

**UNIDROIT Working Group for the preparation
of a Legal Guide on Contract Farming**

**Contributions by participants in the Knowledge Group
assisting the Working Group**

**CONTRACT FARMING IN BOLIVIA:
AN OVERVIEW OF LAW AND PRACTICE**

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This paper was prepared as a result of a field research in Bolivia in May - June 2012
and a research at UNIDROIT in October - November 2012
sponsored by the American Foundation for International Uniform Law

1. CONTRACT FARMING IN BOLIVIA: A LEGAL OVERVIEW

THE NEW LEGAL FRAMEWORK FROM A CONSTITUTIONAL APPROACH

The new economic model

Bolivia's political instability results in the permanent change of its institutions' state, names and structure. Since President Morales, the Government has launched the "National Development Plan -Bolivia dignified, sovereign, democratic and productive for the Good Living¹."

This economic model seeks a) a socially inclusive development, b) decentralization and community social power c) transformation of the productive, industrialization and export core model, and d) change in the international relations approach².

The new constitutional framework:

The new Political Constitution (PC) of 2007 has important connotations on agriculture and on the rural economy. It has triggered a new legal framework, particularly with the new enactment of the Jurisdictional Demarcation Act, the Autonomies Act and the Law on the Agricultural Productive Communitarian Revolution (LAPCR). Other laws include the "Law on the Rights of Mother Earth", "General Law on Mother Earth and Integral Development for the Good Living", "Law on the Peasant Indigenous Economic Organizations and Communitarian Economic Organizations" and "Law on the Value Chain of Sugar".

The Political Constitution has an important role on agricultural production from environmental, cultural, social and economic reasons. Particularly, four concepts are identified: land use and property, the plural economy, plural justice and food sovereignty.

- **Plural Economy and food sovereignty:**

The Constitution recognizes a national economy that is plural, consisting of different cultural identities and modes of production from a state, private, community, family or individual level. The State has to attend to the weakest links in the agricultural value chain, promoting an

¹ The term "Good Living" ("*Vivir Bien*") is a precolonial concept from the Andean cultures. See as a reference: "*Buen Vivir / Vivir Bien -Filosofía, políticas, estrategias y experiencias regionales andinas*" Coordinadora Andina de Organizaciones Indígenas – CAO; Fernando Huanacuni Mamani (2010).

² "*Plan Nacional de Desarrollo: Bolivia digna, soberana, productiva y democrática para vivir bien*"; Resumen elaborado por Esteban Sanjines ; Fundación TIERRA (July 2006); pp.1.

“integral development”³ of agriculture, a “fair exchange between farmers and the rest of the economy”⁴, and organic production⁵.

In this context, the so called communitarian production gains particular attention, as further established by the LAPCR, which seeks a social and economic inclusion of rural communities. LAPCR law allows communities to take part in the definition and monitoring of public policies, or in its wording, it establishes a “State planning with social participation”. But it goes to the extent of comparing communities to economic organizations⁶. While a “Fair Trade” market is necessary and offers interesting opportunities, communities may be rather heterogeneous and not necessarily a synonym of production units, in contrast to producers freely associating themselves⁷. The LAPCR also provides new finance mechanisms, but these are again mainly focused to communitarian production, and not so much to other business-oriented organizations, starting from producer associations. Accordingly, small, medium and big enterprises are excluded - with minor exceptions- from its scope⁸. Nevertheless, a delayed regulatory law is still pending, which should define its full scope and application.

The State plays a central role in the economy and in the elaboration of production strategies, even to the extent of influencing on consumers’ preferences⁹. Several State enterprises are created, such as a seeds company, an organic fertilizer factory or a company dedicated to commercialize and transform agricultural products (EMAPA). The LAPCR creates local, regional and national Productive Economic Councils, mainly comprised of government and indigenous jurisdiction representatives, and with a minor participation of the private sector. These councils participate in the elaboration of public policies for the agricultural production.

There is a priority and protection of national production, and international trade restrictions are possible. Current government has occasionally restricted exports and regulated national prices of agricultural products, producing outrage and opposition of the agribusiness sector alleging economic damages and a collapse on the logistic chain¹⁰. The LAPCR targets national markets and excludes international trade provisions, even when many exporters (and potential exporters) are farmers¹¹. Naturally, Foreign Direct Investment is relegated, although the Government has announced the enactment of a new Investment Law¹².

- **State intervention on the exploitation of natural resources and strategic activities:**

³ The term is used in the preamble and other parts, such as Section III: Sustainable Rural Integral Development.

⁴ Art. 405 (3).

⁵ Art. 407 (3); Art. 2 of the Law on the Agricultural Productive Communitarian Revolution.

⁶ See for instance Art. 8 (recognition of communities as economic communitarian organizations).

⁷ *Informe Nacional de Coyuntura N° 130*; Fundación Mileno.

⁸ “*Ley productiva: nuevo experimentalismo*”; Nueva Crónica magazine (July 2011); Carlos Hugo Laruta.

⁹ LAPCR determines that school curricula shall include food education, and in its scope the consumption of food that is “culturally appropriate”.

¹⁰ 2011 Annual Report of the National Association of Oilseeds Producers (ANAPO); pp.23 ff; http://www.anapobolivia.org/documento/doc_2012.09.21_501675.pdf “*Cupos y banda de precios opacan producción soyera*”; El Día; <http://tinyurl.com/a9wmbzl>.

¹¹ See for example Quinoa section (Land property) on the first part of this report.

¹² “*La nueva ley de inversiones*”; Los Tiempos; <http://tinyurl.com/aer9xbk>.

The PC has a broad definition of Natural Resources, and the ambiguousness of the term leads often to confusion; in any case, it is always directed to a strong control from the State. Natural resources are considered as "minerals in all states, hydrocarbons, water, air, soil and subsoil, forests, biodiversity, the electromagnetic spectrum and all physical elements and forces fit for human use"¹³. Natural resources are considered of "strategic and public interest for the development of the country"¹⁴. While it does not explicitly determine that Natural Resources are of State property, it provides that they are the indivisible and inalienable property of the Bolivian people, administrated by the State in the collective interest. From a literal interpretation, the definition would include agricultural production. This is however not always the case, as for instance on Article 352, which states that the exploitation of natural resources on a determined area shall be subject of a public consultation to the population potentially affected. But in other cases, exploitation of natural resources can indeed include agricultural production. For example, water resources and forestry are defined as "strategic resources", on the view of emphasizing- with less ambiguity - the level of State control. Although so far there has been no nationalization in the agribusiness sector, all Supreme Decrees authorizing the several nationalizations of companies have relied on the State's "strategic" interest¹⁵. The PC establishes that the State may intervene in the value chain of strategic sectors, and the subsequent LAPCR declares the agricultural sector as "strategic". The relationship between "strategic" and agricultural production is broad. A nationalization of any agricultural production is then possible and may even extend to inputs, forests or even water for irrigation. The precedent threatening private property and investment in agriculture is so far related to land encroachments by organized sectors alleging constitutional rights¹⁶. Nevertheless, it is important recalling that the PC also guarantees private initiative, private property and private enterprise.

- **Legal Pluralism and the Indigenous Peasant Jurisdiction:**

The PC determines at least three separate, equally in hierarchy jurisdictions¹⁷, closely related to the rural and the agro: the Ordinary Jurisdiction, the Environmental Jurisdiction and the Indigenous Peasant Jurisdiction (IPJ). This represents a constant threat of conflict of jurisdictions and a consequent hindrance of the right of legal certainty.

The peasant indigenous jurisdiction defines Bolivia as a plurinational State. When undertaking any activity in rural areas, it should be taken into account the particularities of a given community, especially regarding their forms of production and social relationships. The IPJ has autonomy from any other jurisdiction, and in that sense it can be organized according to their institutions, authorities and laws.

¹³ Art. 348.

¹⁴ *ibid.*

¹⁵ For instance, the Supreme Decree 1214 of Nationalization of the Electricity Distribution Company ENDE, makes an interpretation of the PC in regards to "natural resources", "strategic interest" and "value chain", concluding that the public policy is directed to "recover the control administration and direction of strategic companies". The decree is available at <http://tinyurl.com/bc5hlfq>.

