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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the right to food, Olivier De Schutter, submitted in accordance with General Assembly resolution 65/220.

Summary

Better access to markets is key to improving livelihoods for many small-scale farmers in developing countries. Recently, contract farming has been presented as an optimal solution, benefiting firms as buyers, small-scale farmers as suppliers and Governments. This report identifies the issues raised by the expansion of contract farming and notes seven areas in which Governments and firms could ensure that it results in pro-poor outcomes and contributes to the full realization of the right to food. Contract farming rarely encourages farmers to climb up the value chain and move into the packaging, processing or marketing of their produce. The report therefore also examines other business models that could be more inclusive, such as farmer-controlled enterprises, joint ventures or direct-to-consumer food marketing practices by farmers. It is vital to ensure a diversity of outlets for the produce of small-scale farmers to strengthen their position in the food chain, which contributes to the realization of the right to food in rural communities and rural development in general.

* A/66/150.

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I. Introduction

1. There is now a broad consensus on the need to tackle rural poverty and the lack of access to adequate food by increasing support for agriculture. Over the past few years, and particularly since the global food price crisis of 2007-2008, a significant reinvestment in agriculture has been occurring. Previously, the Special Rapporteur documented some of the risks and opportunities resulting from that development. He identified some good practices that could ensure that the investments would contribute to the alleviation of rural poverty and food insecurity and to the empowerment of small-scale farmers (see A/HRC/13/33 and Add.2 and A/65/281). Unless the realization of the right to food serves as the foundation of the current reinvestment in agriculture, the situation of the poorest farmers working on the most marginal land could be further aggravated by this process, which leads to increased competition for productive resources, and the existing dualization of the farming sector could worsen as a result.

2. A key but often underestimated challenge is how to improve the access of farmers to markets. An overemphasis on export-led agriculture in many developing countries may have perverse consequences, leading those countries to depend on a narrow range of raw commodities for their export revenues and making them highly vulnerable to price shocks as food importers (see A/HRC/10/5/Add.2). Small-scale farmers, herders and fishers producing for local consumption[1] could be the primary beneficiaries of strengthened local and regional markets, which would enhance their access to local buyers, particularly urban consumers. Consequently, the Special Rapporteur has consistently encouraged initiatives that could improve the links between local producers and consumers through appropriate infrastructure and price information and the organization of value chains. Guideline 4.5 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security notes that "States should, as appropriate, promote the development of small-scale local and regional markets and border trade to reduce poverty and increase food security, particularly in poor rural and urban areas" (see E/CN.4/2005/131, annex).

3. The development of small-scale local and regional markets seems to be the most promising avenue towards the realization of the right to food in many developing countries where rural poverty is widespread. The choice to focus the present report on business models that are alternatives either to the spot markets or to large-scale acquisitions or leases of land is consistent with this conviction. While alternative business models, such as contract farming, are generally associated with foreign investment and global supply chains, such alternative models can also be adopted by local actors, including public bodies. Under certain conditions, alternative models can help in the development of localized food chains, for instance by linking farmers' cooperatives to the local food-processing industry or to local fresh produce retailers serving urban consumers.

4. The report is based on recent scientific literature and on various site visits undertaken by the Special Rapporteur. It also benefited from inputs from a wide range of stakeholders, including international development cooperation agencies,

[1] The present report refers primarily to crop production, but most of the lessons are transposable to these other sectors of farming, broadly conceived.

United Nations funds and agencies, academic institutions, private sector experts and non-governmental organizations.

II. Contract farming

5. Contract farming has been defined as an agreement between farmers and processing and/or marketing firms for the production and supply of agricultural products under forward agreements, frequently at predetermined prices.[2]

A. Drivers behind the rise of contract farming

6. Contract farming has gained importance in recent years in both developed and developing countries.[3,4] Buyers see it as a means of strengthening control down the supply chain in order to respond to an increased need for production traceability and food product standardization, as quality and food safety standards have gained in importance and as consumers express concerns about the environmental and social aspects of production.[5] Controlling contracted farmers to prevent extra-contractual marketing or the diversion of inputs received for uses other than crop production under the contract may be costly, but the costs are generally offset by the improved reliability and more consistent quality of supplies compared with products purchased on the open market.[2] Contract farming can minimize firms' risks with respect to changes in supply and demand and allows firms to promote safety standards and other quality requirements. Contracts also enable firms to schedule the delivery of products at optimal times for their business, something that they cannot control when relying on the spot market.[4]

7. Firms transfer responsibilities for labour management to farmers through contract farming, and labour costs may be lower because contract farmers often use unpaid family workers. Furthermore, firms using contract farming arrangements can maintain more fluid operations because they are not constrained by fixed assets. These are some of the reasons why, for instance, contract farming with smallholders has been seen as an attractive option in India for companies in the horticultural, poultry and dairy sectors. Although transaction costs are relatively high, this model spreads risk over a large number of suppliers (the buyer, therefore, is not at risk if

[2] C. Eaton and A. Shepherd, *Contract Farming: Partnerships for Growth* (Food and Agriculture Organization of the United Nations (FAO), Rome, 2001).

[3] M. Brüntrup and R. Peltzer, "Outgrowers — a key to the development of rural areas in Sub-Saharan Africa and to poverty reduction", report of the DEG/DIE Workshop on 18 August 2006 (Bonn, 2007).

[4] C. da Silva, "The growing role of contract farming in agri-food systems development: drivers, theory and practice", Agricultural Management, Marketing and Finance Service Working Documents, No. 9 (FAO, Rome, 2005).

