11. Kontract: A hybrid form of law among the Sidama

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Introduction

Three legal regimes govern the Sidama's land. These partly support and partly compete with and contradict each other, leading recently to the emergence of new disputes and concerns.

The three legal systems are *utuwa* (customary land law), state land laws and *kontract* (a new hybrid form of land law). *Utuwa* refers to Sidama customary norms and institutions, under which individual farmers enjoy usufruct rights over agricultural land while the ownership rights reside with the clans. State land laws, including the 1995 Federal Constitution of Ethiopia (FDRE 1995), stipulate that the right to ownership of rural and urban land is exclusively vested in the state and in the peoples of Ethiopia. The statutory land laws further guarantee the rural masses usufruct rights over agricultural land, and prohibit the sale or exchange of such land. *Kontract* – the main focus of this chapter – straddles state land laws and *utuwa*, and exhibits hybrid characteristics. It is enshrined in written agreements concluded between an *akonatari* (transferor) and a *tekonatari* (transferee) regarding the permanent transfer of agricultural land by the former to the latter. The use of the written form and attempts to inject validity into it through both authentication and reference to state law give *kontract* a semblance of modernity. Yet, *kontract* is clothed with components of Sidama customary land tenure: it involves elders as witnesses, it ends with a *fenter* (special feast to mark the conclusion of a *kontract*), it imposes hefty fines should parties break their promise, and it makes elders responsible for reconciling the parties should they disagree on the *kontract* and ostracizing those who resort to invalidation.

Being a mixture of modernity and tradition, one would expect *kontract* to be an interesting case of cooperation and harmonization of state law and customary law. However, as will be shown in this chapter, in practice *kontract* often results in land alienation.

Informal land transfers have been observed in other peri-urban and cash-crop growing sections of southern Ethiopia and beyond. In parts of the study area where the value of land is high, they have also become common, whether designated as

kontract or given another name. The proliferation of *kontract* has triggered disputes. For example, a local court administrator estimated that 70 per cent of court cases in the research site related to land disputes, one-third of which concerned *kontract*.[1] Though there are studies on large-scale formal land transfers (Dessalegn 2011, Makki 2014), only marginal attention has been paid to the widespread micro-land transfer schemes; and the extent and prevalence of informal land alienations, as well as their dispossessing consequences for the poor, has been neglected.

This chapter examines the nature of *kontract*: how it is viewed by various actors, and its implications for agricultural land alienation, which results in smallholders losing their livelihoods, and for rural land reform.[2] It is arranged as follows: after giving a brief profile of the Sidama land and people, I will provide some theoretical and comparative discussions with respect to informal land transfer practices before moving on to the main part of this contribution. First, I will sketch out the fundamentals of Sidama traditional land rights, land rights under the contemporary formal land laws of Ethiopia, and the concept and practice of *kontract* as a hybrid form of land law. Next, I will describe and analyse *kontract* from the perspective of Ethiopian lawmakers, the local people and regular courts. Then, I will single out factors that contribute to or correlate with the emergence and prevalence of *kontract* in the Sidama area and beyond. Finally I will investigate the existence of power imbalances between *akonatari* and *tekonatari*. In the final section, discussions and conclusion, I look at the practice of *kontract* from three perspectives – those of an economist, a legal positivist, and a legal pluralist – before concluding with a reflection on *kontract* and its wider effects, and how these could be addressed through land reform.

Sidama Zone and people

The Sidama people are speakers of the Cushitic Sidama language. They live in Sidama Zone, which is located in the Southern Nations, Nationalities and Peo-

1 Interview 14 September 2012.

2 The chapter is mainly based on qualitative data collected through interviews and focus group discussions with farmers, elders, policymakers, judges, researchers, public servants and legal practitioners, as well as observation in the study area for a total of two months, between September and December 2012, in April and June 2013, and in November 2015, 2016 and 2017. It builds on literature, relevant federal and regional constitutional provisions and legislative frameworks, court cases and comparative experience.

ples Regional State (SNNPRS) in the south central plateau of Ethiopia, about 265 kilometres south of Addis Ababa.[3]

Sidama Zone has a total of 6,972.1 square kilometres. According to the 2007 national population census, its population 3 million people in 2006, 90 per cent of which lived in rural areas, and its annual population growth rate was 2.9 per cent (CSA 2010). It is one of the most populous areas in southern Ethiopia, with a density of 451 people per square kilometre (CSA 2010). The Sidama land features diverse agro-ecologies including semi-arid and arid areas inhabited by pastoralists. With its beneficial climatic conditions, land fertility, economically valuable land and cash-crop production, Sidama can be seen as representative of the productive part of Ethiopia.

The Sidama predominately practise sedentary agriculture. They produce *ensete* (false banana), a highly drought-resistant staple food crop, cereals and legumes, and they also rear livestock. Small farmers in Sidama are also known for growing a type of organic *Coffea Arabica*. At present, around 70,000 hectares of good agricultural land is given over to coffee production, the sales of which bolster Ethiopia's foreign currency funds, and which formally links the Sidama to the global economy. The area also supplies animal skins and hides, and *khat* (a stimulant plant) for export nationally. The average farmland holding in the area is 0.3 hectare per household; this is smaller than both the national and regional averages, which are 0.8 ha and 1.01 hectare per family, respectively (SNNPRS Report n.d.). While cities and towns house only 10 per cent of the population of the Sidama Zone, there is a high degree of urbanization, as reflected in the urban population growth rate of 5 per cent and in the proliferation of towns (CSA 2010).

The Sidama people were incorporated into greater Ethiopia in the second half of the nineteenth century. The Sidama territory is divided between nine sub-clans, each of which controls its own sub-territory. There are various degrees of hostility and alliance amongst the sub-clans and with neighbouring ethnic groups (Hamer 2002, Aadland 2002).

Land rights and legal pluralism

Legal pluralism and its disempowering effects

There are several commonalities in the literature on legal pluralism. Firstly, legal pluralism pervades human society. Thus, the state is no longer the exclusive source

3 The SNNPRS is one of the nine regional states recognized by the Constitution. Administratively, the SNNPRS is broken down into more than a dozen zones and several special districts. Each zone is divided into *woredas* (districts), which in turn are split into *kebeles* (sub-districts).

of law since multiple legal orders co-exist in the same social field and same space at the same time. Secondly, such multiple legal orders may exist at international, national and local levels (Helfand 2015). Thirdly, legal pluralism appears to regard social justice as being of 'prime importance to legal validity' (Barzilai 2008:402).