¹⁶ *Supra* note 1.

¹⁷ Both PC and the Jurisdictional Demarcation Law provide three jurisdictions, although not on a limitative manner. In other words, there is the possibility of even more jurisdictions.

The new Autonomies Act and the Jurisdictional Demarcation Act develop the concept of legal pluralism and create the "Indigenous Autonomy". More precisely, the Jurisdictional Demarcation Law regulates the limits of the IPJ and its relation and coordination with other jurisdictions. The IPJ can only be exercised when there is a confluence of material, personal and territorial jurisdiction. In other words, IPJ has jurisdiction over a particular case happening inside a community's territory, affecting at least one of its members and it is not a matter reserved to other jurisdictions. Restrictions on material jurisdiction can be subject of broad interpretation and discussion. The law only provides ambiguous limits, basically over matters of public interest and international law, such as certain criminal provisions or international treaties. But furthermore, whole areas of law such as labor law, tax law, or administrative law are excluded from its scope. There is no clear limit of what "tax law" or "labor law" may comprise, while a single matter may always be seen or affected under different areas of law. Moreover, the law leaves open the possibility of other limits established by law, without specifying which law, or how such law can be enforceable under another jurisdiction¹⁸.

In the case of signing a contract having effects on a rural area (as most contract farming agreements do) one should then carefully choose, to the extent possible, a specific jurisdiction and applicable law, more or less on the same terms of an international contract. In practice, ordinary jurisdiction's laws and/or local uses and customs are applied to transactions.

- **Land use and property:**

Land property can be collective or private. In any case, land property must fulfill a social and economic function as defined by the PC¹⁹.

Collective property is indivisible, permanent, non-embargable and non-taxable. Limits of collective land are often ambiguous, and when productive, these are a cause of disputes among communities²⁰. Furthermore, its indivisible nature can hinder the free association of producers. Restrictions to credit occur because of its non-embargable nature.

Individual property is classified into small, medium and corporate property. Its extension is limited depending on livestock or farming, and also according to zones (altiplano, valleys and tropical plains). In any case, according to the PC no land may exceed 5000 hectares. The small property is again non-embargable.

Land within a rural community has traditionally been distributed away from a formal legal framework, and closer to the community's customs and understanding of legality, a situation increased by the State's lack of presence in rural areas. On recent years, these arrangements have been legally recognized as "communal lands".

It is important mentioning that land lease is prohibited. The PC does not offer a definition and uses the term "*renta fundiaria*" or "land rent", which could be interpreted as broad as including other types of contracts. In practice, however, land is so far commonly leased for agricultural purposes.

¹⁸ For further detail, see Art. 11 of the Jurisdictional Demarcation Law.

¹⁹ See Art. 397 for the definitions.

²⁰ See for instance the Quinoa section of this report.

Other practical aspect to be considered is that foreigners cannot own land directly or indirectly within 50 km from national borders.

- **Environmental Protection and prohibition of transgenic seeds:**

The Constitution protects the biodiversity, genetic resources of national ecosystems, and traditional knowledge. Intellectual property of genetic resources such as seeds, are therefore constitutionally protected. The use of transgenic seeds has been dramatically restricted, and the newly enacted General Law on the Mother Earth and the Integral Development for the Good Living establishes a gradual elimination of all transgenic crops, with major consequences on transgenic oilseeds crops.

CONTRACT LAW

Contract law provisions are overlapped in the Civil and Commercial code, both containing general and specific provisions over contracts and obligations. The Civil Code's section on the general norms over contracts provides the elements of the contract, contract formation, enforceability, etc. The obligations section refers to covenants and rights, the effects of obligations, consideration, extinction of obligations, etc.

There are only few contracts specifically addressed, some of them with partial effects on contract farming. In any case, the law guarantees freedom of contract, and any contractual provision imposed by law is considered to be automatically inserted on the contract.

A contract is formed when offeror has knowledge of the offeree's acceptance, and the acceptance that includes any material modification is considered a new offer. The perfection of the contract can also be conditioned to a future and uncertain event, such as the harvesting of a future crop.

Provisions over the sales contract on the Civil Code may be applicable on contract farming. The Commercial Code additionally regulates the international sales contract and INCOTERMS.

On any sales contract, the vendor is obliged to hand over the goods to the buyer, and he guarantees the conformity and the transfer of property of the goods. On many agricultural production contracts, goods or rights being sold are non-existent at the time of signing the contract, in which case the transfer of property takes effect and the contract is perfected once they exist²¹. The contract is considered void in the event that the goods or rights don't come to existence²². Another possible condition for the perfection of the contract, is submitting the conformity of goods to previous testing (*venta a prueba*)²³.

²¹ Article 594 of the Civil Code

²² Ibid

²³ Article 587 of the Civil Code

Price is commonly agreed by the parties, unless otherwise established by law. According to the current Government's Food Sovereignty plan, restrictions on prices are intermittently applied to ensure internal market's supply²⁴.

Another contract provided by the Commercial Code on a general manner, is the supply agreement. In the agro, it is used as a delivery contract²⁵. Its main characteristic is the delivery of goods or supply of services on a periodical basis. It is presumed-however- that price is determined and paid on each single transaction. Some companies therefore enter into a contract farming agreement under this form, because it allows a commercial link with producers on a more permanent basis.

The contract of deposit has also important effects on agriculture, since produce is stored on silos or warehouses for several purposes. For instance, it is stored or gathered for its processing; to sell it at a better price in the future; to gather production of several farmers; as on-going inventory; or to be used as collateral. Unfortunately, this contract is not orderly classified, and it is indistinctively provided and overlapped in different laws. The civil code includes several types of deposit contracts, but establishes that the deposit in warehouses is ruled by the Commercial Code. The commercial code regulates the deposit of finished, unfinished and in transit goods. It also refers to the warrant contract, whereby the warehouse has legal authorization for issuing bonds over the pledged assets under its custody.

Similarly, the Regulation for Secured Agricultural Loans (described in the APPENDIX of this report), regulates the use of agricultural produce at warehouses as collateral. Here, the product in the inventory can be sold, while the warehouse acts as a guarantor. Payments for the sold product are performed to the warehouse, which retains the corresponding part to repay the installments of the credit, and pays the remaining to the producer.

Additionally, legal provisions referring to the deposit contract may be used to interpret *maquila* contracts. These agreements are commonly used in the sugar sector, and they are considered under the legal doctrine as a type of deposit contract²⁶.

Related with the deposit contract, the Civil Code also provides the pledge of both produce and means of agricultural production. Opposite to the deposit contract, the debtor keeps and guards the pledged goods. The pledge can even result from production that is "pending"²⁷. The terminology is certainly misleading, but it may be interpreted as to a crop that has not been yet harvested. The credit shall only be used for agricultural purposes, and even when not

²⁴ Supra Note 15.

See also following articles:

"Fijan banda de precios a derivados de soya"; El Sol de Santa Cruz; <http://tinyurl.com/aqzjqc>

"Cupos y banda de precios opacan producción soyera"; Instituto Boliviano de Comercio Exterior (IBCE); <http://tinyurl.com/ajhalb3>.

²⁵ See for instance the quinoa section on this report.

²⁶ This contract type is common in Latin American countries and has been regulated for example under Argentinean law.

²⁷ Art. 1418: "Pueden constituir prenda sin desplazamiento: 1. El agricultor y el ganadero sobre los instrumentos y productos de su explotación, aún cuando estos últimos estuviesen pendientes."

agreed by contract, creditor can perform inspections to oversight debtor's compliance. This is a formal contract that has to be validated by a public notary or a public authority.

The commercial code also contains provisions over agricultural insurance contracts. However, because of its complexity, these are practically existent. The Government has promised to implement a public agricultural insurance, which has even been included in the New Political Constitution as well as in the Law on the Agricultural Productive Communitarian Revolution (LAPCR). So far, there have been rather modest implementations benefitting small producers in the poorest areas, mainly in the occidental part of the country²⁸.