[5] R. Rama and J. Wilkinson, "Foreign direct investment and agri-food value chains in developing countries: a review of the main issues", *Commodity Market Review 2007-2008* (FAO, Rome, 2008).

any one major supply source defaults) and provides for flexible supply that adapts easily to volume or quality variations.[6]

8. A considerable number of small-scale farmers have joined such schemes.[3,7] In part as a result of the withdrawal or reduction of public extension services over the past 30 years, contract farming often represents the only viable option to improve livelihoods, as such agreements guarantee access to markets as well as to good-quality inputs (often supplied at lower wholesale prices) and technical advice, and facilitate both access to certification schemes and meeting standards.[8] The shift to higher-value crops, improved productivity and the lowering of their marketing and transaction costs may result in higher incomes. Contract farming may also improve farmers' access to credit,[9] either because firms directly provide credit or because banks accept farmers' contracts as collateral. Depending on the particular type of arrangement, contract farming can provide a guarantee that farming revenues will be relatively stable and insulated from market price fluctuations.[2] In addition, firms sometimes pay farmers a premium to ensure that they do not engage in selling outside the contract.[10] As a model of direct procurement, which generally cuts out the middleman, contract farming may also be seen as a winning solution for consumers, firms and farmers alike.[7]

9. Governments have generally supported contract farming.[11] They see it as a way to increase farmers' incomes, attract foreign investment and reduce the fiscal burden on Governments, as buyers having long-term contractual relationships with producers often provide the services and types of support traditionally provided by Governments.[9] It has therefore not been unusual for firms to benefit from government financial incentives promoting contract farming, such as tax breaks or tariff reductions.

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[6] According to a study conducted for the European Commission, while most buyers prefer to deal with medium-scale farmers, since contracting with small-scale farmers results in high transaction costs (including monitoring costs), some reasons why small-scale farmers may nevertheless be seen as attractive are their reliance on cheap (unpaid) family labour and their higher degree of dependence since they would typically find it difficult to have access to markets except through the buyer.

[7] B. Vorley et al., "Business models that are inclusive of small farmers", in *Agro-Industries for Development*, C. da Silva et al., eds. (Rome, CAB International and FAO, 2009).

[8] See, e.g., B. Minten et al., "Global retail chains and poor farmers: evidence from Madagascar", LICOS Discussion Papers, No. 164/06 (showing that small contract farmers from the Highlands of Madagascar producing vegetables for supermarkets in Europe and supported by buyers to comply with complex standards and phytosanitary requirements have higher welfare, shorter lean periods and more income stability than farmers selling to local retailers). It is relevant to note that these findings are strongly related to the buying practices of one company, Lecofruit (Légumineuses Condiments Fruits de Madagascar SA), which is by far the major exporter of high-value vegetables from Madagascar and buys from more than 9,000 contract farmers in the country, each cultivating on average less than 1 ha.

[9] S. Setboonsarng, "Global partnership in poverty reduction: contract farming and regional cooperation", Asian Development Bank Institute Discussion Paper No. 89 (Feb. 2008).

[10] P. Birthal, "Making contract farming work in smallholder agriculture", National Centre for Agricultural Economics and Policy Research, New Delhi.

[11] See in particular New Partnership for Africa's Development, "Contract farming offers fresh hope for Africa's declining agriculture", East Africa Policy Brief, No. 2 (Johannesburg, South Africa, 2006).

B. Clarification of the implications of the right to food

10. Whether contract farming will contribute to the realization of the right to food will depend on context, the specific contractual arrangements and to what extent a human rights-based approach is adopted.[12] It is thus important for host States, investors and farmers to consider some of the main benefits and drawbacks of traditional contract farming models, as well as to identify the criteria that can ensure that contract farming truly benefits small-scale farmers. A human rights-based approach leads to the criteria set out below.

1. Duties of the State: respect, protect and fulfil

11. States, under international law, have the duty to respect, protect and fulfil the right to adequate food. The duty to respect requires States not to take any measures that result in preventing access to adequate food. The duty to protect requires measures by States to ensure that enterprises or individuals do not deprive individuals of their access to adequate food (see E/C.12/1999/5, para. 15). Consequently, States must control long-term arrangements between investors and buyers and between farmers and producers to prevent the risk of abuse or, where abuses do occur, to ensure that effective remedies are available. They must also protect basic labour rights recognized under the core International Labour Organization (ILO) instruments, since the failure to comply with such rights can lead to violation of the rights to work and to an adequate standard of living recognized in international human rights law.[13] The duty to fulfil obliges States to proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security (see E/C.12/1999/5, para. 15). To the maximum extent of their available resources, States must, therefore, create an environment enabling farming communities to enter into various arrangements under conditions that ensure that their rights will be effectively safeguarded, despite sometimes stark inequalities of power and asymmetries of information among the various parties.

12. States should also support farming communities by providing certain goods and services required to achieve an adequate standard of living through farming. Although private investors may provide some of the same goods and services, leading some commentators to view contract farming as a means to ensure the more efficient distribution of such goods and services,[14] it would be misplaced to view contract farming as a substitute for the indispensable role of the State in this regard. Guideline 2.6 of the Voluntary Guidelines on the right to food recalls the duties of the State where poverty and hunger are predominantly rural. It is expected that States, for instance, will provide technical assistance to farmers through public agricultural extension services, ensure access to reliable and assured credit for

[12] See, for critical views, D. Glover and K. Kusterer, *Small Farmers, Big Business: Contract Farming and Rural Development* (New York, St. Martin's Press, 1990); P. Little and M. Watts (eds.), *Living Under Contract: Contract Farming and Agrarian Transformation in Sub-Saharan Africa* (Madison, University of Wisconsin Press, 1994).

[13] International Covenant on Economic, Social and Cultural Rights, arts. 6 and 11; see also A/HRC/13/33, paras. 13-20.

[14] L. Ortega and M. Dirven, "Agroindustry and small-scale agriculture: a comparative synthesis of different experiences", report LC/R.1663 (Economic Commission for Latin America and the Caribbean, Santiago, 1996).

small-scale farmers at reasonable rates and help to create basic price support mechanisms for small-scale farmers.[15] Contract farming should not become a driver of the privatization of extension services,[16] or serve as an excuse for Governments to neglect their duty to support farmers with the provision of public goods, since it is precisely the most marginalized farmers who would suffer most from the retreat of State support.