Legal pluralism has been addressed by two theoretical approaches: relationalism and consequentialism. Relationalism focuses on the nature of plural legal orders as well as on the competition, conflict and cooperation between them, and their influence on each another. Consequentialism, which is the focus here, asserts that the effect of a plural legal order may be empowering or disempowering, depending on an actor's capacity to negotiate. On the one hand, when legal pluralism produces empowerment, it offers a greater scope for human agency as there is negotiability of interests in the course of re/making laws, through the access to different legal forums, and thus availability of normative and institutional choice (forum shopping) and the potential for procedural and institutional innovation or rule adaptation (Meingzen-Dick and Pradhan 2002: 27). This means legal pluralism can have an empowering effect provided that 'communities and households are able to better adapt themselves to change and retain their entitlements…to negotiate, bargain and reorganize relationships of production and exchange' (Parthasathy 2002:22). On the other hand, legal pluralism can bring about disempowerment where there are power imbalances among actors – due to impoverishment, gender and other vulnerabilities – that adversely affect the legitimate interests of the weak.

Prevalence of informal land transfer practices in other African countries

Land in Africa is governed by pluralistic legal regimes, as evidenced by the informal land transfer practices that are not uncommon in many areas of the Continent. Land alienation practices, for example, in Nigeria, Ghana, Burkina Faso and Tanzania exhibit some shared features. The practices are prominently observed in peri-urban and cash-crop growing parts, and are disguised as rent, mortgages, or the sale of perennial plants and fixtures. Such deals occur in times of financial distress and use a mix of customary and statutory norms and institutions (Lund 2000). Government officials recognize the practices through attestation, authentication and registration. Such recognition is not necessarily compatible with state law and may, in fact, at times conflict with or undermine age-old customs and legislation that proscribe land sales (Lund 2000). State recognition of informal land transfers makes it impossible for a transferee to get their land restituted. Land recovery is also made unfeasible by economic power imbalances, which tend to tilt in favour of the buyers: 'land is often irredeemable as a goat sold on the market place' (Lund 2000:7–8). These land transfer practices are seen to generate conflicts and disputes, which arise in the course of attempts to recover land (Shivji 2009).

Informal land transfer practices in Ethiopia

Informal land deals are prevalent in several parts of Ethiopia. In Oromia National Regional State (ONRS), for example, small farmers in Western Wollega, Ilubabor and Jimma have been displaced by urban elites who bought their coffee plants (Pausewang 2000). This forced policy makers in ONRS to conduct diagnostic research, which revealed that many peasants had become victims of *kontract* (Gudeta 2009:125). In particular, peasants in coffee and *khat*-growing areas of ONRS have been evicted from their land as a result of the sale of the coffee and *khat* to unscrupulous urban bourgeoisie,[4] a practice which has caused social problems, according to Gudeta Seifu (2009:135):

> The sale transactions usually take place when the landholders are in distress and in dire need of finance to meet their basic needs. The farmers who have already alienated their holdings are now financially in a precarious position… for they lost their livelihood. In effect, this has brought devastating …[social] effects.

Land deals under the rubric of *kontract* are also taking place in other parts of Oromia. The most well known example occurred in Meki, a small town located along the road from Addis Ababa to Hawassa and close to the Awash River plains, which makes it suitable for horticulture. The local authorities ascertained in early 2012 that a total of 700 small farmers had lost their land to either individual or commercial farmers with urban origins – who began growing vegetables and fruits – under *kontract*, the terms of which sometimes extended to 99 years, violating the legal limit of 5–15 years for a lease. Some of these commercial farmers rented land for 1,000 to 1,400 ETB per hectare per season, with advance payments covering several years (The Ethiopian Reporter, 6 January 2012).

As discussed below, one force driving small farmers to engage in these deals is the lack of agricultural support systems, such as loans, to enable them to benefit from their land. Commercial farms are resource intensive – requiring irrigation, water pumps, fuel, seed selection, fertilizers, shades and labour – and the costs of these inputs cannot be covered by smallholders. Moreover, as one local official noted, 'those who acquire land from smallholder farmers are much more organized and networked than we expect" (quoted in *The Ethiopian Reporter*, 6 January 2012). According to Gudeta (2009:140), it is not possible to stop investors from acquiring land from small landholders for commercial ends via enforcement of the formal law alone. As will be considered in later in this chapter, small farmers are selling out their land to rich people as such farmers do not have the ability to utilize their land. Some of the purchasers are rewarded for using such land apparently efficiently. For instance, one investor who had accumulated more than 20 million Birr by growing

4 Interview with judges 29 April 2013.

vegetables on several hectares of land acquired through *kontract*, resulting in the displacement of about fifty households[5], was given a prize for being a model farmer by both the regional authorities and the Ministry of Agriculture.[6]

Three kinds of land rights in Sidama

Sidama traditional land rights

The Sidama people recognize two types of land tenure: *dannawa* (communal land) and *utuwa* (private land). The underlying principle behind both *dannawa and utuwa* is that land is the common property of a clan (*gosa*), but that individuals have access to and can use the land on the basis of clan membership (Markos *et al.* 2011).

Dannawa is composed of roughly demarcated pasture lands belonging to sub-clans and forests outside *utuwa* dedicated to the use of members of the particular sub-clan, or of several sub-clans in common, for grazing, hunting, beekeeping, extraction of forest resources (e.g. firewood and wild fruits), social and cultural sites and market places (Markos *et al.* 2011). *Dannawa* can, under exceptional situations, be distributed to individual members of a sub-clan. This could happen when a household is facing a shortage of farmland because of changes in demography or in order to accommodate outsiders. Otherwise no one is allowed to privately appropriate *dannawa*. Historically, *dannawa* was placed under the administrative and judicial jurisdiction of the highest clan council (*songo*), who determined the use rights of this communal land and settled disputes relating to it. Both *utuwa* and *dannawa* could not be subject to alienation. Access to and use of the two land tenure types has traditionally enabled Sidama households to make an adequate living (Markos *et al.* 2011).

Utuwa is the more prominent kind of customary land tenure among the Sidama (Markos *et al.* 2011:71). The *utuwa* is said to have been inherited from a distant ancestor who occupied and developed it and then passed it on to his descendants. As such, today *utuwa* is privately held agricultural land expected to be passed on to male descendants, and every male has the customary right to receive a plot of farmland from his father's *utuwa* when he comes of age and gets married. The underlying principle is that land is an inalienable common property of a clan, but with individual access based essentially on clan membership (Hamer 2002). As a local youth leader expressed it:

5 Interview with Daniel Behailu, researcher from the School of Law Hawassa University on land policy and law, 26 November 2012.