LAW ON THE VALUE CHAIN OF SUGAR OF 23 NOVEMBER 2012

The Law was recently passed with certain opposition by the sugar sector, although it was intended to be drafted as a product of consensus between government, mills and producers²⁹.

The sugar industry has the most complex contractual relationships in the agricultural sector outside live-stock. Mills commonly require big investments and have an impact area near its facilities, because cane cannot be transported to long distances. Producers and mills have an interdependency relation and are obliged to permanently negotiate the terms of their agreements.

Contracts for the production of sugar are typically under the form of a *maquila* contract. Contrary to the Argentinean legislation that has a law exclusively to regulate such contracts (Law 25.113 of 1999), this law does not refer to *maquila* contracts as such, but rather to "cooperation agreements" ("*convenios de cooperación*") and "direct sales contract of sugar cane", without any definition of such terms. Moreover, the cooperation agreement does not clearly protect property rights of the producer over his cane. Article seven establishes that the producer has property rights over the cane delivered to the mill, and then the property rights over the transformed produce in the agreed percentage, with no clear instance where the transfer of property is performed. Commonly, *maquila* contracts-including those used in Bolivia- involve a far reaching property right. More specifically, the producer does not lose the property of his produce at any stage of the transformation process, while the mill acts both as a contractor and a depositary.

A typical asymmetry in the sugar production contract takes place at the time of delivery. Sugar cane loses its *saccharose* rapidly in about three days from the moment it is harvested. In the high seasons, trucks wait on long lines for several hours in front of the mill before they can deliver the cane, and mills pay producers according to the level of *saccharose* of the cane. Moreover, farmers bear the risk if production exceeds the capacity of the mill. The Law does not provide any relief over these matters. Article 12 establishes that mills are obliged to receive farmers' cane, *unless* the mill has reached its total capacity and/or produce does not comply with the minimum technical requirements for its transformation.

²⁸ "El Seguro Agrario Universal arranca desde julio y despierta expectativas en Bolivia"; EJU!; <http://tinyurl.com/bx5oq2n>.

²⁹ "Hoy promulgan ley de azúcar con Guabirá en desacuerdo"; El Día; <http://tinyurl.com/a6uaqfq>.

On the other hand, identical to the Argentinean legislation, any agreement limiting the free commercialization of the producer's share of the transformed produce is void.

The Law also identifies and defines the parties and key elements that should be included in a sugar production contract: the processor; the producer; a supervisory body composed by representatives of producers and mill; depletion of *saccharose* in the transformation process; traceability; and harvest schedule.

The depletion of *saccharose* may not exceed a determined threshold (18 %) and it's bore by parties on equal proportions. By this way, the law intends to prevent abusive clauses imposed by mills. However, this threshold is not inflexible and may be modified by subsequent Supreme Decrees, which could be promulgated considering particular circumstances of a given mill. This may result on further going intensive negotiations between stakeholders and Government.

The Law also defines a system for controlling, monitoring, and developing the sugar production. Contracts have to be submitted to a governmental instance; a registry of mills and producer associations as well as an investigation center are created; and mills have to provide a certificate emitted by an independent body (National Institute of Metrology-IBNORCA) of the calibration of measurement equipment. On the other hand, the Law on the Agricultural Productive Communitarian Revolution of 2011 has created the Agro-Environmental Observatory, which shall work in coordination with the National Statistics for generation of information and monitoring tasks regarding agricultural production in general.

An important improvement through the law is that now producers have access to the production of alcohol. Alcohol was so far considered a by-product, for which mills would not share any benefit with producers.

AGRICULTURAL FINANCE

On April 2012, the Supervisory Authority of the Financial System (Asfi) has aproved a Regulation for Secured Agricultural Loans (*Reglamento de Operaciones de Crédito Agropecuario debidamente garantizado*). Financial institutios granting agricultural loans have to comply with these guidelines, including minimum standards and controls, such as:

- Having a commercial strategy, taking into consideration geographic zones, agricultural sectors, productive cycles, production factors and others.
- Site inspections to the producer's land.

It determines the implementation of two structured loans:

- Credit by stored product: The producer has access to a loan, in proportion of product stored by a company (with 2 years of minimum experience in warehousing), which pays the installments in accordance to the sales of the stored product.
- Credit by sales contract: The producer has access to credit, by a sales contract with a company. The buyer retains part of the payment of the purchase to repay the installments.

It also determines collateral credits, which besides a mortgage by the debtor, can include a collateral issued by a guarantee or investment fund.

Production Development Bank (*Banco de Desarrollo Productivo*):

This is a newly created second tier bank, acting as trustee of several trusts destined to development finance. The trustor of the Bank is the Ministry of finance. The bank contracts first tier banks, which manages retailer portfolios from the resources generated by the trust.

Trust model: The Bolivian government agrees to buy agricultural machinery from Brazilian industries. The government of Brazil pays out to the Brazilian companies, and the Bolivian government pays the Brazilian government on credit. The beneficiaries of the machinery are agricultural producers and municipalities from Bolivia.

- Main characteristics of the Trust:
 - Amount: 35 000 000 USD.
 - Term: 240 months, with a grace period of 60 months.
 - Interest rate: 2% annual
 - Moratorium interest: 1% annual
 - Collateral: Promissory Notes of the Bolivian Government
 - Dispute resolution mechanisms: Parties agree not to invoke Sovereign and State Immunity; Conciliation and direct negotiation; Ad Hoc arbitral procedure, according to the UNCITRAL Rules, by three arbitrators in Montevideo-Uruguay

- Parties:
 - Trustor: Ministry of Rural Development and Land (*Ministerio de Desarrollo Rural y Tierras*).
 - Trustee: Financial System Development Fund-FONDESIF (*Fondo de Desarrollo del Sistema Financiero y de Apoyo al Sector Productivo*)
 - Beneficiary:
 - Individual persons that:
 - Are members of a social organization
 - Are residents of the zone where the machinery will be implemented
 - Have a minimum experience of two years in the agricultural practices for which machinery will be implemented.
 - Have property rights and peaceful possession on the farming land.
 - Have a personal guarantor, with repayment capacity and Bolivian nationality.
 - Apply for a maximum of one self propelled motorized machinery and one machinery of other characteristics, including irrigation equipment.
 - Pay an initial minimum installment of 20% of the total value of the machinery
 - Legal persons that:

- Are an association of small and medium producers.³⁰
- Have property rights and peaceful possession on the farming land.
- Agree to assign its members as joint guarantors of the financial lease (*garantía solidaria, mancomunada e indivisible*).
- Pay an initial minimum installment of 10% of the total value of the machinery.
- Municipal governments that:
 - Pay an initial minimum installment of 10% of the total value of the machinery.
 - Authorize the automatic debit from its accounts by the Trustor, in case of default.
- Object of the Trust:
 - Financial leasing (*venta a cuotas con reserva de propiedad*) for: - Self propelled motorized machinery (of Brazilian origin): 120 months; - Agricultural and irrigation machinery and equipment (of Brazilian origin): 48 months.
- Characteristics of the leasing:
 - Debtors can pay part of or the whole outstanding debt at any moment, previous written notice to the Trustee.
 - Once all installments are paid, the machinery's property right is transferred to the beneficiary.
 - In case of default the machinery may be recovered.
 - Currency: US Dollars
 - Interest rate: 6% annual interest
 - Portfolio recovery:
 - Extrajudicial:
 - From 10 to 30 days after default: telephone callings
 - From 30 to 90 days after default: *In situ* visits, and notice of default.
 - In the case of municipal governments, the Trustee will request the Trustor the automatic debit from the beneficiary's accounts.
 - Judicial: after 90 days from default.
 - Limits of portfolio management: - Lenders of a same group³¹ can't be financed for more than 1% of the total value of the trust; A guarantor cannot guarantee more than 3% of the total value of the trust; - Municipal governments can't be financed for more than 5% of the total value of the trust.

³⁰ No definition for "association of small and medium producers" provided.

³¹ There is no definition provided for "group of beneficiaries".