2. Need for non-discriminatory business models

13. A human rights-based approach requires a focus on the most vulnerable, those who are most often excluded from progress. Contract farming schemes often exclude the poorest farmers, who have limited and marginal land and fewer resources to invest and live in remote areas. Researchers note that the transaction costs associated with providing inputs, credit and extension services and carrying out product collection and grading are disincentives for firms to contract with smallholders, so firms often prefer to engage with medium- or large-scale farmers.[5,9,17] Unless vulnerable and marginalized groups are considered specifically, they may be excluded from the opportunities that these business models seek to create. Moreover, small-scale farmers are usually in weaker bargaining positions. They may be illiterate or lack the skills to effectively defend their rights and interests in contract negotiations. Women often are marginalized, particularly where decisions are made at the community level through decision-making processes from which they are de facto excluded.

3. Need to ensure coherence and sustainability

14. What is in the interest of the parties to certain contractual arrangements or business models may not be in the interest of the community as a whole, and the solutions may not be sustainable. For instance, contract farming may divert agricultural production towards cash crops that, while potentially increasing revenue for some producers, may also lead to local food price increases, as less food would be produced for local consumption, with the risk that food would become unaffordable for the poorest in some communities. This may be in violation of the requirement that “every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement” (see E/C.12/1999/5, para. 6). The specialization in cash crops frequently entails a loss of biodiversity and a shift away from diversity and towards

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[15] See, e.g., FAO, “Pathways to success: success stories in agricultural production and food security” (Rome, 2009).

[16] See P. Birthal et al., “Vertical coordination in high-value food commodities: implications for smallholders”, MTID Discussion Paper No. 85 (International Food Policy Research Institute, Markets, Trade and Institutions Division, Washington, D.C., 2005), and I. Delforge, “Contract farming in Thailand: a view from the farm”, Focus on the Global South, Occasional Papers 2 (Bangkok, 2007).

[17] N. Key and D. Runsten, “Contract farming, smallholders, and rural development in Latin America: the organization of agroprocessing firms and the scale of outgrower production”, *World Development*, vol. 27, No. 2 (Feb. 1999); P. Simmons et al., “An analysis of contract farming in East Java, Bali, and Lombok, Indonesia”, *Agricultural Economics*, vol. 33, s3 (Nov. 2005); J. Coulter et al., “Marrying farmer cooperation and contract farming for service provision in a liberalising sub-Saharan Africa”, *Natural Resource Perspectives*, No. 48 (Nov. 1999). The evidence on this point is mixed, however. See, for the argument that there is no bias against small-scale farmers, footnote 16.

mono-cropping in farming systems that may be detrimental to the biotic activity of the soil and may accelerate soil erosion. States have a duty to “protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry” (E/CN.4/2005/131, annex, para. 8.13).

C. Avoidance of negative transformations of the political economy of food chains

15. An analysis of contract farming grounded in the right to food highlights six potential problems. Four arise from the shift to contract farming itself, and two stem from the specific content of the contract farming arrangement into which some farmers enter.

1. Overspecialization and unsustainable agricultural practices

16. Contract farming is generally associated with the production of commercial crops for export, mono-cropping and forms of production that rely heavily on chemical fertilizers and pesticides, often with adverse repercussions for human health and for soil. None of these consequences, however, are inevitable in contract farming. As already noted, this kind of contractual arrangement between a buyer and a farmer can be used to produce crops for sale on the domestic market and contribute to the strengthening of local markets, and in particular to improving the links between rural producers and urban consumers. Contract farming could and should include incentives for moving towards more diverse farming systems, using a combination of plants, trees and animals according to the principles of agroecology (see A/HRC/16/49). While contract farming often involves the provision of inputs, including mineral fertilizers, by the buyer, it may also include provisions that oblige the producer to comply with certain environmental conditions, for instance more cautious use of pesticides.

2. Vulnerability of small-scale farmers to food insecurity through food price volatility

17. Contract farming often leads the producer to shift from food crops to cash crops. When farmers change all of their crop production to non-food crops covered by contractual arrangements, however, they relinquish the ability to produce food for their families, thus losing a valuable safety net. This renders the farmers vulnerable to food price increases, particularly if firms do not meet their contractual obligations or if farm incomes are lower than expected in comparison to the evolution of food prices. Farmers sometimes also have to manage gaps between contract cycles, during which time they do not earn any money from farming.[18] To mitigate the risks involved in the shift to cash crops and the resulting dependence of farming households on the market to purchase food, a portion of the contracting farmer’s land should be left to the farmer or other household members to grow food crops for household consumption. This can be effective especially where the contract farmer benefits from technology and skills transfers, leading to multiplier effects on non-contracted farming activities, including subsistence crop farming.[2] Similarly, farmers can use by-products and residues from contract farming activities

[18] I. Delforge, “Contract farming in Thailand: a view from the farm” (see footnote 16).

in various ways, including by selling the by-products or using them for subsistence activities. In Madagascar, small-scale farmers contracted by Lecofruit for vegetable production use part of the land for the production of rice, the staple crop, and the productivity of rice increases (from 3.6 to 6.0 tons/ha) thanks to the use of compost and manure and the recycling of waste from vegetable production. In Mali, the production of biodiesel from jatropha by small-scale farmers contracted by MaliBiocarburant SA (MBSA) produces residual "press cakes" that can be used as an organic fertilizer, as well as glycerine used to produce soap. The jatropha trees are intercropped with maize, which accounts for 80 per cent of the surface, ensuring that priority is given to staple food crops.[19] This should ensure adequate protection for the contract farmer against the risk of occasional bad harvests or sudden crop price depressions.[20] Such a guarantee of a stable income commensurate with an adequate standard of living is essential, and even a pricing mechanism that, as proposed below, guarantees a minimum price to the producer (unless the price is linked to the cost of production and the cost of living) would not provide an equivalent safeguard.