6 Recently renamed the Ministry of Agriculture and Natural Resources.

> *Utuwa* means 'tomb'. It is the ancestors' burial ground. It is also land, which you till, you drive your living from, which is passed onto you by your father who received it from his father, which you have to hand over to your descendants. It is a taboo to sell land; it is even prohibited to mention the word 'sale' in regard to land. If you dare sell part of your land, you will be cursed by the ancestors' spirit. There is a belief that once you sell a part of your plot, you do not stop short of selling out your entire land, and if you happen to sell your land as a whole, you are deemed to be a cursed person and as such you must disappear from the area as you did a shameful thing and are not worthy to be member of your locality. Sale of one`s ancestral ground makes one a social outcast as he who does that must leave the village for fear of being burnt by the eyes of ancestors. (Interview, 12 October 2012)

Land alienation to non-clan members occurs rarely. When it does, it is preceded by collective deliberation and consultation among the clan members of the man selling the land, and only after close family members and the sub-clan have been given first refusal on buying the land in question. In addition, the potential buyer must be welcomed by the seller's clan.[7] The entire process of land alienation is therefore a collective decision, and is as good as accepting the person who acquires the land into the sub-clan: by virtue of the transaction, the buyer changes his clan membership and becomes one of them.

National law and land rights

The 1995 Federal Constitution of Ethiopia tacitly classifies rights over land into two categories: ownership and subordinate rights (Art. 40), stipulating that 'the right to ownership of rural and urban land is … exclusively vested in the state and in the peoples of Ethiopia' (Art. 40[3]). Subordinate rights over land, which may be termed as usufruct rights, have several dimensions and have been further elaborated in the Constitution and state land legislation.

First, the Constitution bestows usufruct rights over agricultural land to all Ethiopian peasants and pastoralists without payment (Art. 40 [4 & 5]). These rights have been extended by offering agricultural land for an indefinite period of time to 'any citizen of the country … who wants to engage in agriculture for a living' and who has no other adequate means of earning a livelihood.[8] Second, usufruct rights accorded to peasants are not given to the head of a farming family or any particular member therein; the right is bestowed on the farming family as a unit

7 Interview with a local elder, 12 October 2012, and with a legal practitioner, 8 June 2013.

8 The Federal Rural Land Administration and Use Proclamation No. 456, 2005 (hereinafter Proclamation No 456, 2005), Art. 5; The Rural Lands Proclamation No. 31, 1975 (hereinafter Proc. No 31, 1975), Art. 4.

and as a going concern.[9] It remains the right of the current and future members of such families considered collectively and inter-generationally so long as one of them continues farming. Hence, it is a right given to the living and the yet to be born members of such rural households.[10] The main legal implication for the joint nature of usufruct rights is that no member of a household, in particular the head, can validly transfer the rights without the free consent of all the other members.[11] Finally, the Constitution enshrines the principle of non-eviction of peasants and herders from their land.[12] One of the top priorities of the Ethiopian Government is 'to protect the rural poor from the risk of losing their land' (De Schutter 2011:532). The constitutional commitment to protect peasants from eviction from their land refers to the state itself as well as to non-state forces, such as investors or community authorities. Article 40(3) also protects peasants from their own folly by ruling out any meaningful transfer of land rights through the formal market channels, stating that: 'Land…shall not be subject to sale or to other means of exchange'. Peasants are only allowed to rent out part of their land, for a short period of time, with the consent of concerned family members and the prior approval of local authorities.[13] These restrictions on the marketability of land usufruct rights are linked with the overriding essence of the existing rural land law of Ethiopia, which views land as a subsistence asset for peasants and pastoralists.[14]

Concept and practice of kontract: a hybrid form of law

The etymology of the term *'kontract'*[15] is obscure. It seems that it originated in the English term 'contract', which is pronounced in Amharic as " (*kontract*) and in Sidama language it as *'kontracta'*. The Sidama people's inclination to use the term *kontract* instead of *kontracta* lies in the fact that Amharic, as the lingua franca of Ethiopia, is widely spoken there. It is also used interchangeably with the Amharic translation of the English term 'contract', which is (*wule*). There is, however, a fundamental difference between the two terms. While the term '*wule*' does not necessarily imply the existence of a definite term in a given agreement, the notion of *kontract* suggests the existence of a fixed period in a transaction. The practice

9 Proc No. 31, 1975, Article 4; Proc No 456, 2005, Art 8(2).
10 The Federal Constitution, 1995, Art. 40 (7); Proc No. 456, 2005, Art 2 (4).
11 Proc No 456, 2005, Art. 8.
12 The Federal Constitution, Art. 40 (6); and Art. 40 (4&5).
13 Proc No 456, 2005, Art. 8.
14 *Rural Development Policies and Strategies of Ethiopia* (Ministry of Information 2001)
15 Nomenclature-wise, local people use the words '*kontract*' and '*kontrata*' as synonyms to describe the practice. However, during my fieldwork for this chapter, I realized that the inhabitants use the former much more frequently than the latter both in their day-to-day conversations and in written documents relating to these transactions, so I have chosen to follow their example here.

among the Sidama people shows that by *kontract* they mean a written agreement concerning a plot of agricultural land, concluded between *akonatari* (transferor) and *tekonatari* (transferee) with a view to permanently transferring the land from the former to the latter. In short, it is a sale agreement.

Kontract is a Janus-faced transaction. On the one hand, parties to a *kontract* incorporate into it elements of the modern notion of 'contract'. For example, they reduce *kontract* to a written statement, affix their signatures to it, have it attested by witnesses and even sometimes have it authenticated by relevant government offices. In addition, *kontract* is clothed with modernity by the inclusion, in cross-references, of some of the provisions of the Country's Civil Code. On the other hand, *kontract* embodies components of the Sidama customary land tenure. For instance, in most cases elders help the parties reach an agreement and serve as witnesses. Other elements of Sidama custom which are made part of *kontract* include the organization of a feast (*fenter*) to mark the conclusion of the agreement[16], the indication of hefty fines (monetary and customary visitations) should a party break their word, and the elders' obligation to reconcile the parties in the event of a dispute or to ostracize or even curse anyone who breaks the *kontract.*

It should nevertheless be noted that parties to a *kontract* never openly call it a land sale agreement; instead they disguise the transaction as a sale of coffee or *khat* bushes, fruit trees or other types of immovable property. This implies the eventual restitution of the land related to the transaction and suggests that *kontract* is a land rental agreement, a temporary transfer of land use rights. As such, it would seem to lead to a landlord – tenant relationship. However, in reality, this immovable property rarely exists on the transferred land and *kontract* does not relate to the sale of property on the land but simply involves the transfer of a piece of bare farmland. If some crops, fruit trees, ground works or huts on the land are transferred with the land, this is merely incidental. As one community leader/farmer expressed it, *kontract* 'is a twisted form of an ordinary land rental transaction'.[17]

During imperial times, such land deals were not disguised, but were openly labelled '*kontract* for the sale of farmland' as land sales were legal. The change in nomenclature began to occur in the mid 1990s, when the parties involved and the land deal facilitators, such as agricultural extension workers and lawyers, realized that the law prohibited land sales. From then on, the term 'sale' was avoided; it was replaced by terms such as sharecropping, *kontract* and rental, used to pretend that only immovable property on the land or land use rights were being transferred.[18]

16 A *fenter* may consist in having some local drinks or just paying some money to the elders who helped them make the deal and ultimately served as witnesses.

