders and religious leaders at Wojer kebele, 10th February, 2022).

Cost Effective:

As the focus group discussants indicated, customary disputes resolution mechanisms of *shimglina* are cost effective to the rural poor. However, the formal legal system is not equally important to the rural poor farmers to run their land and land related cases. They indicated as in the following ways: We prefer *shimglina* customary disputes resolution from the various levels of *shimglina* due to the fact that it provides free service and it is worthy to solve our problem of land disputes without high financial cost. However, the formal legal system is expensive and needs extra resource in the procedures of the cases up to its final decision (FGD5 with farmers, who settled their land disputes through *shimglina* at Sebatamet kebele, 14th February, 2022).

Participatory:

The informants affirmed that *shimglina* is participatory in its procedures of settling their rural land disputes. Disputant parties can discuss their disagreement in face to face with *shimageles* (elders and religious leaders) and with each other. In *shimglina*, the disputants are parts of the dispute resolution process and in the selections of local elders and religious leaders to resolve their land disputes. In addition, the final decision of *shimageles* (elders and religious leaders) needs the consent of the parties who are in disputes to accept or reject the decision (FGD2 with the elderly arbitration committee at Feresewoga kebele, 9th February, 2022). In this regard, Luna, (2003) argued, restorative justice encourages the voluntary participation of the disputants based on their consensus for finding solution to their shared disputes.

However, as the informants described, in the formal land dispute resolution mechanism, decisions are made based on the evidences gained and the concerned rural land laws. Hence, their processes are not participatory and the verdict is mandatory to accept (FGD2 with the elderly arbitration committee at Feresewoga kebele, 9th February, 2022). Thus, the participation of the parties in the resolution procedures helped them for mutual understanding.

Timeliness:

Based on the collected data, settling rural land disputes through *shimglina* customary conflict resolution is speedy in terms of time it takes to resolve. However, the formal land dispute resolution system is not fast to respond and decide. The discussants described as: *Shimglina* is speedy to resolve our land disputes but in the court system it takes more than a year to decide on

the issue. The long and tedious process of the court proceeding could contribute to the disputes are changed in to violence and creates loss of life and property distraction. Timely response to land dispute is needed to reduce the negative effect of the problem in the economic and social life of the people (FGD5 with farmers who settled their land disputes through *shimglina* at Lijome kebele, 11th, February, 2022).

Therefore, timeliness is vital in the customary conflict resolution of *shimglina* in land disputes to reduce further escalation and damage between and among disputants in particular and the disruptions of the peace of the community in general.

Accessibility:

According to informants, farmers choose to use *shimglina* customary conflict resolution mechanisms in rural land and rural land related disputes over the formal dispute resolution mechanism due to ease of access to their village. They explained the issue as: The formal legal system institutions for land disputes are far from the community and it needs transportation expenses and time to travel the physical distance to get the access of institutions like court and rural land administration and use institutions. This consumes our time and resource that were important to our agricultural activity. So, the question of accessibility is acceptable without doubt to us to save our resource and time (Interview with elder 4 and religious leader 1 at Tentakerkose kebele, 25th February, 2022).

Complimentary To the Poor and Complementary to the Formal Government Institutions in Rural Land Dispute Resolution Service:

As the informants explained, customary dispute resolution mechanisms of *shimglina* in the study area are important for the economically poor and disadvantaged members of the community to settle their land disputes without expense in the procedure of dispute resolution. The poor and vulnerable groups in the community are using *shimglina* in land disputes (FGD2 with the elderly arbitration committee at Tentakerkose kebele, 11th, February, 2022). In this regard, harper, (2011) stated "customary justice systems are the cornerstone of dispute resolution for the poor and disadvantaged in developing countries". Hence, the evidences' indicated, *shimglina* largely served the economically poor members of the community to settle their land and land related dispute, as a result of people who have economic problems are in problem to use the formal legal mechanisms for dispute resolution. In addition, the FGD discussants described: *Shimglina* through *shimageles* (elders and religious leaders) are effective even during the time of the formal legal system is weakened or not to govern and resolve rural land disputes in the rural community. The community can govern their rural land issues based on the customary practices of themselves. They have been working to resolve different cause of land disputes over years for the benefit of the community to led stable and peaceful economic and social life and can reduced loss of life and property distraction (FGD1 with elders at Wojer kebele, 9th, February, 2022).

In addition to this, *shimglina* also contributes to the government as a complementary in filling the gaps in providing dispute resolution service in rural land disputes and reducing backlog of land-based court cases in the *Woreda* court and in rural land administration and use offices. It is also too important to strengthen the state-based land dispute resolution mechanisms and potential avoidance of exclusively win-lose outcomes that may escalate a dispute (Interview with the *Woreda* rural land administration and use expert 2 at Bahir Dar *zuria Woreda*, 18th, February, 2022).