18. Beyond the farming household, the switch to cash crops also increases vulnerability to price shocks for the local community. When the contracted crops are edible produce that is available on the local market, it may be helpful to ensure the accessibility (physically and economically) of adequate and culturally acceptable food for the population. One possible solution to facilitate the enjoyment of the right to food of the community is to include a local marketing requirement in the contract whereby a certain percentage of crops is sold on the local market.[21]

3. Transformation of small-scale farmers into false wage-earning agricultural labourers on their own land

19. More generally, contract farming can lead to a loss of control over production, including which crops to produce and how to produce them. Contract farming can thus cause farmers to become essentially wage-earning agricultural labourers on their own land, but without the benefits associated with paid labour, such as minimum wages, sick leave and other legislated benefits. Contracted small farmers are then seen by the buyer as labour market intermediaries. This is particularly clear after plantations are broken up by owners to create small-scale farms, possibly to break the power of unions or divest firms of their responsibilities, with negative effects on former labourers. Seen in this light, contract farming raises a number of questions that concern the right to work and the conditions of employment on family farms. Contract farmers often rely on family labour to fulfil work requirements. While this may be seen as leading to greater employment opportunities, it often simply results in more family members working without pay because that may be

[19] Center for Human Rights and Global Justice, "Foreign land deals and human rights: case studies on agricultural and biofuel investment" (New York University School of Law, 2010).

[20] Indeed, for small-scale farmers who are averse to risk, such a guarantee may be essential to joining a contract farming scheme. See H. Binswanger, "Attitudes toward risk: experimental measurements in rural India", *American Journal of Agricultural Economics*, vol. 62, No. 3 (1980) (showing that smallholders may prefer lower but stable incomes to potentially higher gains but associated with higher levels of risk).

[21] L. Cotula, "Investment contracts and sustainable development: how to make contracts for fairer and more sustainable natural resource investments", Natural Resource Issues No. 20, International Institute for Environment and Development (IIED) (London, 2010).

the only way to cut costs and to make the contractual arrangement profitable. In such contexts, child labour can become a problem in contract farming arrangements.[22] Article 10 of the International Covenant on Social and Cultural Rights and article 32 of the Convention on the Rights of the Child impose on States the obligation to protect children and young persons from economic and social exploitation and to punish their employment in work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, spiritual, moral or social development. States must adopt effective measures to ensure that the prohibition of child labour is fully respected (see E/C.12/GC/18, para. 24). It is also relevant to note that in accordance with article 9 of the Covenant, States must guarantee the right to social security, which must also be accessible to independent producers (see E/C.12/GC/19).

20. Specific problems are associated with the hiring of outside labourers by contracting farmers. Such labourers may not be covered by the same labour laws that cover agricultural workers on larger plantations. Article 7 of the Covenant recognizes the individual dimension of the right to work, stating the right of everyone to the enjoyment of just and favourable working conditions. All workers are entitled to fair wages and equal remuneration for work of equal value without distinction of any kind; in particular, women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; a decent living for themselves and their families; and safe and healthy working conditions. Working conditions for labourers on small farms, however, are often worse than on larger plantations. Wages for labourers on small farms are often extremely low, and women labourers are frequently paid even less than male labourers. Monitoring compliance with labour legislation is difficult, especially since labourers on small farms (just like agricultural workers on large plantations) are unlikely to be unionized, and labourers' employment situations on small farms are often insecure. Contract farming makes small farms more like large-scale plantations, and in this case in particular it encourages the farmer to hire an outside workforce on a more or less regular basis. In such cases, the enforcement of labour legislation encounters specific challenges, which may be best tackled by ensuring that the buyer controlling production also controls compliance with domestic labour legislation.

4. Gender effects

21. Women have less access to contract farming than men. A study found that in the Kenyan horticulture export industry, women comprised fewer than 10 per cent of contracted farmers, and in a sample of 59 contract farmers for French beans exported from Senegal, only one was a woman.[23] The ability of women to benefit from contract farming is determined by their rights over land and by the power relationships both within households or, when the contract is negotiated through representatives of the community or the farmers' organizations, within those groups. Indeed, even where most of the work is in fact performed by the wife and other family members, it is not unusual for the contract to be signed by the husband, as head of the household, as is seen in sugar contract farming in South Africa or in

[22] S. Singh, "Contract farming in India: impacts on women and child workers", Gatekeeper Series No. 111, IIED (London, 2003).

[23] M. Maertens and J. Swinnen, "Are modern supply chains bearers of gender inequality?", paper presented at the ILO-FAO workshop on Gender and rural employment: differentiated pathways out of poverty (Rome, 2009).

vegetable contract farming in the Indian Punjab.[24] In addition, studies suggest that women lose control over decision-making when crops are produced for cash rather than for local consumption. While women decide about the use of food produced for self-consumption, they do not decide how the income of the household is spent. Therefore, unless the framework for contract farming respects women's rights and is gender sensitive, it will undermine gender equality.[25] Research done on bean contract farming in Kenya shows, for instance, that while women performed most of the work, they received a limited portion of the revenues from the contract. In addition, where they did receive cash, they were expected to contribute to household expenditures even when this would have been the husband's responsibility.[26] Strengthening the position of women is not only a matter of guaranteeing the right to equality of treatment, but also a means of improving productivity, since women receiving a greater proportion of the crop income will have a greater incentive to increase production. Moreover, household food security and children's health, nutrition and education all gain from improved income for women, in comparison to the gains that result from improved income for men. The more women decide on how to spend household income, the more it is usually spent on children's needs;[25] a child's chance of survival increases by 20 per cent when the mother controls the household budget (see A/HRC/13/32, para. 58).

5. Potential for trapping small-scale farmers in cycles of debt

22. While the ability of buyers to purchase inputs at wholesale prices might allow them to pass savings on to farmers through lower prices, it may also be that when a farmer has access to inputs only through a buyer, the buyer will charge farmers higher than market prices for those inputs. In the course of consultations, the Special Rapporteur received a communication indicating that in the absence of public services, contract farming can create potentially devastating dependence by small farmers on the technology, credit, inputs and services provided by their contracting companies. This not only points to the danger of the Government relinquishing its duty to support farming communities by providing adequate public goods in the hope that private investors will fill in the gap, it also highlights one of the main negative effects of contract farming for farmers, which is its potential to trap them in cycles of debt. One common occurrence is that farmers must borrow money to invest in agricultural production as required under the contract and then do not earn enough money to cover their debts, for instance, because of falling market prices or poor harvests. This risk is particularly important where the investment on the land is related specifically to one type of production for which the contracting firm is the only buyer, a constraint that may be exploited by the firm as a way to exercise monopolistic power and thus gradually impose lower prices on farmers.[4] Crops that rely on complex production and processing technologies and substantial specialized inputs that are unfamiliar to most growers and require large capital outlays significantly increase the level of risk confronted by growers, as illustrated by the Smallholder Sugar Authority and Smallholder Tea Authority

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[24] See J. Behrman et al., "The gender implications of large-scale land deals", IFPRI Discussion Paper No. 01056, International Food Policy Research Institute (Washington, D.C., 2011).