17 Interview, 18 September 2012.

18 Interview with a local farmer, 22 December 2012.

Therefore, *kontract* embodies a rejection of a fundamental common tenet of both the present state land tenure and Sidama custom: the inalienability of land. Moreover, as will be shown below, *kontract* is a blend of state land tenure and Sidama customary land tenure.

Different views on kontract

Kontract and formal law

As mentioned above, under the 1995 Constitution of Ethiopia and as reiterated in various subordinate laws, land cannot be subject to sale or any other means of exchange, and any practice or decision that authorizes transfer of ownership over rural land is of no effect. Specifically, it is unlawful for an informal land seller to assume an obligation to deliver ownership or even usufruct over rural land to a land buyer. Similarly, it is illegal for a purchaser to assume an obligation to pay for the transfer of ownership or usufruct in regard to rural land. So, from the standpoint of the formal land law, land alienation deals – regardless of their age – should be struck down for transgressing the supreme law of the land. A joint reading of Article 1845 and Article 1810(1) of the Civil Code sends the message that contracts tainted with unlawful objects are not subject to prescription. This is because the phrase 'Unless otherwise provided by law…' in Article 1854 suggests so. Thus, any deal relating to land sale remains invalid under the state law.

Local views on kontract

Many land deals are made with *kontract*, even though the local people are well aware of its risks and disadvantages.

A model farmer and community leader residing in Sidama Zone compared *kontract* deals with 'a black market for the sale of a farmland', stating that he had never seen such land being restituted to the landholder.[19] During a focus group discussion, a land administration expert described the situation as follows:

> They sell the land, claiming that the land is rented out for any period between 40 and 99 years or even for life. According to the law in force, the maximum period for which a peasant can rent out their land is 25 years when dealing with an investor, 10 years when the deal is between peasants. They do it between those who trust each other. It is a deal based on trust. We cannot do anything about informal land deals. The seller is not benefiting out of it. It is a puzzle for us. The

19 Interview, 14 September 2012.

> peasant is selling land by using the language of state land law, which permits land rentals, but for completely different purpose. (Interview, 14 September 2012)

As indicated by a focus group discussion with female-headed households, an *akonatari* – often a household head – enters into a land deal with the *tekonatari* without securing the consent of his family members, contrary to what is required by state land laws.[20] In addition, the *kontract* is not submitted to the relevant authorities for registration and approval in the initial stage because they might hamper the transfer process, even though they might know about the transaction informally and even cooperate. As several different informants – farmers, officials and the police – told me, land-related corruption has become common. Stein Holden (2012:10), who has undertaken research in the Sidama area, observed:

> … the courts favour the wealthy who can afford to pay for decisions in their favour. If people do not pay, the cases may take a very long time… cases [land related] are decided through mobile phones, meaning that the wealthy and influential have mobile phones and communicate easily with the court judges while the poor have to travel and wait for long time for their cases to be handled and for communicating their situation. Decisions may also be based on family ties.

The *tekonatari* is often a member of the rural elite or a trader with urban roots deemed to be a 'model farmer' by national and local politicians.[21] They are people capable of paying for the land and investing in it; they may invoke tradition to shame an *akonatari* that demands the return of the land; and they can litigate all the way from the sub-district land administration committee right up to the Federal Supreme Court. The *tekonatari* makes use of a mixture of elements of state law and of Sidama traditional land tenure rules and processes to make his land deal secure, then uses his influence and connections to register the land subject to the *kontract* in his name.[22]

As one judge told me, most cases (80 per cent) dealt with in the district courts are rural land disputes, out of which 30 per cent relate to *kontract.*[23] As I was told by several lawyers and judges,[24] practising lawyers play an important role in the legalization process of *kontract* – they draft *kontracts*, have them authenticated and defend them in court – despite the fact that they are fully aware of the nature and negative consequences of *kontract*.[25]

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20 Focus group discussion with local farmers, 16 September 2012.
21 Interview with a Sidama elder, 18 September 2012.
22 Interviews with local farmers, 14 and 18 September 2012.
23 Interview, 17 September 2012.
24 Interview, 14 September 2012.
25 Ambreena Manji (2012:467) describes lawyers playing a similar role in Kenya, facilitating small-scale land grabs: 'the legal profession, far from upholding the rule of law, has played

The increasing use of *kontract* is, in part, the result of changes to *koota*, a sharecropping arrangement used to match land with labour and/or other inputs. *Koota* has served as a social safety net for those who have land but are unable to work it for various reasons, including ill health, old age, absence from the land while working elsewhere, or destitution. Land left in the care of widows may also be left untended as cultural barriers prevent widows working on the land. In such cases, sharecropping arrangements – usually lasting for one or two seasons – traditionally came into play. Under this arrangement, the net profits from the harvest would go to the landholder. These could range from a quarter to three-quarters of the harvest after the deduction of expenses, depending on the nature and size of the contribution of the landholders and sharecroppers. Recently, *koota* has become a kind of precursor to *kontract*. Sharecroppers usually grow permanent crops such as coffee, *khat* and sugar cane and would, therefore, prefer to keep the land. To achieve this, having first become a sharecropper, a potential *tekonatari* extends loan after loan to the landholder until they are heavily indebted. This gives the sharecropper a bargaining chip with which to pressurize the landholder to enter into *kontract*.[26]

Kontract in the courts

When disputes emanating from *kontract* reach the regular courts, they are challenged, as the courts must handle such disputes in the context of opposing constitutional provisions, subsidiary land laws and Sidama custom.

Pre-empting court litigation

A tekonatari who foresees and endeavours to pre-empt court litigation by the *akonatari* will use elements of customary and state law selectively. To this end, as mentioned above, the *kontract* is made in writing with the attestation of three to seven elders. The written *kontract* indicates, *inter alia*, that hefty fines will be levied on any party who opts to invalidate the *kontract*, stating therein that part of the fine will go to the state treasury and part to the elders. Coupled with this is the obligation on the part of the *akonatari* to repay the entire sale price should he demand restitution.

Should an *akonatari* move to attack a deal, among the sanctions based on customary law that can be read into the *kontract* is ostracism; this means that the *akonatari* is cut off from his vital day-to-day social relations. As one informant put

a central role in (…) using its professional skills and networks to accumulate personal wealth for itself and others'.