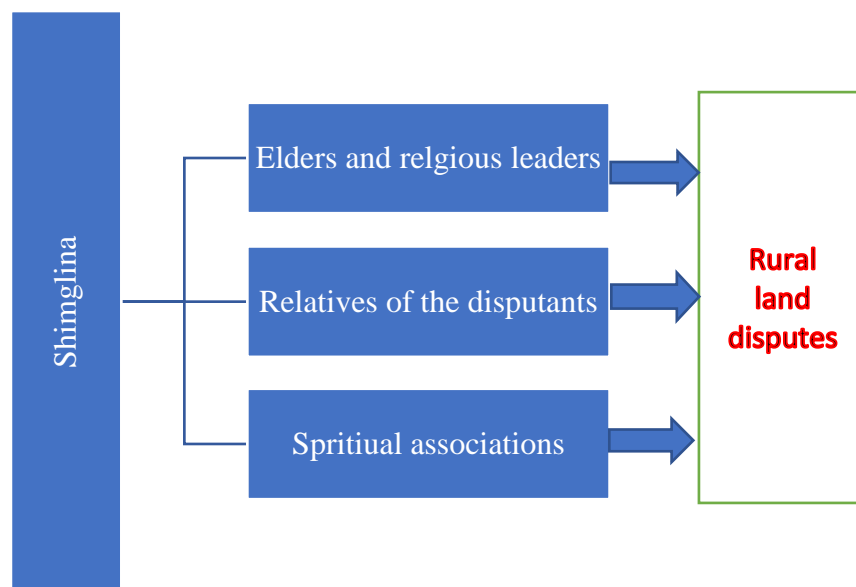
Flexibility:

Based on the collected data, the customary conflict resolution mechanism of *shimglina* for land and land related disputes in the community is flexible towards the conditions and time to resolve the issue. It is not rigid to a certain circumstances and rules. Elders and religious leaders are trying to reconcile disputants by suggesting various possible ways based on the circumstance of the disputes, the disputants and the values of the society through their traditional wisdom of peace making (Interview with elder 6 at Lijome, 9th, February, 2022).

Farmers who were settled his land disputes through *shimglina* said: “elders and religious leaders can easily understand our dispute situation, interest and the solution to our mutual disputes” (Interview with a farmer who settled his land dispute at Lijome, 9th, February, 2022). Hence, the flexible nature of *shimglina* customary conflict resolution has benefited the disputant parties in resolving the problem by considering their circumstances.

Respects:

As one key informant from elders explained, “respects and trust towards shimageles (elders and religious elders, relatives, the member of the spiritual association and self-help groups) was cherished in the traditions of the community”. The other also added that, “*shimglina* were a socially legitimate mechanism in land disputes”. Disrespect to elders and religious leaders are taboo in the community. This value helped the community to resolve their land disputes easily through *shimglina* customary conflict resolution system as *shimglina* was highly valued and adhered to by the members of the community and the value of *shimglina* was deep rooted in the socio-economic interaction of the community (Interview with elder 1 religious leader 5 at Feresewoga kebele, 24th, February, 2022).



*The picture shows the actors of shimglina customary conflict resolution and institutions of *shimglina* customary conflict resolution in land disputes in the study area

Conclusion:

This study was carried out in Bahir Dar *Zuria Woreda* to examine and identify the strength of customary conflict resolution mechanisms in rural land disputes. The findings indicated that the resolution of land disputes by *shimglina* customary conflict resolution mechanisms as a culture of peace are largely practiced in the community. Rural land disputes were addressed through

shimglina customary conflict resolution mechanisms in Bahir Dar *Zuria Woreda* people such as disputes related to land ownership, boundary trespass, land inheritance, donation, land transfer, share cropping, plant shade, drainage direction, divorce related land disputes, livestock destroy crops, disputes on grazing land, access to pathways disputes, dispute on squatting communal lands and land grabbing disputes.

The strength of the customary conflict resolution mechanisms in rural land disputes were also other issues addressed in this study. The findings indicated that *shimglina* customary conflict resolution in rural disputes have been its own strength for the rural poor community in many ways like cost effectiveness to run their dispute case, builds the broken relationships of the disputants through forgiveness, consensus based participation in the process of dispute resolution, timely response or speedy resolution, accessible to their locality, and complementary service to the government to fill gaps were the strength of *shimglina* customary conflict resolution mechanisms in settling rural land disputes in the case study area. Finally, the researcher recommended that the regional and local governments should give high attention to *shimglina* customary conflict resolution for peace as result of local land disputes can be better resolved by the customary conflict resolution practices of *shimglina* in the study area. The governments need to strengthen the practice of *shimglina* customary conflict resolution mechanisms to resolve land disputes, which are important to vulnerable members of the community who are deprived of protections in the state legal systems land disputes resolution due to economic problems to run their issue.

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