2. CONTRACT FARMING IN BOLIVIA: MAPPING OF CONTRACTUAL RELATIONSHIPS IN THE QUINOA, SUGAR, RICE AND SOY SECTOR

INTRODUCTION

Between May and June 2012, I did a field work and data collection in Bolivia, in the cities of La Paz, El Alto, Santa Cruz and Montero, having conducted a total of 33 interviews with representatives of producer associations, government agencies, companies, trade chambers, research institutions, NGOs and other stakeholders of the agricultural sector. The research was focused on the trade relations between buyers and producers of quinoa, sugar, rice and soybean.

QUINOA

General Aspects: Quinoa is mainly produced in the south Altiplano, located in the departments of Oruro and Potosí. This includes some poor and isolated areas where the presence of the State can be scarce. Farmers are Aymaras, organized in native indigenous communities with strong cultural ties. The legal order in the region has elements of Aymara's own culture and sense of justice and legality.

The contractual relationships are commonly verbal, and strongly based on friendship and cultural relations (*padrinazgo* and *compadrazgo*).

Land property: Legal property of land is almost in every case communitarian- *Tierra Comunitaria de Origen (TCO)*. Land is owned by each community as a whole. The property right is based on the traditional possession of land as a native indigenous community. The State allows the community to arrange the use, division and dispose of the communitarian land, according to their own rules, uses and customs. In practice, the community members are organized as to have their own land each, as well as other areas remaining communitarian.

There are also permanent conflicts regarding property rights inside each community and among other communities. According to the General Manager of CABOLQUI- Paola Mejía- and the Coordinator of the Productive Program for the South Altiplano of FAUTAPO- David Soraide- these problems seem to have increased in proportion with the increase of quinoa's value. In the last twenty years, many immigrants have returned to their communities, so far cultivated mostly by elderly farmers, and have claimed their rights as members of the community. With the appearance of new descendants, land has been subdivided into smaller plots. Each community also demands more land suitable for cultivation, entering into conflicts with neighboring communities. Moreover, as quinoa's farming demands relatively few care, many farmers have their homes outside the community and come back to the farming lands only when necessary, several times a year.

Production: Individual producers associate themselves in different forms such as associations, cooperatives or as providers of a company. This allows them to have stronger power of

negotiation, reduce costs of production and have access to cooperation, financing and inputs. At the same time, this may also represent a liquidity problem, because producers have to wait longer to be paid, as larger quantities of product may take longer to be sold.

The whole sale market of Challapata (Oruro) plays a significant role in the production chain, because it is the larger market and establishes a market price reference. This market offers certified and uncertified product, and it is also the center from which large quantities of quinoa are smuggled to Peru.

Companies: As cultural and symbolic ties are very important, companies have to work closely with communities, establishing links and creating incentive programs, called “suppliers programmes” (“*programas de proveedores*”).

From 2002, the company Andean Valley has a programme with independent producers, as well as whole or part of communities. The programme includes 18 communities with 447 families. Considering the increasing international demand, the supplier’s programme is not always enough, and the company has to buy from producers outside its programme as well.

According to the general Manager of Andean Valley, Mr. Javier Fernández, producer associations such as ANAPQUI or CECAOT had a significantl higher market share, but because of higher efficiency, companies have started to have a consistent growth since 2000, and today they have the largest market share.

Other smaller and local companies offer only specific services, such as storage, selection and washing of the product. They commonly buy according to their requirements in price, quantity, quality, regularity, etc., and can also place the product under consignment.

- **Price:** Price of quinoa is very unstable. It is normally orally agreed at the time of the transaction, taking into consideration the weekly price in the *Challapata* whole sale market.
- **Form of delivery:**
 - By the producer:
 - To a nearby local storage, commonly a community’s storage.
 - To a storage in a whole sale market, commonly the whole sale market of *Challapata*.
 - To the company’s storage (rarely).
 - By an independent carrier, normally paid by the company. Otherwise, producers may jointly hire a common carrier to reduce costs, and deliver to:
 - The company’s facilities
 - The spot agreed to be transferred to the company.
 -
 - By the company:
 - From the producers plot

- From a nearby local storage, commonly a community's storage.
 - From a storage in a whole sale market, commonly the whole sale market of *Challapata*.
- **Weighing:** Product is normally weighted in bascules that weight the truck. It can be weighted in the community and/or in the whole sale market and/or in the company's premises. A representative of the producers may travel along to control the delivery and receive the payment.
- **Certification:** Obtained by certifying companies and paid by the buyer. Certification is issued to the buyer only, by this mean guaranteeing that the seller won't sell the product to someone else. A requisite for the certification is the existence of a **written contract** between the buyer and seller. This is a forward delivery contract of organic production, by which the producer commits to use organic practices. It isn't a sales agreement properly, and it may be considered a supply contract.
- **Inputs and technical assistance:** Companies usually provide certain services to, establish a commercial link with farmers. Andean Valley's programme offers the following:
 - Payment and processing of the certification of organic quinoa.
 - On-going technical support, including the work of two agricultural engineers constantly visiting communities. The technical support includes:
 - Pest control
 - Light traps
 - Soil conservation
 - Rotation of parcels
 - Soil fertilization:
 - Compost
 - Organic fertilizers
 - Machinery and tools:
 - Manual harvesters
 - Threshers
 - Packaging of the product
 - Technical training
 - Support in the projects of the communities with better performance, such as building roads.
 - A premium in the price, up to 80 *Bolivianos* more than the market price in the whole sale market of *Challapata*.
- **Commercialization:** Quinoa is sold in the internal and international market as grain (ready to be cooked similar to rice), or transformed into flakes, flour, cookies, breakfast cereal, bars, mixed with chocolate, mix for granola, etc.

Associations: There are three major associations, ANAPQUI, CECAOT and APQUISA, all producing certified organic quinoa under export standards. ANAPQUI is the biggest one.

According to the President of ANAPQUI- Juan Ernesto Crispin Canaviri- It is formed by 12 regional organizations, including around 2000 members from 157 communities. Its total cultivable area is around 35 000 hectares. It has a processing facility in *Challapata*. To be part of ANAPQUI, the producer has to provide with a quintal of quinoa as a guaranty deposit, which is returned if the producer decides to retire from the association.

- **Price:** Price is set taking into consideration the market price. According to David Soraide from FAUTAPO, ANAPQUI is the entity which commonly pays more for the product, setting the maximum market price reference. The general Manager of Andean Valley, Mr. Fernandez, while recognizing this, argues that the difference is not considerable.
- **Form of delivery:** Under same conditions of companies. In the case of ANAPQUI, producers have to transport their product to the whole sale market of *Challapata*, where it is picked up by ANAPQUI. Product can be first stored in local storages. According to Mr. Crispin Canaviri, there are written contracts between the producer and the carrier, and between the regional or community's storages and the producer.
- **Form of payment:** According to Mr. Soraide (FAUTAPO), Farmers are not paid immediately, but up until three months product is collected from their lands. Mr. Crispin Canaviri says that producers are normally paid around two weeks after.
- **Weighing:** Under same conditions of companies. Normally, associations only accept a determined amount of product from each producer in accordance to their capacity of production, to avoid a producer of acting as an intermediary.
- **Certification:** Under same conditions of companies.
- **Inputs:** Under same conditions of companies. ANAPQUI has a senior technician in *Challapata*, and junior technicians in the communities.
- **Commercialization:** Under same conditions as companies. An additional revenue source is the fair trade market, which pays a premium. According to Mr. Fernández from Andean Valley, when quinoa's prices reach levels too high as in the current tendency, this premium is not significant.
- **Corporate governance:** ANAPQUI's decision making is formed by regional committees (*consejos consultivos*) chaired by regional leaders, which meet every three months. There is also an annual assembly, where the national directive is elected. The continuous change of directives can cause efficiency problems, as pointed out by Mr. Fernández.

Individual producers: If production is certified as organic, the form of production is similar as above. According to the general Manager of Andean Valley, there have been an increasing number of independent producers, several exporting certified product independently. Andean Valley also buys from these producers, when its suppliers are not enough.

