

# THE LEGAL DIMENSION OF CONTRACT FARMING

## Promoting Good Contract Practices between Producers and Buyers in Contract Farming Operations in the African Context

ADDIS ABABA, 31 October 2014

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Report on the Consultation Workshop  
“The Legal Dimension of Contract Farming”

Addis Ababa, 31 October 2014

## 1. Event Overview

The Consultation Workshop took place at the United Nations Conference Centre at UNECA in Addis Ababa, Ethiopia, on 31 October 2014, focusing on the legal aspects of the parties' agreement and based on practical experiences and the treatment of contract farming in the domestic legislation of different countries in Africa. This report summarizes the Workshop, entitled, “The Legal Dimension of Contract Farming, Promoting Good Contract Practices between Producers and Buyers in Contract Farming Operations in the African Context,” which was organised by UNIDROIT,<sup>1</sup> in partnership with the Food and Agriculture Organization (FAO)<sup>2</sup> and the International Fund for Agricultural Development (IFAD).<sup>3</sup>

The Addis Consultation Workshop on contract farming was the fourth and final consultation of a round of consultation events<sup>4</sup> with stakeholders in contract farming relationships, primarily farmer communities and private sector representatives, in the process of preparing a UNIDROIT/FAO Legal Guide on Contract Farming. The Guide is currently being developed by UNIDROIT within a Working Group together with FAO and IFAD and the participation of other multilateral organisations.

The workshop had the following objectives: promoting awareness and understanding of the economic, social and legal dimensions of contract farming; discussing the diversity of approaches in the legal framework of domestic legislation of several countries as applicable to contract relations between producers and buyers; sharing stakeholders' experiences, recommendations, and best practices focusing on issues related to the negotiation process, the conclusion of the contract and the definition of reciprocal contractual obligations; sharing experiences, recommendations, and best practices related to performance of parties' obligations, as well as non-performance and dispute resolution; informing the content, scope, and purpose of the forthcoming UNIDROIT/FAO Legal Guide on Contract Farming with the inputs and discussions of the workshop. This and earlier consultation rounds were meant to explore the future use of the Guide and serve to build a network within target groups that will participate in the future implementation of the Guide.

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<sup>1</sup> The International Institute for the Unification of Private Law (UNIDROIT) is an intergovernmental, Rome-based organisation specialising in the harmonisation and modernisation of private law rules at the global level, through international treaties and soft law instruments in various areas, including contract law.

<sup>2</sup> FAO will be co-authoring the Guide together with UNIDROIT and has provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts.

<sup>3</sup> IFAD has also provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. In addition, IFAD is providing substantial support to the preparation of the Guide through a grant to FAO (recipient).

<sup>4</sup> The first workshop of the consultation events took place in Buenos Aires (Argentina) on 25 March 2014, entitled “Contract Farming today, the right equilibrium”, which was organised jointly by the World Farmers' Organisation (WFO) and UNIDROIT, with the cooperation of FAO and IFAD. WFO has participated as a key partner representing the professional and trade interests of farmers and has also provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. The report of the first workshop is available in English at the following address: <http://www.unidroit.org/english/documents/2014/study80a/wg03/s-80a-wg03-18-e.pdf>. Subsequent events were held in Bangkok, Thailand and Rome, Italy. Reports for these consultations are also now available at <http://www.unidroit.org/work-in-progress-studies/current-studies/contract-farming>.

### 1.1. Participants

The workshop was primarily addressed to a broad audience of stakeholders in contract farming relationships in Africa, mainly in Eastern and Southern Africa, i.e. producer organizations, private sector representatives, IGOs and development agencies, NGOs, public government entities and the legal academic circles. Altogether, approximately 35 persons participated in the workshop.

### 1.2. Speakers

Presenters and panellists included representatives of stakeholders and multilateral organizations (UNIDROIT, FAO and IFAD), as well as law professors and practitioners from different countries.

### 1.3. Material

The following documents were provided at the meeting:

- A project flyer and the full-fledged programme prepared by UNIDROIT. The final programme is attached in Annex II.
- A participant list. The final participant list is attached in Annex III.
- A draft abstract of the future Guide with an executive summary of chapters as a basis for discussion at the Workshop. The abstract will be revised over the coming weeks and made available on the UNIDROIT website.
- Group allocations for breakout small group discussion sessions.
- A selection of informational material on contract farming, reference documents, and sample issues for consideration and resource materials on contract farming and the work of international partners, were made available to the participants through the event website<sup>5</sup> and in soft and/or hard copy at the Workshop.

### 1.4. Institutional Partners and Opening Addresses

Mr. Robson Mutandi (Country Director for Ethiopia, IFAD, on behalf of Susan Minae, FAO) began by noting how the three Rome-based UN agencies, FAO, IFAD and WFP, work closely together, and he welcomed all participants on behalf of all three agencies. According to Mr. Mutandi, the issues discussed at this Workshop are of critical importance not only for Ethiopia, but also for the whole sub-region and region. Issues surrounding contract farming in the African context are critical for the agenda for 2025. This meeting gave the opportunity to bring together top minds from diverse professions and expertise to work through some of the critical issues so that we can navigate this very complex underlying relationship, very important in our engagement with farmers, particularly smallholder farmers now entering into contract farming. Mr. Mutandi welcomed participants who came from far away, and noted the range of countries represented, from Seychelles to Uganda to Rwanda to Burundi.