26 As explained to in interviews with a local farmer, 12 September 2012 and with a Sidama farmer, 14 September 2012.

it: 'A person who is excluded from society in this way is regarded as a dead person.' John Hamer (1998:151), who studied the Sidama extensively, expressed it this way: 'To seek to escape normative pressure is to invite social isolation and ultimately destruction by the Creator.' Elders, who are indicated as witnesses in the *kontract* will, therefore, try to dissuade the *akonatari* from seeking to invalidate the deal, threatening him with exclusion from society, customary visitations, and ultimately cursing – the most feared sanction.[27] If the *akonatari* yields to the elders' demands, he is compelled to abandon his intention to file a lawsuit, or withdraw it if he has already filed it, and reconcile with the buyer. Even in this scenario, he may be ordered to pay a fine, usually slaughtering an animal to mark the end of the reconciliation. The heavy fine indicated in the *kontract* might be reduced or waived altogether depending on the circumstances of the case.

All these tactics, especially the use of traditional sanctions, tip such lands deals in favour of the *tekonatari*, and run counter to the fundamental tenets of *utuwa*, as well as state land laws. To suit the interests of elites it seems that new practices are being grafted onto traditional elements.[28]

Overcoming pre-emptory measures

Some *akonatari* refuse to be cowed by tradition, and show signs of breaking away from it. For example, some use a family member who did not sign the *kontract* to complain to the court that the *kontract* is invalid as it was done without their consent.[29] Finding a family member who was not part of a *kontract* is not a problem because land transfers in the locality are mostly done unilaterally by the family heads, as permitted by Sidama patriarchy. When the prompted family member goes to court to seek the invalidation of the *kontract*, the instigator (i.e. the *akonatari*) plays the role of Good Samaritan, pretending to dissuade their relative from dragging the *tekonatari* into court.[30] In some cases, the person seeking to battle it out in the court genuinely opposes the *akonatari's* unilateral act; either way *kontract* cases end up in the regular courts.

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27 Interview with Daniel Behailu, researcher from the School of Law Hawassa University on land policy and law, 22 December 2012; see also Seyoum (2006:96).

28 My fieldwork reveals that the Sidama categorize their elders into two: 'people's elders' and 'government elders'. The former are conservative, authentic, fear the sceptre of the spirit of ancestors, incorrupt, faithful to custom and rarely involved in *kontract*. When *kontract* cases are submitted to them, they tend to decide in favour of the *akonatari*, invoking *utuwa*. Government elders act to the contrary. In particular, they offer services related to dispute resolution for money, are regarded as corrupt and facilitate *kontract* much more frequently and in favour of the *tekonatari*. This taxonomy warrants a separate study.

29 Interview with a lawyer, 22 December 2012.

30 Interview with a judge, 14 September 2012, and interview with Daniel Behailu, researcher from the School of Law Hawassa University on land policy and law, 8 June 2013.

Invalidating kontract

The *akonatari* invokes the concept of contract invalidation on the grounds that the land deal was unlawful, claiming that the agreement was underpinned by a promise to deliver land ownership or land use rights contrary to the law of the land. The pleading is based on cumulative reading of the constitutional provisions, which ban land alienation, and Article 1808(2) of the Civil Code, which provides that

> A contract whose object is unlawful…may be invalidated at the request of *any contracting party or interested third party* (because) obligations to convey rights on things, if the latter are not in *commercio*, that is, are made non-transferable (non-conveyable) by law, the obligation is clearly unlawful (Krzeczunowic 1983:64–65).

Before September 2011, the decisions of the state courts (i.e. district and zonal courts) in the Sidama area on such *kontract* cases lacked uniformity, varying from court to court, from judge to judge in the same court, and even from case to case heard by the same judge. As an SNNPRS Supreme Court judge explained, in some cases, the *kontract* was invalidated and the *tekonatari* ordered to return the land. In others, judgments went in favour of the *tekonatari*, who retained the land. While in others, judges applied a ten-year period of limitation relating to contracts in general embodied in Article 1845 of the Civil Code, which provided that 'actions for the invalidation of a contract shall be barred if not brought within ten years'. This meant that, if ten years had lapsed from of the effective date of the *kontract*, the *akonatari's* claim would be rejected; if less than ten years had elapsed, then the *tekonatari* was required to restitute the land. This variation in the handling of *kontract* cases was widely witnessed in state courts in the Sidama Zone, and the lack of uniformity in the decisions of regular courts on the matter also prevailed elsewhere in the SNNPRS, where areas given over to cash crops frequently witnessed – and continue to see – deals made under the rubric of *kontract*.[31]

In September 2011, concerned with the inconsistencies around how *kontract* disputes were being handled, the SNNPR Supreme Court adopted a uniform position on the disposition of *kontract* cases through a Circular, which was approved by a forum that brought together all the court presidents in the region. The Circular stated that *kontract* should be treated like any other ordinary agreement and, as such, those legal rules governing contracts in general should apply to these deals as well. According to the Circular, one of these stipulations was the aforementioned Article 1845 of the Civil Code. The Circular also assumed that the intention of the parties at the time of the conclusion of a *kontract* was clearly to transfer ownership over land: there was no intention on the part of the parties to restitute the land at a certain point in the future. Under the Circular, land subject to *kontract* was assumed to have gone out of the hands of the *akonatari* forever. Based on this assumption,

31 Interview with SNNPRS Supreme Court judge, 25 September 2012.

the Circular divided *kontract* agreements into two types: those for which ten years or more had elapsed between the date of conclusion and that of filing for invalidation; and those for which less than ten years had elapsed. The former were to be barred from the courts by the period of limitation; the latter were to be be struck down, leading to the restitution of the disputed land to the *akonatari*.