In the other case (uncertified quinoa), production is more precarious, as it does not have to comply with any particular standard.

In general, individual producers selling to intermediaries (that is, not exporting by themselves or not selling the product directly in a whole sale or retail market) have less bargaining power, and buyers can more easily fix a price and other conditions of the sale. Intermediaries typically store larger quantities to resale. Such producers don't have their own means of transport, and depend on intermediaries that can cover remote areas.

Cooperation Agreements: Between 2010 and 2011, the cooperation service of Denmark tried to implement two agreements (which ultimately failed) under the following conditions:

- I. Parties:
 - a. International cooperation agency: Financier
 - b. CABOLQUI (Cámara Boliviana de exportadores de Quinoa): coordinator
 - c. Indigenous community, located in south Altiplano (Oruro): beneficiary

- II. Objective:

Quinoa farming with efficient and ecological techniques.

- III. Main obligations of the Financier:
 - 1) Supply of:
 - a. Technology
 - b. Machinery
 - c. Technical assistance and training

- IV. Main obligations of beneficiary:
 - a. Supply of manpower.
 - b. Guarantee the legal, peaceful and legitimate ownership and possession of the land, according to the extension and other characteristics established in the agreement.
 - c. To build a barbed wire on the perimeter of the farming land, and an adobe wall on the 2000 mts² perimeter of the facilities.

- V. Main obligation of coordinator:
 - a. Coordination of the project.
 - b. Supervision and inventory.

- VI. Devolution of the financing:

The community has to repay 100% of the costs of implementation and 50% of the costs of infrastructure, with the gains from the following three harvests. The transfer of infrastructure's property will only operate after the complete repayment, with the transfer of the remaining 50% through a donation contract.

- VII. Use of the project:
- a. The project remains available for other communities to observe and acquire the know-how. The facilities remain open to the International Cooperation to use it for investigation, diffusion and training purposes.

SOYBEAN ³²

Form of production:

- **Mechanized:** All production, including planting, harvesting and application of inputs is mechanized.
- **Number of harvests:** There are two harvests a year. The summer harvest is the most important one, while in winter there is a crop rotation with sunflower, sorghum, wheat and corn.

Market: Around 30% of production is for internal demand. The rest is exported.

Tax: **Small producers** (below 50 hectares) have a tax exemption.

- **Medium producers** (between 50 and 1000 hectares) have a special tax regime called *Régimen Agrounificado* (RAO), which groups different taxes, in one annual payment.
- **Big producers** (more than 1000 hectares) are under the general business tax regime.

80 to 85% of producers are small, 15% to 20% are medium producers, and approximately 7 % are big producers.

Price: A cost structure is calculated taking as a reference the price of soy in the Chicago Stock Exchange Market and the Rosario Stock Exchange Market in Argentina, and deducting logistic costs such as fuel. Buyers usually have better information of price fluctuations and are better positioned to negotiate the price. For example, Gravelal has its own securities brokers in the stock exchange markets as well as the technology to have real-time information.

The bargaining power of producers is related with the amount of their production. The exact time when price is set is a matter of negotiation between parties, since price is volatile and fluctuates according to the cost structure and the securities markets. Commonly, price is set a few days after all product has been delivered to the buyer, and payment is performed within one month. If there is no agreement on the price, the producer may decide to take his production out of the buyer's silos, and sell it to other buyer.

Form of the contract: Contracts may be written when the buyer finance the producer.

Finance: Land cannot be used as collateral, because of legal uncertainty regarding property rights of rural land. In any case, producers with less than 50 hectares of land can't pledge their lands according to law. Typically, producers offer other assets as collaterals, such as urban real estate assets, vehicles and machinery.

³² A sample contract is annexed to this document.

Companies also finance producers to secure a greater volume of production, typically by an advanced payment. For instance, one of the companies grants secured credits by paying around 3 000 \$US for each 10 000 \$US of product. Generally, 40% of production-or around 150 \$us to 400 \$us per hectare-may be financed by the buyer, which mainly covers only operative costs.

Companies usually provide inputs and seeds as well. One of the companies noted that they don't provide inputs because they consider that there are several specialized input companies already doing that.

Indeed, input companies also provide short term finance for the sale of their products (between 6 months to one year).

Form of delivery: The big transportation demand makes it a big and separate business from the soy production. The cost of transportation is normally bared by the producer, while buyers usually provide gathering centers (silos) spread in different areas.

Quality: Quality standards differ according to the end product. They determine:

- Consistency of the grain (if the grain is broken or not).
- Ripeness
- Level of proteins
- Agrochemical residues.

Association of Producers (ANAPO): National Association of Oilseeds Producers (ANAPO) is an active organization that provides valuable services to its members, such as:

- Market information
- Technical advice
- Technical training
- Financing of seeds
- Processing of annual tax payments.
- Bargain power against buyers.
- Government lobby.

Issues detected by the agribusiness sector:

- **Cartels:** Production is purchased only by few big industries, such as Cargill, ADM SAO, Gravelal, FINO and IOL. Producers say that companies act as a cartel by interchanging information and agreeing on purchase prices.
- **Governmental interference:** The government has a tense relationship with the private sector, which is worst in the oriental region of the country where the agro-business is booming. It is recurrent that entrepreneurs complain about the government interfering on their business on a negative way. During 2012-for instance-the government temporarily restrained soy exports-as part of its food sovereignty model-seeking to stabilize the increase of the edible oil price in the internal market. The private sector

complained that this caused a collapse in the logistic chain. Producers could not sell their produce, while lagers reached their maximum capacity. Some were obliged to sell on a low price to mitigate losses.

- **Legal uncertainty regarding land property:** Bolivia is undergoing through a deep political and social change. In 2007 a new Political Constitution was enacted, and the enactment and modification of several laws are dramatically changing the legal framework. Because of its complexity, land property in rural areas still has many legal loopholes and a great degree of legal uncertainty. The private sector and the banking system have great concerns. Production is hindered and expansion of arable lands is limited. There have already been incidents of rural properties' encroachments and vandalism by groups alleging constitutional rights and governmental support³³. Particularly in remote areas, there has been no effective Government action to restitute the peaceful possession of the land³⁴.
- **Lack of public infrastructure:** Bad and few roads, particularly during the summer rainy season, delay deliveries and limits output. As a Land-locked country, Bolivia has few cross-border exits.
- **Political conflicts and instability:** Different groups with particular demands use the blocking of roads and highways as a pressure mechanism against the government, causing great economic damages for the private sector.

SUGAR

Production: Cane is transformed into sugar and alcohol in mills. There are few sugar mills in Bolivia, since it is an industry that requires big investments in rural areas. The main mills are *Guabirá*, *UNAGRO*, *La Bélgica* and *San Aurelio*, all located in the Department of Santa Cruz, in the cities of Santa Cruz and Montero. Mills have a surrounding impact area where cane is produced. Cane cannot be produced far from mill, because once cut it quickly losses its quality. Producers and Mills are then organized on the same area and depend on each other under complex contractual relationships.

The crops require relative few care and the same canes are harvested for up to five years. Canes gradually lose quality throughout this period. Similarly, annual crops also vary in quality

³³ See the national press for several cases. For instance:

"Inspección certificada avasallamiento de tierras en zonas aledañas a La Paz" ; La Patria; <http://lapatriaenlinea.com/?nota=125117>; *"Salesianos de Bolivia escriben al presidente para denunciar avasallamiento de tierras en Muyurina"*; Arzobispado de La Paz; <http://tinyurl.com/ate5nrv>; *"Embajada alemana asumirá defensa por avasallamiento de tierras de Abendroth"*; Jornada; <http://www.jornadanet.com/n.php?a=80894-1>; *"Denuncian avasallamiento en más de 30 propiedades del oriente boliviano"*; eju!; <http://eju.tv/2012/10/denuncian-avasallamiento-en-ms-de-30-propiedades-del-oriente-boliviano/>.

³⁴ *Íbid.*

depending on the time of harvest (better crops with higher level of *saccharose* are harvested during summer).

Cane is not only transformed into sugar, but the residual is also used to produce alcohol.