[25] See M.-K. Chan, "Improving opportunities for women in smallholder-based supply chains", for the Bill & Melinda Gates Foundation, 2010.

[26] C. Dolan, "Gender and witchcraft in agrarian transition: the Case of Kenyan horticulture", *Development and Change*, vol. 33, No. 4 (September 2002).

contract-farming schemes in Malawi.[27] The resulting cycle of debt can trap farmers into contractual arrangements that are neither optimal nor easily abandoned, either because of the debt itself or for other reasons, for example, because the soil was degraded by heavy pesticide use or because farmers have lost their relationships with former transaction partners, are unable to re-establish traditional cultivation methods or products or have become too dependent on the firm for other services.[4]

6. Inequitable contracts resulting from asymmetry of power

23. The bargaining position of farmers is often weak before they enter into contracts. They typically have less information and negotiating skills than their business partners and a lower degree of legal literacy.[3] The way prices are determined, the deductions for the provision of inputs, the conditions under which the contract can be terminated and the way in which the quality grading of the produce is assessed are all areas in which contractual clauses may be heavily biased in favour of the buyer.

24. Under such clauses, firms may reject delivered products by stating falsely that they do not conform to quality regulations, thus transferring financial losses to farmers when market prices are low. Firms can manipulate prices when the price mechanism specified by the contract is not transparent, using complex price formulas, quantity measurements or price measurements. They also can manipulate delivery schedules to benefit from market price changes or from changes in a product’s qualities upon which prices are based (for example, delaying the purchase of sugar cane when prices are based on sucrose levels because sucrose levels decline rapidly after harvest).[4]

III. Elements that a contract should integrate

25. States should pay attention to a number of issues, listed below, to ensure that contract farming arrangements contribute to the realization of the right to food. Agribusiness enterprises also have a role to play. Consistent with their responsibility to respect human rights (see Human Rights Council resolution 17/4), they should seek to incorporate good practices in their dealings with small-scale farmers. The Special Rapporteur highlights seven areas where improvements could be made.

A. Long-term economic viability

26. The arrangement must be viable for all the parties concerned. If it appears unviable to the buyer, the contract may be terminated or the buyer may renege on obligations when under financial stress, with detrimental consequences for the livelihoods of farmers. If the arrangement is unviable for the farmer, for instance because of an unsustainable debt, the buyer may face supply problems in the short

[27] What is specific about this example is that the State, rather than private buyers, contracts farmers under this scheme, supplying the growers with credit, crop inputs and extension services, which the growers must reimburse. The costs of participation for small-scale farmers are disproportionate, since fixed costs, including costs for the payment of extension services, are highest for those who cultivate small plots. See M. Warning and W. Soo Hoo, “The impact of contract farming on income distribution: theory and evidence”, paper prepared for the Western Economics Association International Annual Meeting (2000).

term and incur high reputational costs with other farmers, which may make it more difficult for the buyer to enter into arrangements with other producers in the longer term. Agreements should be structured so that both farmers and firms benefit and so that both sides desire to respect the contract and do not have strong incentives to renege on it.

B. Support for small-scale farmers in negotiations

27. To satisfy the first condition above and because small-scale farmers are in a comparatively weaker bargaining position, they should have the opportunity to contribute to the wording of contract provisions, ensuring that the contracts reflect the farmers' needs and that obligations are written in terminology that the farmers will understand. Farmers' organizations may have a key role to play in supporting the negotiation of contracts and in providing advice, and the bargaining position of farmers is strengthened by their being organized in cooperatives that negotiate on behalf of the members. This also lowers the transaction costs for buyers, and may reduce the risk of farmer defaults by providing group lending and improved communication. Once contracts are drafted, farmers must be provided with a copy of the contract. In the case of illiterate parties, the written contract should be reviewed by farmers' representatives, a farmers' organization or a supporting non-governmental organization. Copies should also be made available to relevant governmental agencies to ensure appropriate oversight and reduce the risk of abusive clauses.

C. Gender equality

28. Contracts should be put in the woman's name where it is expected that the woman would be the main person working on the farm, or, in the case of a couple, in the names of both parties. It should not automatically be in the name of the male head of household or the male holder of the title to the land cultivated.

D. Pricing

29. The pricing mechanisms should be clear and transparent and show how prices incorporate production costs, risks and returns.[7] While a variety of price models exist (e.g. spot market-based pricing, split pricing, fixed prices and flexible price model), in the view of the Special Rapporteur, the ideal pricing mechanism is one replicating the formula used in fair trade schemes. The producer should be guaranteed a fixed minimum price based on the need to meet production costs and to ensure a living wage for all the workers concerned (including family members, where applicable) (see A/HRC/13/33, paras. 14-17), but the prices paid by the buyer should be higher if market prices increase. This is the price-setting mechanism used, for instance, by MBSA for the acquisition of jatropha produced by smallholders in Mali. The farmers, represented by a union of cooperatives, are guaranteed a minimum price, which may increase relative to the price of diesel at the pump.[19] This eliminates the temptation for the producer to sell goods outside the terms of the contract, and thus the need for the buyer to closely monitor the producer's operations. It therefore guarantees a stable supply for the buyer, while

simultaneously reducing transaction costs linked with the contracting of a large number of small-scale suppliers. Pricing mechanisms should be subject to an independent arbitration mechanism, and farmers should be provided with the market prices of internationally traded commodities to reduce the risks associated with the asymmetry of information between the parties.

E. Quality standards

30. Standards must be clear and specific so that firms cannot manipulate the application of vague standards. On the other hand, they should not be too complex, which could also allow firms to manipulate standards. Firms should demonstrate the standards visually to farmers. In addition, the firm's representatives should explain well in advance how crops are graded.