The standard justification for the application of the period of limitation is that it is difficult to find evidence for deals that are over ten years old, much having been destroyed or witnesses having died.[32] Providing certainty around investment activities and discouraging people from sleeping on their rights for an intolerable amount of time are further cited as justifications for the ten-year limitation. However, the underlying reason for the courts not to evict a *tekonatari* is that they are regarded as 'land improvers'. As one judge observed:

> Declaring *kontract* illegal and consequent land restitution amount to evicting the developer. We judges have to consider the prevailing interest in the society, which is not to restitute the land to the seller. (Interview, 21 September 2012)

A *woreda* (district) court judge also told me:

> We currently decide in favour of the 'developer', the one who is currently working on the land. (…). There is a need to prevent a socio-economic crisis, as such transactions are rife. People genuinely thought that the transactions they have undertaken are legitimate and hence have been using the land for a longer period of time. (Interview, 17 September 2012)

In 2015, the SNNPRS Supreme Court turned round and annulled the conditional recognition of *kontract*, deciding that all *kontracts* are illegal and therefore invalid and that the passage of time should not save a *kontract* from invalidation, so all land subject to *kontract* must be restituted to the *akonatari*.[33] However, the Federal Supreme Court Cassation Division, whose decisions are binding at all levels of federal and regional courts[34], has taken two positions with regard to the practice of *kontract*: the first is the invalidation of agreements that expressly transfer land[35];

32 SNNPRS Supreme Court Cassation Division Case, File No. 36888, October 2010.

33 SNNPRS Supreme Court Cassation Division File No. 64745, May 16, 2015.

34 Federal Courts Proclamation Amendment Proc. No 454, 2005, Art. 2(1).

35 This is reflected in the decision to nullify a farmland sale agreement that was explicitly designated as such. In this case, the court also decided that a period of limitation was inapplicable (Federal Supreme Court Cassation File No, 110549, February 2016). The position was further applied in the court's decision to invalidate a land mortgage agreement given in the form of security for a loan (Federal Supreme Court Cassation File No 79394, September, 2012). The court has also applied the same approach by invalidating an agreement to transfer rural land in consideration of settlement of a debt (Federal Supreme Court Cassation File No 49200, November, 2010).

the second is to turn down petitions seeking the invalidation of disguised land sales. This means that a *kontract* whose true character is concealed – as commonly happens through the deliberate avoidance of any explicit reference to sale of land – escapes court nullification and is thus saved.

The story of *kontract* in the courts does not end here, however, because some *kontract* cases have landed in the House of Federation, which is entrusted to adjudicate constitutional disputes. The House of Federation has repeatedly struck down land sales of any kind – be they direct or indirect – based on their violation of the Constitution, and has required land restitution.[36] The House of Federation invariably invokes the constitutional principle of small farmers' immunity from eviction as a key justification. On the same grounds, it has nullified sale and mortgage agreements concerning land, and attacked rental agreements that purport to transfer agricultural land for an indefinite duration or for a period that exceeds the limit set by the law.[37]

Kontract and the local government administration

Apart from the courts, as one land administration expert indicated, other local state actors also have a role to play in the practice of *contract*, in particular by giving legal cover to such land alienation deals.[38] The entire local government administration may be implicated in supporting *kontract*, and agricultural development agents, land administration and use committees and trade and industry offices contribute conspicuously.

Firstly, agricultural development agents working for the local government administration use their knowledge of the financial vulnerability of peasants to broker land deals when potential *tekonatari* ask them to 'find land' for them.[39] Secondly, members of the local land administration committee 'write support letters' to the local agriculture office, asking for a land certificate to be issued in the name of the *tekonatari*. The committee members extort money from the *tekonatari* transferor, threatening him by saying: 'Land sale is illegal. The *kontract* is unlawful. It is even against the Federal Constitution. The committee is going to issue a land certificate in the name of the *akonatari*, not in your name!'[40] With this message they communicate to the *tekonatari* that he should give a 'good sum of money' to the committee members, who will then issue a land certificate in his name. Based on the 'support

36 Decisions of the House of Federation rendered on 26 June 2015 and 12 March 2016.
37 Decisions of the House of Federation rendered on 12 March 2016.
38 Interview with a land administration expert, 21 September 2012).
39 Interviews with Yidnekachew Ayele, Director of Legal Aid Clinics at the School of Law, Hawassa University, and researcher on family law and land rights, 12 October 2012; and with a lawyer, 8 June 2013.
40 Interview with a land administration expert, 12 October 2012.

letter', the agriculture office '(…) puts a signature on an already printed certificate and awards the certificate to the *tekonatari*'.[41] Thirdly, the agriculture office often also plays a role in overvaluing the property on a plot of land that the courts have ordered to be restituted, thus rendering restitution ineffective as most peasants are unable to pay the required compensation.[42] Fourthly, some land *tekonatari* use their *kontract* to obtain an agricultural investment license and investment incentives from the local trade and industry office. One expert working in the local trade and industry office told me:

> … some agricultural investors get land for their investment through the device of *kontract*. When such investors bring documents such as a *kontract* proving that they have secured land, we provide them with the required license and investment incentives, including loans, for which they are eligible. (Interview, 24 September 2012)

The treatment of the *tekonatari* as an agricultural investor eligible for investment incentives opens a door for him to collateralize the land subject to *kontract* – as currently happens with land acquired for coffee-processing purposes. Government-owned micro-finance institutions also take land acquired via *kontract* as security for loans.[43]

Factors driving small farmers into kontract

Several factors contribute to the prevalence of *kontract* among the Sidama. Among them are the historical experience of land alienation in the area, demographic pressure and a lack of significant out-migration from the rural population, whose consequent increase in the value of land might have contributed to the revival of land deals such as those considered here. The *akonatari* are also often driven into *kontract* by a lack of money to cover expenses such as those for customary weddings, medical treatment, education or old age (see Berhutesfa 1999). However, two factors stand out from the others as contributors to the rise of *kontract*: the lack of agricultural support schemes and the provisions of state land laws.

The unavailability of agricultural support to peasants in the area is not without historical antecedents. During the Empire (prior to 1974), agricultural support schemes were directed at commercial coffee farmers. The pursuit of socialist modernity during the Derg period (1974–1991) skewed resource allocation towards producers' cooperatives and state farms, which led to the small farmers be-

41 Interview with a local public servant, 8 June 2013.
42 Interview with a lawyer, 14 September 2012.
43 Interview with a public servant, 25 September 2012.

ing given little agricultural support. This bias has been continued since 1991, as Ethiopia has adopted and implemented an agricultural policy founded on market principles that, thus, focuses on peasant production for the market. For the Sidama smallholders, this post-1991 liberalization has meant a lack of any meaningful agricultural complementary support – such as loans and access to affordable fertilizers or quality government extension advisors – escalating input prices and market volatility, all of which have contributed to an inability to get fair prices for their produce and, consequently, to the emergence of *kontract*. The *akonatari* alienates his land because he is unable to work the land because, at present, there are no agricultural support schemes open to him.