Harvests take place six months a year between May and October, while sales of sugar and alcohol are aimed to be performed on a permanent basis.

Around 35% to 40% of production is mechanized. Because of the topography, there are some areas that require manual harvest. In some cases mechanization is necessary because of lack of labor.

Both producers' unions and mills support producers in different ways, such as providing technical support, technical training, cash advances, financial intermediation or provision of inputs.

Some mills import inputs, harvest and apply pesticides to small fields, in order to support small producers.

Land ownership: Mills have a surrounding impact area where they own lands.

- **Guabirá Mill:** it's the only mill with no lands. It has an impact area of around 120 000 hectares with small, medium and large producers owning lands.
- **UNAGRO Mill:** It has an impact radius of 20 to 30 km.

Corporate Governance: Producers are associated into a pyramidal scheme, with smaller organizations such as cooperatives being part of bigger organizations such as federations or unions. These organizations provide an important support to its members, from negotiation of contracts to provision of inputs and finance.

Producers and Mill representatives have weekly meetings to negotiate prices and also to deliberate about management and policies, including issues such as quantity of production, or the performance of competitors.

Mills usually have strong unions, conformed by smaller organizations as well as individual producers. *UNAGRO* also has independent producers represented by the mill instead of by the union.

In the case of *Guabirá*, producers are also shareholders. Eighty percent of its shares are owned by around 1 500 producers, each with no more than two percent of total shares.

Form of the contract and price: Contracts are written, signed during the months of February and March. *UNAGRO* signs contracts with each cooperative and association.

Contracts tend to have the form of a "*maquila*" contract, whereby producers maintain the property of processed product up until the Mill sells it. The benefits are then divided into around 57% for the producer, and the remaining 43% for the mill.

Producer can also opt by selling the cane or the sugar that is later produced to the mill.

Production of alcohol is in many cases considered a by-product and producer doesn't receive any benefit.

The price of the cane before transformation depends mainly on the level of *saccharose*, which is established by a laboratory.

Price of sugar is set according to the market price at the moment when it is sold. However, the Mill facilitates cash advances of around 60% to 80% of the average monthly price, every 15 days. The ending balance is closed approximately every 11 months when all production is sold.

Producers may also accept payments in sugar.

Transport: Transport may be performed by an independent carrier, the producers or the mill.

Delivery: During harvest period, sugar canes are delivered daily to the Mill. *UNAGRO* makes 12 000 to 13 000 tons of processed cane daily.

Finance: Credits are given to finance harvesting, enlargement of crops, and provision of agrochemicals and machinery.

Mills have access to the banking system. *Guabirás* producers/shareholders are also eligible for credit, and *Guabirá's* Union acts as a financial intermediary by an agreement with a financial institution, which makes direct disbursements to the producers. In the case of *UNAGRO*, the Mill is the guarantor of the cane union before the bank.

Besides banks, small financial cooperatives and individual persons give loans to producers on a high interest. Loans sometimes are even given from the union itself to the mill and vice versa.

Tax: Small producers (below 50 hectares) have a tax exemption.

Medium producers (between 50 and 1000 hectares) have a special tax regime called *Régimen Agrounificado* (RAO), which groups different taxes, in one annual payment.

Big producers (more than 1000 hectares) are under the general business tax regime.

Most of sugar producers pay RAO.

Guabirá pays part of the RAO tax of the producer, while *UNAGRO* does not.

Contractual imbalances: Producers bear the risk of loss if production exceeds the Mill's capacity, and therefore Mills sometimes neglect the reception of part of the production previously agreed.

Producers receive a different payment according to the quality of the sugar cane, which significantly depends on the time when it is received by the mill. The maximum period before the cane loses all its value is three days from the moment it is harvested. On the busy season between July and August trucks have to wait up to 12 hours before delivering the product.

In any case, negotiations between producers and mill representatives are tough. For instance, one mill executive argues that unions have an excessive intervention on the management of

the mill and that they sometimes push too much on their own benefit, for example to receive payments before terms are due.

Abuse of dominant position: The Vice Ministry of internal commerce and exports has undertaken investigations to assess possible abuses by mills' dominant position, among other things, by establishing abusive clauses, buying at a low price or not complying with contractual agreements.

Violations of labor law: Mills and farmers with big extensions of land hire labor to harvest the cane. In rural areas labor laws are many times ignored, leaving laborers without social benefits, labor law protections, insurance and child labor is used.

RICE

Production: Rice is planted between October and December, and harvested between January and April. Product is sold continuously.

Most of production and crops are located in the Department of Santa Cruz, in the regions of *Montero, Yapacaní* and *Warnes*.

Rice is gathered in mills, which undertake a simple transformation process.

In contrast to sugar mills, rice mills require low investment and in many cases are very precarious. There are a big number of mills, and some are fuelled by gas or even firewood; many are bought as obsolete machinery in Brazil from where they are smuggled.

Around 85 % of production is mechanized; the remaining 15 % includes manual and semi-manual harvesting.

Contract form: Contracts are commonly verbal.

Written sales contracts under an annual payment schedule, typically at a lower market price, may also be signed. Other written contracts include very simple forward delivery contracts (*Contrato de compromiso de entrega*), determining date, quantity and quality of the delivery.

Mills primarily perform a service of transformation of rice, but they also offer one or more of the following services:

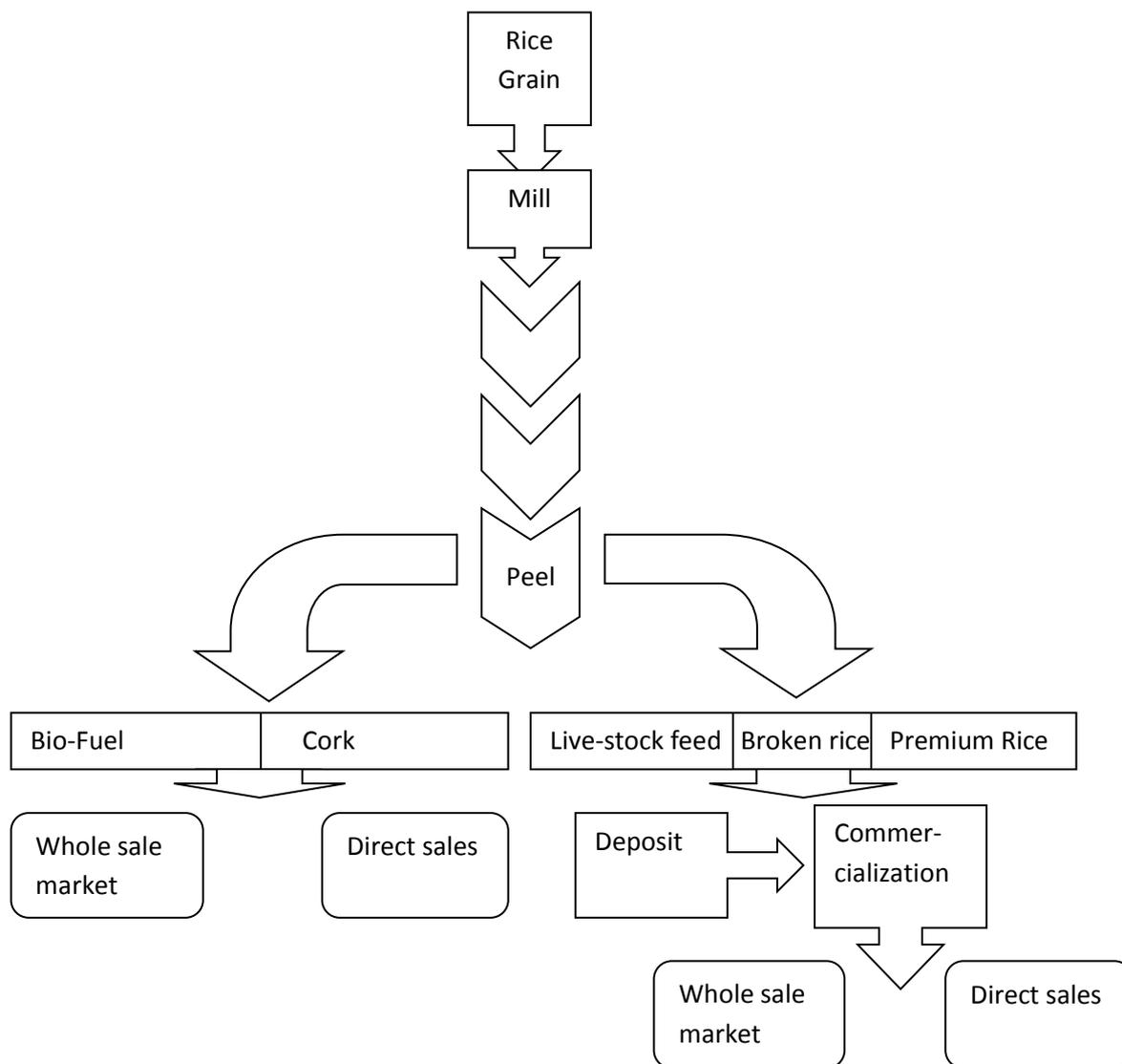
- Deposit: Mills are also a gathering center.
- Intermediation: Mills can buy from producer to sell in the whole sale market or as a retailer, in the same manner as independent middle men (*rescatistas*).
- Bigger mills also offer technical assistance, as well as provision of inputs and cash advances to finance producers.