Mr. Perin Saint-Ange (IFAD Regional Director for Eastern and Southern Africa) began by welcoming all participants to this joint initiative between UNIDROIT, IFAD, FAO and others. IFAD considers this Workshop to be a very important exercise, and he hoped that by the end of the day, all participants would realize how important their inputs will be in informing this work on contract farming, pursuing

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<sup>5</sup> <http://www.unidroit.org/work-in-progress-studies/current-studies/contract-farming>

the goals of transforming agriculture and improving conditions for doing business and smallholder farming.

Professor Marcel Fontaine (UNIDROIT Working Group on Contract Farming), on behalf of UNIDROIT and its Secretary General, thanked all participants for joining this Workshop on the legal dimension of contract farming in the African context. Both FAO and IFAD are active at the international and local level in trying to foster effective contract farming. As far as UNIDROIT is concerned, it brings to this project many years of developing international studies to harmonize commercial and contract law between nations. The UNIDROIT Principles of International Commercial Contracts have become a benchmark for assessing recent contract law reform in several countries and they are frequently used in international arbitration. It is hoped that the future Guide will form an important tool for policy development and capacity building for national and international organizations, bilateral cooperation entities and NGOs, for use in implementing their development and capacity building strategies. Professor Fontaine noted the participation of representatives from a wide set of countries, and expressed his personal appreciation and the appreciation of UNIDROIT for their acceptance of our invitation.

## 2. The Forthcoming Legal Guide on Contract Farming

Professor Marcel Fontaine (Member, UNIDROIT Working Group on Contract Farming)

In accordance with the authorization given by the Governing Council at its 91st session (Rome, 7 to 9 May 2012), the Secretary General of UNIDROIT set up a Working Group for the preparation of a Legal Guide on Contract Farming composed of contract law experts representing different jurisdictions and legal backgrounds, relying also upon the active cooperation of partner multilateral organisations and including an appropriate representation of agricultural producers and the private sector. The Working Group is placed under the chairmanship of Professor Henry Gabriel (Elon University School of Law, Greensboro, USA), member of the UNIDROIT Governing Council.

As a matter of terminology, after much deliberation, the Guide will use the term agricultural production contract as the contract underlying contract farming. The Guide focuses on two parties: the producer and the contractor. The producer is the farmer, and the contractor is whoever deals with the producer to buy the product, whether a processor, marketer, exporter, etc. The contract is defined as an agreement by which, on the one side, the producer undertakes to produce agricultural commodities, to deliver them in accordance with the contractor's specifications, and on the other side, the contractor undertakes to acquire the product for a price and generally to supply the producer with different inputs and technical advice. These are the main features of the agricultural production contract. We are aware that there are many different possible variations. For example, there are many different types of value chains, and this means that each contract has its specificities. But, the main features described are generally common across most or all types of chains.

Why draft a legal guide? UNIDROIT in its mission of working for law unification, has previously resorted to different types of instruments. The most typical in the work of UNIDROIT is the preparation of international conventions to be signed and adopted at a diplomatic conference and then ratified by the different countries, as has been the case with for example, leasing or factoring. However UNIDROIT has also resorted to soft law codifications, such as the UNIDROIT Principles and the Legal Guide on Franchising. Much could be said about the advantages and disadvantages of these different approaches for law harmonisation. The choice of a legal guide has been inspired by desires for simplicity (no need for concerns about processes for ratification), yet this also means that the Legal Guide will have no normative value. Furthermore, agricultural production contracts are characterized by too much diversity to be subject to universal codification at the global level. The format of a legal guide allows flexibility and the possibility to discuss possible alternatives and solutions, while being also the most appropriate for explaining advice.

To whom would the Guide be addressed? The Guide will be mainly addressed to the parties themselves – producers and contractors, but also of course their advisors and the associations to which they may belong; also, to other parties that may be involved in contract farming through their association with either main party, from the other participants in the value chain, suppliers of inputs, financial institutions, insurers, and so on; in addition, the Guide will be addressed to informing public authorities as they consider possible regulatory or policy reforms related to contract farming. One general point to stress is that the Guide is drafted under the sponsorship of several international organizations: it is not meant to favour the interests of either of the parties over the other. The aim is to offer both parties good, useful advice with a special concern to promote fair and balanced contracts. In this respect, due consideration is given to the fact that the producer is often the weaker party, but also that we must take into account both parties' legitimate interests: the Guide will stress the requirements of good faith and the advantages of cooperative behaviour.