F. Environmental sustainability

31. Contract farming should increasingly seek to promote agroecological forms of production and provide adequate knowledge as well as biological inputs. Contract farming will increase its sustainability if it is based on sustainable, knowledge-intensive modes of production that rely on on-farm fertility generation and pest management rather than on external inputs. Where the contract provides for highly input-intensive modes of production, specific requirements should ensure that the reliance of the producer on external inputs (in particular, improved varieties of seeds and chemical fertilizers) does not lead to a situation of increased dependency for the contracting farmer: (a) when inputs are provided by the buyer, reasonable prices should be charged, never exceeding commercial prices; (b) farmers should be offered the possibility of seeking insurance to protect them from changes in the price of the inputs they are sold; and (c) other forms of support, particularly technical advice, should be prioritized, ensuring that sustainable practices are tested and promoted, including biological control, composting, polycropping or agroforestry.

G. Mediation and dispute settlement

32. Contracts should facilitate communication between parties through appropriate management structures and should identify ways of resolving disputes. It should be acknowledged that in the vast majority of cases where one of the parties fails to comply with the requirements of the contract, there is no resort to courts because the sums involved are too small and because, in many developing countries, courts are in practice inaccessible to the rural poor. Buyers, on the other hand, are reluctant to use formal legal procedures, not only because it is impractical to do so, but also because of the risk that the relationships with the farming communities will turn sour.[28] The real sanctioning mechanism is the breakdown of the contractual relationship. The farmer will refuse to continue to supply the buyer if he or she feels that the relationship is imbalanced, and the firm will cease buying from the farmer if

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[28] J. Kirsten and K. Sartorius, "Linking agribusiness and small-scale farmers in developing countries: is there a new role for contract farming?", *Development Southern Africa*, vol. 19, No. 4 (2002).

it considers that he or she is not complying with the expectations set.[29] Therefore, while the legal system is one of the main accountability mechanisms available, other mechanisms should be established. Among them are negotiation spaces, independent arbitration mechanisms, forums in which farmers can raise concerns and conflict mediation by non-governmental organizations or third parties. Regular meetings should be organized between the parties to ensure a consistent flow of communication so as to identify problems early on. Specific quotas to ensure the equitable representation of women on committees representing contracting farmers could be established.

IV. Other business models that could benefit small-scale farmers

33. Contract farming rarely encourages farmers to climb up the value chain and move into the packaging, processing or marketing of their produce. The purpose of contract farming is to organize a division of labour between the seller and the buyer in which the seller is confined to the production of raw commodities. In addition, all the strategic decisions — about what to grow and how to grow and about which markets to target — are with the buyer. The producer is merely the executor. Finally, in contract farming, the interests of the two parties differ: while both have an obvious interest in the success of the arrangement, the terms of the contract will be more or less favourable to each, at the expense of the other. Other business models, therefore, should be explored.

34. In the view of the Special Rapporteur, farmer-controlled enterprises, joint ventures and community-supported agriculture schemes provide interesting and complementary ways to rethink the political economy of food chains for the benefit of small-scale farmers. Although there are several other business models not studied in this section,[30] the models explored here highlight the need to think more broadly about investment in agriculture and access to markets for small-scale farmers.

A. Farmer-controlled enterprises

35. Farmers can be encouraged to form their own cooperatives, farmer associations or collectives.[31] While such farmer-controlled enterprises can enter into contract farming schemes (in conditions more favourable to the members), they also can strengthen farmers' negotiating skills and bargaining positions in their dealings with the suppliers of inputs and commodity buyers; they can facilitate access to markets and to moving towards the processing, packaging and marketing of crops;

[29] M. Warning and N. Key, "The social performance and distributional consequences of contract farming: an equilibrium analysis of the arachide de bouche program in Senegal", *World Development*, vol. 30, No. 2 (2002); H. Guo et al., "Contract farming in China: supply chain or ball and chain?", paper presented at the 15th Annual International Food and Agribusiness Management Association Forum and Symposium, 2005.

[30] See S. Vermeulen and L. Cotula, "Making the most of agricultural investment: a survey of business models that provide opportunities for smallholders", IIED/FAO/International Fund for Agricultural Development (IFAD)/Swiss Agency for Development and Cooperation (SDC) (London/Rome/Bern, 2010).

[31] See J. Coulter et al. in footnote 17.

and they can improve the ability of their members to contribute to the design and implementation of public policies that affect them (see A/HRC/13/33, paras. 30 and 31). For instance, the total income of farmers with group marketing in the Philippines (as supported by the MASIPAG network, which reaches 35,000 farmers practising sustainable agriculture) is about 45 per cent higher than the income of other farmers.[32]

36. Collective ownership models can give small-scale farmers more autonomy over their land and production than traditional contract farming arrangements and can also cut out middlemen that might take a large percentage of earnings. Collective farming can also empower women farmers, strengthen their claims to land and protect their right to work.

37. Farmer-controlled enterprises come with their own challenges. Large organizations may be unresponsive to the needs of individual farmers, as was the case with some State-controlled cooperatives in the past. Small cohesive groups are generally more successful than larger organizations that might be less responsive to members.[31] Organizing farmers can require a lot of effort and may not be efficient for farmers with limited time. Particularly where democratic control within the group is weak, such organizations may not always provide economic benefits to its members. The leadership may not be well-trained in managerial and business skills. Accountability towards members must be balanced against the need for continual and effective leadership, for instance by providing that professional managers report to an elected cooperative board without being subject to elections, as in a reported example of a cooperative in Guatemala.[7] Organizations formed by external agents and supported by development actors may be unsustainable in the long term if their viability depends on the support level they receive. When farmer-controlled enterprises are formed and led by non-governmental organizations, development organizations or the public sector, it may be desirable to set a timeline for the end of external support. The design of such an exit strategy in the business plan when the enterprise is established should ensure that the enterprise is sustainable and will be viable on its own.