Transport: Producers bear the transport of the product to the mill.

Delivery:

- **Quality parameters:** humidity, purity (inclusion of stalk or alien seeds), colour, texture, variety, organic production, sanitation standards.
- **Perishability:** Rice must be adequately stored. When it is left too long on trucks it spoils. Rice transported from remote areas (such as *Guarayos*) are known as lower quality.

Rice value chain:



Finance: Mills may finance producers by cash advances or provision of inputs (commonly seeds).

Input shops finance producers with an annual interest rate of 16-20% for a period of six months or until the harvest period. For the repayment, they may as well accept payment in kind.

Banks may give credit using a rice warehouse as a warrant.

Banks may give SME Credits for the installation of a mill. Mills tend to have better access to credit than farmers. To finance producers, mills may act as a guarantor. In other cases, it may act as a facilitator, for example by introducing the producer to its bank or credit agent to facilitate negotiations. Mills can be credit intermediaries, receiving a credit and transferring it to the producer at a higher interest rate.

Corporate governance: Producers are the owners of their lands, and may associate themselves to install a mill.

Producers are also associated on a pyramidal scheme with smaller associations affiliated to larger ones. The National Federation of Rice Producers-FENCA is the main association. It has its own mills, and its members are producers with lands from 5 to 100 hectares. It offers technical support and advice to its members. Some important projects of FENCA are

- To improve uniformity to raise the standard of production.
- To acquire a dryer, allowing to store more produce and get better access to credit

FENCA acts on behalf of producers' interests, giving bargaining power before mills and lobbying before the government.

Problems:

- **Production:** Production yield is lower in comparison to other countries. When crops are inaccessible, either because of their remote location, the lack of labor or machinery, production may be lost or otherwise not harvested at its optimum yield time.
- **Barriers to enter to a closed whole sale market:** Intermediaries - mills and middle men alike – work on a closed market scheme with whole sellers, with whom they have close connections based on long-term relationships of family and friendship. This allows whole sellers to pay intermediaries by credit, once the product is sold. Both lack of liquidity and access to closed whole sale markets represent further barriers for producers to sell their product directly.
- **Contractual imbalances between producers and intermediaries:** By their dominant position, mills impose contractual conditions, for instance regarding reception and price. Thus, intermediaries pay producers a lower price, exchange information to agree on a determined market price, and they may only receive rice that needs to be peeled.
- **Lack of credit:** Production is fragmented and precarious. The lack of production standards in volume, quality and uniformity restrains access to credit.

On the other hand, short term credits by input shops oblige producer to sell its product fast and at lower conditions.

Sample contract for the production of soybean in Bolivia

Señor Notario de Fe Pública:

En el registro de escrituras públicas que corre a su cargo, sírvase insertar una por medio de la cual se acredite la presente sobre compraventa de granos de soya a futuro con anticipo de pago de parte del precio bajo garantía hipotecaria, de conformidad con las cláusulas que siguen:

Primera. Las partes.

1.1. **LA EMPRESA**, ¹....., en lo sucesivo denominada a los fines de este contrato, el COMPRADOR, por una parte; y,

1.2.en lo sucesivo referidos como los VENDEDORES, por la otra parte.

LOS VENDEDORES y el COMPRADOR en conjunto podrán ser llamados como las PARTES.

Segunda. Objeto.

LOS VENDEDORES venden al COMPRADOR y éste compra la cantidad detoneladas métricas (...TM) de grano de soya por campaña de verano 2011/2012; 2012/2013; 2013/2014; 2014/2015 y 2015/2016; y métricas (...TM) en cada campaña de invierno 2012; 2013; 2014; 2015 y 2016, en adelante denominado el PRODUCTO; todo producido en los fundos rústicos de propiedad de los VENDEDORES, denominados: 1....., Provincia; Cantón; Localidad, superficie ... has. 2), Provincia; Cantón; Localidad, superficie ... has. 3), Provincia; Cantón; Localidad, superficie ... has. 4), Provincia; Cantón; Localidad, superficie has. 5), Provincia; Cantón; Localidad, superficie has. 6), Provincia; Cantón; Localidad, superficie has; donde los VENDEDORES cultivarán la soya en cantidad superior que la necesaria para cubrir la cantidad de grano de soya antes señalada. El PRODUCTO, en la cantidad comprometida deberá ser entregado al COMPRADOR hasta el 30 de mayo de cada año, es decir, 30.05.2012; 30.05.2013; 30.05.2014; 30.05.2015 y 30.05.2016 para las campañas de verano impostergablemente; y en cada campaña de invierno hasta el 30 de noviembre de cada año, es decir, 30.11.2012; 30.11.2013; 30.11.2014; 30.11.2015 y 30.11.2016, de forma impostergable. Los VENDEDORES reconocen al COMPRADOR el derecho de preferencia a comprar el excedente de grano, si lo hubiera.

Tercera. Calidad del PRODUCTO.

El grano de soya deberá ser de primera calidad. Lo relacionado con los índices de calidad y condiciones que debe reunir para su procesamiento, tolerancias, descuentos, castigos que se practiquen por granos quebrados, humedad, impurezas y otros que disminuyan las condiciones pactadas de primera calidad, son las imperantes en el mercado departamental propias de la comercialización de granos de soya.

¹

Una compañía multinacional

Cuarta. Naturaleza del contrato.

Siendo la naturaleza del presente contrato una venta a futuro, el mismo no se lo considera aleatorio y los riesgos por pérdidas de cosechas emergentes de caso fortuito o fuerza mayor corren por cuenta exclusiva de los VENDEDORES quienes solamente podrá cumplir sus obligaciones resultantes del presente contrato con la entrega del grano de soya en el lugar indicado y el plazo establecido.

Quinta. Precio y anticipo de pago.

El precio se lo determinará entre las PARTES en el momento de la entrega de los granos de soya. Los VENDEDORES recibirán del COMPRADOR la cantidad de, en calidad de anticipo de pago del precio y como financiamiento para cada campaña de verano; y....., en calidad de anticipo de pago del precio y como financiamiento para cada campaña de invierno. Para recibir un anticipo correspondiente a una campaña, el entregado durante la campaña anterior debe estar completamente liquidado y el PRODUCTO entregado y recibido a satisfacción de los VENDEDORES ². Estos anticipos cuyo único destino es la producción de la soya que se vende mediante este contrato, se entregarán en insumos a través de “notas de pedido” de forma parcelada, y eventualmente en efectivo, hasta llegar al monto antes indicado; en consecuencia los VENDEDORES autorizan al COMPRADOR a pagar por su cuenta y a su cargo a terceras personas proveedoras de los insumos. Los desembolsos de los anticipos se efectuarán mediante documentos privados que se suscribirán bajo la égida del presente contrato del que forman parte indisoluble y tienen la calidad de suma líquida y exigible conforme se tiene pactado en este contrato. El COMPRADOR queda facultado para suspender la entrega de los anticipos si a su criterio los VENDEDORES podrían incumplir con sus obligaciones de entregar el grano de soya en la cantidad, plazo y condiciones establecidas en el presente documento. Los VENDEDORES se obligan a pagar sobre el anticipo antes mencionado la tasa de interés equivalente alpor ciento (....%) anual y en caso de mora pagarán también la tasa delpor ciento (....%) anual sobre los saldos insolutos.