For example, peasants are expected to purchase fertilizers and seeds from the market on a cash basis. Some time ago, the government authorities in the Sidama area briefly introduced a programme by which peasants with land could get a 50 per cent short-term loan for the purchase of fertilizers through local government bureaucracy. However, the arrangement was abused by local officials, local militia men, elders on the government payroll, unemployed youth and other people with political affiliations, who purchased more fertilizer than they were able to use and sold them back to the market, having recognized that there was no effective mechanism for enforcing the repayment of the fertilizer loans. One farmer recounted:

> I went to the chairman of my neighbourhood to find out that his house had been converted into a fertilizer store… He took fertilizers in the name of dead residents, those who left the area, children and the elderly with the intent to sell it out to retailers… (Interview, 26 September 2012)

Such corrupt practices resulted in poor collection of fertilizer debts (SNNPR Report 2011), and the scheme was discontinued, leaving small farmers to purchase fertilizers at market price.[44]

There are also problems with the government's agricultural extension service, whereby farmers who are able to purchase agricultural inputs get free advice from government deployed agricultural extension workers. At present, there is at least one government agricultural extension worker stationed in each neighbourhood in Sidama Zone. They are supposed to counsel peasants on how to till land vulnerable to erosion, how to use fertilizers and seeds, conserve land, avoid wastage during harvest and generally employ modern techniques to raise agricultural productivity. However, many peasants have questioned the relevance of the advice given to them by the often young, inexperienced extension agents, especially given the complexity of the local agro-ecology. Some are, at best, contemptuous about the quality of services given by these workers, which also include land certification, census, political agitation and work as election facilitators. As one peasant told me:

44 Interview with a local administrator, 19 September 2012.

> The government's extension program is to be valued more for creating job opportunity for the youth than for the quality of agricultural services to be gained from it. (26 September 2012)

All in all, informants claim that giving them a piece of land without the ability to use it themselves drives them to engage in *kontract*, which has the effect of reducing the size of their landholding or rendering them landless.[45]

The second overarching factor contributing to the rise of *kontract* is a set of legal rules that implies the possibility that the government authorities can confiscate land that they believe to be improperly cultivated or that has been left uncultivated for a certain period of time. This rule, which is part of the rural land laws of five major regional states, arises from the duty of the peasant to continuously till his land or risk government dispossession: 'A holder of rural land shall be obliged to properly use and protect his land. When the land gets damaged the user of the land shall lose his use right.'[46] This general provision is amplified by a regulation, which provides that:

> An individual loses land use right when he fails to implement soil conservation techniques, and leave the soil to erode, when he does not plant trees suitable to the environment, and the concerned official ascertains such failure with evidence. … The landholder shall be evicted by the concerned legal body after notifying the land holder as well as a higher body… Any rural land user who is evicted from his possession is obliged to return the land use right certificate within in a month after the decision.[47]

In practice, this means that no rural land user may negligently let his land lay fallow for more than two consecutive years. After the *kebele* administration ascertains that the land has not been ploughed, it gives an oral warning to the land user in the presence of the *kebele* land administration and use committee and local elders. If the land is not ploughed within six months of this warning, the *kebele* administration gives a written warning to the land user within a month. If the land is still not tilled even after this written warning, he loses his usufruct rights.[48]

These stipulations give unchecked discretion to local administrators to evict peasants for misuse use of the land or failure to use the land for two consecutive years. When these provisions are seen in the context of the Sidama area's

45 Focus group discussions with local farmers, 21 September 2012 and 12 October 2012; and interview with Yidnekachew Ayele, Director of Legal Aid Clinics at the School of Law, Hawassa University, and researcher on family law and land rights, 10 December 2012.

46 SNNPRS Rural Land Administration and Use Proc. No 110, 2007, Art. 10 (1).

47 SNNPRS Rural Land Administration and Use Reg. No. 66, 2007, Art. 13 (4, a, c and d).

48 SNNPRS Rural Land Administration and Use Reg. No. 66, 2007, Art. 13 (5); SNNPRS Rural Land Administration and Use Proc No 53, 2003, Art. 9 (6) & 7).

longstanding association with the state in relation to land, people are quite legitimately suspicious, even though there is no evidence that the authorities have actually invoked these provisions. In summary, the above accounts show that the ability of small farmer to use their land has been incrementally diminished by several decades of government inaction concerning agricultural support services and the introduction of land laws that increase the insecurity of tenure.

Winners and losers under kontract

There is a distinct imbalance in the economic positions of the *akonatari* and *tekonatari*. In most cases the *tekonatari* has urban roots and his livelihood does not depend on farming but comes rather from non-agricultural sources, often he is either a model farmer or trader or local public servant. He makes permanent improvements on the land acquired immediately, to foreclose any possibility of land recovery in the event of litigation. He further possesses the capacity to cover the costs associated with land certification and successfully defend himself from land recovery suits. He also has the ability to invoke Sidama tradition to foreclose any land restitution claim. *Kontract* cases entertained by the House of Federation, on the other hand, reveal the weak financial status of the *akonatari*. In one case, an a*konatari* mortgaged her land to cover the expenses for searching for her lost children; the mortgage led eventually to sale. In another case, a litigant mortgaged her land to provide money for food, and ended up selling her farmland.[49] Moreover, a review of the decisions of the federal and regional supreme courts with regard to *kontract* reveals that many *akonatari*, being indigent, are only able to pursue their cases in the courts with the support of free legal aid.

The relative weakness of the *akonatari* is also manifested in the likelihood that his land will be restituted even after a decision is made in his favour by the federal and regional supreme courts or House of Federation. The current position taken by the federal and regional supreme courts, including that of the House of Federation, indicates that land will be restituted. However, in practice, the land is often not recovered by the *akonatari* because immediately after securing a decision invalidating the *kontract*, the *tekonatari* may file another suit demanding compensation for the property on the land on the basis of Article 1815 of the Civil Code, which states: 'Where a contract is invalidated…the parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made.' Such suits are routinely accompanied by a stay of execution order aimed at retaining possession of the land in the hands of the *tekonatari* until the litigation on compensation is finally settled. The second round litigation is long and protracted. The court order,

49 Decisions of the House of Federation rendered on 26 June 2015 and 12 March 2016.

which delays the execution of land restitution to the *akonatari*, allows the *tekonatari* to continue investing in the land and, in the end, to use the experts from the local agricultural office to secure an overvaluation of the property.[50] Property overvaluation is often exacerbated by corruption, the lack of a national property valuation formula and experts. Even if property appraisement is carried out properly, it is difficult for the *akonatari* to pay compensation to the *tekonatari*, because the latter has usually made significant improvements to the land since the conclusion of the *kontract*, with a view to 'buying tenure security' and hence forestalling any future possibility of land restitution. Under such circumstances, it is virtually impossible for an *akonatari* to actually get their land back.