B. Joint ventures

38. Farmers (generally through their organizations) and private investors may establish joint ventures, with each party contributing in cash or in kind. Such business models ensure, in theory, that both sides are equal partners and are co-owners of the project. Both sides hold equity shares in the joint venture, while retaining their individual legal status and sharing in profits or losses made by the joint venture. Enabling farmers to be shareholders allows them to influence company governance and negotiate price policy, to share in the benefits (whether profit is reinvested or distributed as dividends) and to improve access to credits and other farm-related services.[33]

39. For instance, Divine Chocolate Company Ltd. (formerly the Day Chocolate Company) was established in 1998 by Kuapa Kokoo Farmers' Union (KKFU),

[32] L. Bachmann et al. (eds.), *Food Security and Farmer Empowerment*, MASIPAG (Los Baños, Philippines, 2009).

[33] M. de Koning and B. de Steenhuijsen Piters, "Farmers as shareholders: a close look at recent experience", Bulletins of the Royal Tropical Institute, No. 390 (2009).

representing 68,000 cocoa-producing farmers in Ghana, and TWIN Trading, a membership organization based in the United Kingdom of Great Britain and Northern Ireland comprising 24 farmer cooperatives from eight countries dedicated to developing the fair-trade supply chain for the coffee, nuts, cocoa, sugar and fruit produced by 163,000 farmer families. Christian Aid, Comic Relief and Oikocredit, a microfinance institution, also supported the joint venture by taking shares, as did the Body Shop, which later donated its shares to KKFU. The Department for International Development of the United Kingdom guaranteed a bank credit line from a major commercial bank, which gave Divine Chocolate better access to finance and enabled it to grant a larger quantity of shares of the company to KKFU, resulting in greater decision-making power in the operations. KKFU now owns 45 per cent of the shares of Divine Chocolate as well as 33 per cent of the shares of the United States branch of Divine created in 2007. Divine Chocolate sold more than $71.5 million worth of chocolate in its first nine years of operation. In 2001, dividends were paid for the first time, after offsetting set-up costs. They remain symbolic (a direct payment of $1 per member), but come on top of the fixed prices by KKFU, the fair-trade premium and the benefits of the farmer support and development programme, to which Divine contributed more than $1.22 million in its first 10 years of operation. The arrangement facilitated income-generating activities and supported community projects (including boreholes, schools, sanitary facilities and mills), as well as the training of farmers and participatory decision-making.[34]

40. MBSA is another promising joint venture model, focusing on the production of biodiesel from jatropha in collaboration with smallholders in Burkina Faso and Mali, with support from Dutch private institutional investors and the Government of the Netherlands. In Mali, 2,611 farmers were involved in 2009, having planted 1.6 million jatropha trees on 3,250 ha of land. The farmers are organized in 12 cooperatives, joined in a farmers' union. The union negotiates the price of the jatropha with MBSA and provides support to the farmers. The farmers' union is represented on the board of the company and owns a 20 per cent share of the company. The farmers, therefore, benefit directly from the sale of their produce and from dividend payments as shareholders.[19]

41. Joint ventures, however, are not a panacea. A number of studies indicate that this model does not necessarily deliver better livelihoods for small-scale farmers or improve rural development and the realization of the right to food. The firm frequently controls all business decisions, and the joint venture might manipulate accounts to avoid paying out dividends.[21] Questions arose in South Africa, for instance, after the beneficiaries of the post-1994 land restitution and redistribution programmes were encouraged to establish joint ventures with agribusinesses or to conclude leaseback agreements granting the former landowners use of their lands in conditions sometimes deemed unfair,[34,35] and in Malaysia, after the Government, under the "Konsep Baru" (New Concept) scheme, encouraged production of palm oil on land under native customary rights in Sabah and Sarawak, in the form of a

[34] L. Cotula and R. Leonard (eds.), "Alternatives to land acquisitions: agricultural investment and collaborative business models", chap. 2, IIED/SDC/IFAD/Centro Terra Viva (London/Bern/Rome/Maputo, 2010).

[35] Ofreneo, "The leaseback mode of agrarian reform: strengths, weaknesses and options", Action for Economic Reforms, Poverty Series (September 2000); for a similar situation in the Philippines, C. Flores-Obanil and M. Manahan, "Leaseback arrangements: reversing agrarian reform gains in the Philippines", *Farm Bulletin*, vol. 1, No. 2 (2006).

three-way joint venture among a private plantation company (60 per cent of the shares), a local community (30 per cent) and a parastatal agency (10 per cent) in which the local communities in effect relinquished all day-to-day decision-making power within the joint venture.[30]

42. To reduce such risks, farmers' organizations and host Governments should have representatives on the board of the joint venture company, which should include safeguards for minority shareholders. The local partners could also be represented on the board of the holding company.

C. Community-supported agriculture

43. Direct-to-consumer food marketing is an even more innovative way of linking small-scale farmers to markets in conditions that allow them to increase their incomes and at the same time to control their production. Although still relatively marginal, local food systems have made spectacular progress in recent years in a range of developed countries. In the United States of America, direct-to-consumer food sales more than doubled in 10 years, moving from $551 million in 1997 to $1.2 billion in 2007, and the number of farmers' markets rose from 2,756 in 1998 to 5,274 in 2009. In 1986 there were two community-supported organizations, whereas now there are an estimated 1,400 such organizations. The United States Department of Agriculture estimates that in 2007, 136,817 farms were selling directly to consumers.[36] Modern community-supported agriculture emerged in Japan with the *teikei* system, and now shows a strong growth in several countries, including Canada and France, where the network of "Associations pour le maintien d'une agriculture paysanne" now includes 1,200 community-supported agriculture schemes. Although they are often linked to the increased consumer demand for organic products, such initiatives ensure farmers a guaranteed outlet for their produce and stable revenues.