Sexta. Lugar de entrega del producto.

Los VENDEDORES se obligan a entregar el grano de soya vendido en los silos denominados cuya ubicación, es de conocimiento de los VENDEDORES; sin embargo, y previo aviso a los VENDEDORES el COMPRADOR podrá cambiar el lugar de la entrega de la soya vendida.

Séptima. Fiscalización, inspecciones y autorización para recoger la cosecha.

Los VENDEDORES reconocen al COMPRADOR la facultad de inspeccionar en cualquier momento y todas las veces que juzgue necesario el estado de la plantación, a cuyo fin le facultan a ingresar a las propiedades donde se encuentran los cultivos sin necesidad de autorización expresa. También y en virtud de la naturaleza del presente contrato, el COMPRADOR podrá cosechar y recoger la cosecha del PRODUCTO vendido si estima conveniente, quedando claramente establecido que esta opción de ninguna manera puede entenderse como eximisión o enervamiento de la obligación de los VENDEDORES de hacerlo y entregar el PRODUCTO en el lugar convenido.

² Comentario : Error, debería decir COMPRADOR

Octava. Preferencia.

Los VENDEDORES reconocen expresamente que sus obligaciones emergentes del presente contrato tienen preferencia sobre cualesquiera otras contraídas con terceras personas. Así lo declaran y también reconocen que no tienen otras obligaciones que comprometan el grano de soya que mediante este contrato están vendiendo al COMPRADOR.

Novena. Mora.

Los VENDEDORES se obligan al fiel y estricto cumplimiento de las obligaciones emergentes e inherentes al presente contrato, en particular a la entrega del grano de soya con la calidad convenida, en el lugar designado y en el plazo establecido. El incumplimiento en la entrega del grano de soya en las condiciones antes descritas, determinará que los VENDEDORES incurran en mora, sin necesidad de requerimiento judicial o extrajudicial previo, reputándose la totalidad del anticipo recibido, intereses convencionales y penales en sumas líquidas y exigibles pudiendo el COMPRADOR iniciar la acción judicial que ³en derecho corresponda a su elección. Cualquier espera o prórrogas que el COMPRADOR permitiere a los VENDEDORES no debilitarán su derecho a exigir el cumplimiento del presente contrato en el plazo y condiciones convenidas.

Décima. Caducidad del término y derecho de aceleración.

Independientemente de la mora de los VENDEDORES por incumplimiento de sus obligaciones emergentes del presente contrato, el COMPRADOR podrá de la misma manera y con efectos iguales, declarar la caducidad del término y declarar el monto total de lo adeudado por concepto de anticipo, intereses convencionales y penales, de plazo vencido, sumas líquidas y exigibles y en mora aunque el término no se encuentre vencido, de conformidad con el art. 315 del Código Civil y proceder a la cobranza judicial de lo adeudado sin necesidad de intimación o requerimiento judicial o extrajudicial previo, por cualquiera de las siguientes cláusulas:

10.1. Incumplimiento de cualquiera de las cláusulas del presente contrato;

10.2. Disminución de la solvencia de los VENDEDORES librada a la sola apreciación y criterio del COMPRADOR;

10.3. Solicitud de concurso preventivo o de quiebra, o concurso voluntario o necesario de acreedores, promovidos por cualquiera de los VENDEDORES o terceras personas;

10.4. Disminución de las garantías otorgadas o del patrimonio, incluyendo su división, de los VENDEDORES, o su fuga o la persecución judicial o el embargo o secuestro de sus bienes;

10.5. Si los VENDEDORES en cualquier momento desconocieran la validez legal o la ejecutabilidad de las obligaciones contraídas bajo el presente contrato;

10.6. Si los VENDEDORES incurrieran en cesación de pagos con cualquier tercero;

10.7. Falta de acuerdo en el precio de la soya vendida; y,

10.8. En general cualquier acto o hecho de los VENDEDORES o circunstancia que a criterio del COMPRADOR pudiera poner en riesgo el cumplimiento de las obligaciones de los VENDEDORES.

³

Comentario : Es como una combinación de venta a futuro y contrato de crédito

Los VENDEDORES se obligan a informar al COMPRADOR mediante carta notariada de cualquier acto o hecho que pudiera afectar el cumplimiento de sus obligaciones de venta del grano de soya o el derecho de éste sobre las garantías pactadas en este contrato.

Undécima. Garantías.

Los VENDEDORES garantizan el fiel y estricto cumplimiento de sus obligaciones emergentes e inherentes al presente contrato y en particular el anticipo recibido en cada campaña y sus accesorios, con todos sus bienes muebles e inmuebles, presentes y futuros y en particular con las siguientes garantías:

11.1. Real Hipotecaria

EL VENDEDORES, constituyen primera hipoteca, especial, señalada y privilegiada a favor de los COMPRADORES, sobre: Fundo rústico, ubicado en, cantón, con una extensión superficial de metros; cuyas colindancias y límites son: Al Norte con y mide metros; Al Sur con y mide metros; Al Este con y mide metros; y Al Oeste con y mide metros. Derecho propietario registrado bajo la matrícula N°

En consecuencia la referida propiedad, con todas sus mejoras, superficie, usos, usufructo, costumbres y servidumbres, sin reservas de ninguna naturaleza, queda gravada a favor del COMPRADOR hasta que los VENDEDORES cumplan todas y cada una de las obligaciones resultantes del presente contrato.

Los VENDEDORES, no podrán realizar actos de disposición patrimonial sin la autorización expresa del COMPRADOR.

Duodécima. Resolución del Contrato.

Asimismo, EL COMPRADOR podrá resolver el presente contrato, sin necesidad de requerimiento judicial y/o extrajudicial, por las causales precedentemente señaladas del numeral 10.1. al numeral 10.8; así como las estipuladas tanto en la cláusula quinta como en la cláusula novena de este contrato.

Decimotercia. Autorización.-

Por el presente contrato, los VENDEDORES, AUTORIZAN al COMPRADOR a descontar de sus ingresos de granos de soya, para efectuar la cancelación del anticipo otorgado

Decimocuarta. Renuncia al trámite del proceso ejecutivo.

Los VENDEDORES convienen que en caso de ejecución judicial para el cumplimiento de sus obligaciones, se ejecutarán por la vía coactiva civil establecida por los Arts. 48 y siguientes de la Ley 1760 de 28 de febrero de 1997 a la cual quedan sometidos, a cuyo efecto reconoce a este documento suficiente fuerza coactiva, renunciando en forma expresa a los trámites del proceso ejecutivo.

Decimoquinta. Gastos.

Todos los gastos que demande el perfeccionamiento del presente contrato, incluyendo los de protocolización e inscripción en los registros correspondientes, corren por cuenta exclusiva de los VENDEDORES.

Decimosexta. Domicilio especial.

Para todos los fines del presente contrato y en particular para el caso de ejecución judicial las PARTES señalan como domicilio especial el descrito en la cláusula "Primera" de este documento, conviniendo en que la jurisdicción en su caso será la de Santa Cruz de la Sierra.

Decimoséptima. Aceptación.

Nosotros: en nuestra calidad de representantes legales de **LA EMPRESA**, como el COMPRADOR, aceptamos el presente contrato; así también nosotros:....., como los VENDEDORES, aceptamos el presente contrato.

Las partes firmantes ratificamos las cláusulas que anteceden y convenimos en dar a esta minuta el valor de instrumento privado a los fines de ley.

Usted señor Notario agregue lo que sea de estilo.

(lugar), (fecha) de 2012

LA EMPRESA

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