Peasants who transfer their landholding as a whole via the *kontract* scheme tend to lose their farming skills, first during periods of *koota* (sharecropping arrangements) and then during the long period of *kontract.*[51] And the increasing trend for commercially driven *kontract* transactions is one of the reasons for a noticeable shift away from production of food crops to the production of cash crops – particularly coffee, *khat* and sugarcane. The revival of *kontract*, together with the lack of seed and fertilizer subsidies for poor farmers, has contributed to food insecurity in the study area. As one local farmer put it:

> We used to produce pretty much most of what we ate on our own farms in the old days; now we buy food items from the markets at higher prices, like those who live in towns. Those who purchase land through kontract grow cash crops, mainly sugar cane, khat and eucalyptus trees, all destined primarily for urban people. (Interview, 23 September 2012)

Thus, evidence suggests that rural households in the area are experiencing food insecurity in which land alienation through *kontract* plays a part, even if the degree of its contribution in this regard requires further empirical investigation.

Discussion, conclusion and suggestions

Analytical perspectives from economics, legal positivism, and legal pluralism

Kontract may be seen through the lenses of economists, lawyers, or legal pluralists. Economists view *kontract* as a simple land rental agreement, with land to be restituted on a specific agreed upon date. More broadly, the economists also regard *kontract* as a free juridical expression of the peasants' demand for restrictions on

50 Interviews with a judge and a practising lawyer, 24 September 2012.

51 Interview with an elder, 14 September 2012 and interview with a local public servant, 18 September 2012.

the transferability of land use rights imposed by the state law to be lifted (Tesfaye 2004, McClung 2012). To such economists, a degree of differentiation in the size of landholdings is necessary in rural Ethiopia, where too much equality in land allocation prevails, to enhance the productivity of the land. For them, *kontract* is a useful tool in replacing the miniscule and uneconomical farm plots (also called starving plots) common in rural Ethiopia with relatively larger farmlands, since it transfers land from those who cannot use it to those who can. These medium and large farms improve agricultural productivity, which in turn leads to economic development, with its supposed trickledown effect on the poor (Deininger *et al.* 2008). Thus, they argue, policy should let these 'people-driven land rental practices' evolve and be prudently governed by land laws and institutions. State courts should nurture, not nullify, grassroots practices concerning land transactions.

The economic efficiency oriented view outlined above can be attributed to international organisations such as the World Bank and United States Agency for International Development (USAID). A study conducted by the World Bank has argued that:

> Most farmers would rather rent their land during stressful periods compared with any other alternative, such as selling it. In other words, in addition to all the other benefits of rental markets suggested in the literature, the availability of formal land rental markets will serve as a caution to enable farmers to withstand unfavourable circumstances by temporarily renting their land rather than selling it. Small farmers are driven into informal land deals by state land laws that impose restrictions on land use rights of small farmers; remove the restrictions to make them beneficial for the poor (Haddis 2013:9).

It has also been claimed that 'unofficial transaction may negatively affect women and other vulnerable people because it does not provide effective legal backing when local land grabbers snatch their holdings' (Haddis 2013:10). Thus, the solution is to liberalize land markets, among others, to solve the problem of shortage of land and capital, to encourage the movement of people towards off-farm activities, and to increase land tenure security. Research done under the auspices of USAID presents *kontract* as an ordinary 'land rental', that is, as, a contractual arrangement for a defined duration with land restitution in the end (Gizachew and Solomon 2011:7, McClung 2012). The same research classifies land transactions in Sidama area simply as land rental and sharecropping arrangements, discounting out *kontract* in the sense understood here (Gizachew and Solomon 2011, McClung 2012).

Lawyers with a legal positivist orientation (i.e., those who assume that the state is the exclusive source of law) would see *kontract* in terms of a violation of state land law. Under *kontract*, the intention of the parties is to transfer land rights over rural land permanently in favour of the *tekonatari*. The legal positivist approach is in

line with the stance taken by the House of Federation, as well as with the position adopted by the Federal Supreme Court Cassation Division and the latest judgments of the SNNRS Supreme Court. To positivist lawyers, the prevalence of *kontract* is due to a lack of clarity, the existence of loopholes in the state land laws, their weak enforcement, and an absence of clear sanctions against those who enter into land sales. As *kontract* is a legal problem, therefore, they recommend the introduction of additional laws that are specific, complete, clear, effectively communicated to the right people and properly enforced upon transgression.

Legal pluralists, on the other hand, view *kontract* as constituting a third layer of the land tenure regime, lying somewhere between *utuwa* and state land law. Unlike for the legal positivists, the accent here is not on mere legality or economic efficiency, but rather on the recognition of a different set of land norms and institutions, including *kontract*, whose validity and legitimacy emanates from the grassroots, that is, the local people.

However *kontract* is viewed, one point is clear: the prevalence of *kontract* in rural Sidama is weakening the professed protective purpose of the current land policy of Ethiopia, which is meant to ensure that land remains in the hands of peasants as a survival asset. Allan Hoben (2000:30) has observed:

> The present tenure system with state ownership of land…could not prevent land sales and mortgaging but made them take place where the sellers are at a disadvantage, could not prevent land transfer from rural communities to commercial farmers and urban dwellers… could not slow rural–urban migration…

Summary and conclusion

Kontract is a practice of disguised permanent transfer of farmland encapsulated in an agreement concluded between *akonatari* (transferor) and *tekonatari* (transferee). It is a hybrid of state law and Sidama customary law, for it takes elements from both. At the same time, it is opposed to both. *Kontract* conflicts with the Constitution's clearly stated tenet that agricultural land held by the rural masses is a survival asset and is *ex-commercium*. And it is inconsistent with time-honoured egalitarian, though not inclusive, principles embodied in Sidama custom.

Despite this, *kontract* has gained some kind of legitimacy from the state apparatus. The position of the federal and regional highest courts towards *kontract* has been contradictory and lacks uniformity: where the courts repudiate *kontract*, their decisions are not effective because of power imbalances; and from the point of view of the *akonatari*, court decisions in this regard are not worth the paper they are written on. Legitimacy is also given to *kontract* by land administration agencies, which accept the *tekonatari*'s annual land use fee and register land subject to

kontract in the *tekonatari*'s name. Hence, to some degree, *kontract* is a state-sanctioned land deal, which allows those with financial clout to undertake what might be called small-scale land grabs.

The subtext in the practice of *kontract* favours those deemed 'improvers' of the land, and has adverse consequences for economically vulnerable sellers. Thus, the diagnosis of *kontract* undertaken here suggests that the egalitarian principle behind Ethiopia's land policy is being undermined. This indicates the need for a rural land reform, which should have twin pillars: it should grant the poor access to both agricultural land and to meaningful agricultural support. Such a land reform should be augmented by a system of good land administration that, among other things, includes a mechanism for minimizing or eliminating land-related corruption. The implication of all this is that the debate surrounding negotiated legal pluralism should consider critically its outcome, which is rooted in a significant power imbalance, instead of merely valorising it as a potent tool for providing flexibility and human agency. In other words, there should be critical scrutiny of who is negotiating with whom, under what circumstances and with what impact.

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