44. Two interesting attempts to link small-scale farmers to local consumers through a redefinition of local food systems are found in Belo Horizonte, Brazil, and Durban, South Africa. Both examples were studied closely by the Special Rapporteur when he conducted official missions to those countries in 2009 and 2011. In 1993, Belo Horizonte adopted a municipal law, setting out a policy framework based on the concept of food sovereignty and established a secretariat for food policy and supply. Under this framework, it sought to create various channels of affordable access to healthy food. Because conventional markets were often found to be too expensive for low-income groups and because the poorest parts of the city, the favelas, were usually not well served with respect to food distribution, the secretariat established mobile food distribution services. It sought to support family agriculture through government food purchases and incentives prioritizing local producers, seeing such support as a key to reducing migration to the cities and encouraging organic production methods. The local food system of the city was rethought by integrating the logistics and supply chains of the entire food system and by tying local producers directly to consumers to reduce prices. In 2008, 34 producers from eight rural municipalities of Belo Horizonte, selected through a public process, were assigned fixed sale points throughout the city, and the price and

[36] S. Martinez et al., "Local food systems: concepts, impacts and issues", United States Department of Agriculture, Economic Research Report No. ERR-97 (May 2010).

quality of their produce were regulated to ensure that the food would be affordable and healthy. In the same year, the city operated 49 conventional and 7 organic markets, benefiting 97 small producers from surrounding areas.

45. In the City of Durban/eThekwini Municipality, with a population approaching 4 million people, a new Agricultural Management Section within the municipality seeks not only to support community food gardens, but also community mini-farms and emerging commercial farms. The municipality identified 26 farmers' associations and 800 community gardens and aims to improve market linkages with the urban residents. It is estimated that, provided that there is adequate support, such gardens could generate 60,000 jobs. One key objective for the municipality is to become increasingly self-sufficient in fresh and affordable food through surplus sales to the urban centre. The Agricultural Management Section established six hubs to pursue this strategy — in effect, centres to support local farmers and improve their ability to market their produce, including sites demonstrating agroecology techniques, a research and development centre on agroecology, training sites, a packing and marketing hub and, in the future, a seed bank.

V. Conclusions and recommendations

46. **The Special Rapporteur concludes from his review of alternative business models that they all carry potential risks and benefits for the realization of the right to food and that Governments have a key role to play in protecting individuals against the many risks involved and in ensuring that contract farming and other business models support the right to food of small producers, their local communities and the entire population.**

47. **Governments should support the organization of farmers into cooperatives and other types of producers' organizations that can improve farmers' bargaining position and help them to move up the value chain into the produce packaging, processing and marketing operations and help them to acquire inputs and sell their produce under better circumstances. This condition is necessary to ensure fairness in the negotiations between investors and farmers' organizations. Governments could also provide legal advice to farmers or their organizations to enhance their negotiating position and to ensure that any contract they choose to enter into is economically sustainable for them.**

48. **As part of their national strategies for the realization of the right to food, Governments should create an environment enabling the development of local markets benefiting small-scale farmers and the creation of a range of options for connecting small-scale farmers in rural areas to urban consumers. The more farmers have alternatives for accessing markets, the stronger their position will be in negotiating the terms of agreements with private entities for contract farming or joint ventures.**

49. **Governments have a duty to support the realization of the right to food, to the maximum extent of their available resources, by providing small-scale farmers with appropriate support, including by:**

(a) **Providing stable and reliable infrastructure services such as roads, water, electricity and communications;**

(b) **Supporting traditional and wholesale markets;**

(c) **Establishing schemes allowing small-scale farmers to climb up the value chain, including by identifying at the local or regional level which partnerships could be established between producers, packagers, processors and retailers;**

(d) **Requiring public extension services to provide advice to farmers on how to create joint ventures with firms or how to establish farmer-controlled business entities.**

50. **Governments could also encourage preferential sourcing from small-scale farmers through fiscal incentives or by making access to public procurement schemes conditional on the bidders' compliance with certain sourcing requirements.**

51. **Governments should ensure that the degree of competition among traders is sufficient to prevent farmers from being locked into unequal relationships with a particular trader in the absence of alternative buyers for a given crop. In particular, Governments should ensure that the expansion of contract farming does not result in the dismantling of public support schemes and the privatization of agricultural extension services, which would narrow the range of options available to small-scale farmers and increase the asymmetry of power between unorganized small-scale farmers and private actors operating on a national, regional or global scale.**

52. **Governments should ensure that regulatory oversight keeps pace with the level of the expansion and the complexity of business models, including small-scale farming. Certain key clauses of contracts should be regulated, including those concerning price fixing, quality grading and the conditions under which inputs are provided, and the reservation of a portion of land for the production of food crops for self-consumption. The contracts, once agreed upon by the parties, could be subjected to vetting by authorities to ensure that any abuse is identified and, where appropriate, remedied; in addition, non-judicial dispute resolution mechanisms should be made available. Particular attention should be paid to the seven critical aspects and good practices for contract farming identified in section III above. In addition, Government agencies should:**

(a) **Monitor labour conditions in contract farming and ensure that the expansion of such farming does not lead to the overexploitation of cheap family labour or to indirect downward pressure on the labour rights of agricultural workers;**

(b) **Link their support for contract farming to compliance with certain environmental conditions, such as reduced use of chemical fertilizers or the planting of trees, or to the adoption of a business plan that provides for a gradual shift to more sustainable types of farming.**

53. **National food security institutions should monitor and assess the contribution of the various business models explored in the present report to the realization of the right to food. These institutions could build on the work of the National Council on Food and Nutrition Security in Brazil or the specific work of the South African Human Rights Commission on food security issues. Governments should also set up forums in which the fairness of food chains**

could be discussed among producers, processors, retailers and consumers to ensure that farmers are paid fair prices for the food they produce. Such forums could examine:

(a) **How the farm gate price relates to the retail price and whether the wedge between the two remains within a reasonable margin;**

(b) **How more direct links could be established between producers and consumers.**

This should be seen as part of a larger enterprise of developing local food systems and thus of creating alternative outlets for small-scale farm production.

54. **Agribusiness enterprises should incorporate the seven good practices identified in section III in their dealings with small-scale farmers.**

55. **Development partners and international organizations can ensure that contract farming schemes work for the benefit of the poor small-scale food producers and respect the principles of the right to adequate food, including by increasing the capacity of community-based organizations to negotiate equitable agreements with the private sector, by contributing to financing equity participation by local communities in joint ventures or by supporting farmer-controlled enterprises to acquire the assets and managerial skills necessary to climb up the value chain, as initial support is frequently needed to start businesses that will become self-sustaining.**