The Legal Guide is being drafted by a Working Group that has been meeting in Rome since early 2013. It is a large group of scholars, practitioners, representatives of international organizations, as well as representatives of farmers and agribusinesses. Some Group members have been designated to prepare the first draft of the different chapters, taking into consideration the diversity of legal systems. The UNIDROIT Secretariat is strongly involved in the preparation of the Guide, with considerable assistance from FAO, IFAD and other institutions in the Working Group. There have already been three full sessions of the Working Group (January 2013, June 2013, March 2014) to discuss the development of the draft chapters, and consultations to bring together diverse stakeholders. Similar consultations to the present consultation in Addis have been held in Buenos Aires, Bangkok, and Rome.

The Guide will be structured to begin with an introduction chapter with a general presentation of contract farming and description of the purposes of the Guide. The next chapter will explore the legal framework. Each agricultural production contract is subject to its applicable law, both as private law aspects and as regulatory aspects such as human rights, safety, environment, etc. Attention is drawn to the aspects of the legal framework that should be considered when drafting and entering into the contract. Next, will follow the chapter on the parties to the contract, contract formation and contract form. These elements are examined within the context of potential variations across legal systems. The subsequent chapter is on the obligations of the parties, describing the respective obligations with respect to the product, production process, delivery, and price and payment. The next chapter on excuses for non-performance explores how there are some supervening events (force majeure, hardship) which could affect the performance of the contract, and of course, gives advice on how to draft clauses and consider the different solutions that may be available in different legal systems in such cases. Then, the chapter on remedies for breach contains a thorough analysis of the remedies available for each party under different legal systems. The Guide will try to distinguish remedies according to the type of obligation and highlight the advantages and disadvantages of each possible choice of remedy, with a particular focus on cooperative remedies which are aimed at saving and restoring long term relationships. The final two chapters treat first duration, renewal and termination, and then dispute resolution, including arbitration and other alternative means such as mediation.

There are challenges in the development of a Legal Guide. First among them is the great variety of commodities and products, as well as variety of geographical contexts. This is a worldwide project with the aim to be useful for the farmer in the US, as well as the farmer in Zambia and the farmer in Laos. The level of development and the level of capacity, particularly on understanding legal topics, are hugely different. Furthermore, countries have vastly different legal and economic systems. For these reasons, it is necessary to be prudent and careful when providing advice within the context of such variability. It is also necessary to make the information accessible to non-legal readers without losing the required degree of legal rigour.

The development of the Guide is already at an advanced stage. The last full meeting of the Working Group will take place in late November 2014. All chapters have already been drafted and reviewed.

A zero draft is still available on the UNIDROIT website for public comment. The outputs of the consultations will be very useful for the Working Group in the last stages of drafting and revision. The Guide will be published in early to mid-2015.

### 3. Outcomes: The Legal Dimension of Contract Farming in Africa

The sections below provide a summary and consolidation of the major outcomes and issues brought forward during the consultation workshop. At the workshop, participants provided many useful recommendations, based on their experience, on ways to connect the Guide's global approach with the regional context in Africa. Thus, at the global level, vertical integration and supply chains are two of the main characteristics of today's agricultural markets. This influences, today more than ever, the way agricultural commodities are produced, how much is produced, where, when and for whom. Supply chains are structured around contracts linking the various actors, from the rural producer down to the final consumer. The first contract in the chain is the one where the farmer agrees to produce for a buyer a certain commodity according to a set of specifications and production methods, often using the know-how and technology of the buyer and under the latter's looser or tighter control.

This first contract in the chain is what the Legal Guide on Contract Farming will call an "agricultural production contract", underlying contract farming. Contract farming offers many potential benefits, sustaining and developing the production sector by contributing to capital formation, technology transfer, increased agricultural production and yields, economic and social development and environmental sustainability. Final consumers, as well as all participants in the supply chain, also reap substantial benefits from stable sources of supply and efficient processing and marketing systems. Public authorities and governments are increasingly aware of the role that contract farming can play in agricultural development, and some governments have introduced enabling policies to attract private sector investors to enter into ventures, sometimes in the form of public private partnerships. On the other hand, one should not neglect that contract farming carries some risks, mainly due to over-dependency of the farmer and other risks which typically affect the weaker party in the bargaining process.

The success of contract farming may depend on many elements, but one key element is the ability of the parties to build stable, commercially sound and fair relationships based on clear commitments and mutual compliance. The contract really acts as the cornerstone of the deal. The applicable law also plays a major role. Besides giving legal effect to the obligations of the parties, the law also supplements them in some situations, with mandatory provisions and default rules to apply in the absence of express or implied choices by the parties. Latest estimates from FAO predict that the world will need to nearly double food production within the next decade to feed its population. Achieving that objective will require a vast amount of resources and adequate policies to channel investment towards agriculture and food production. The necessity to increase investment in agriculture must be stressed particularly in the African context. Another question, in this general environment, concerns the role of lawyers in helping to make sustainable investment in agriculture more attractive. Private law does not, perhaps, immediately come to mind when thinking of food security. The organizers of this Workshop believe that an adequate legal framework for investment in agriculture may have a role to play. FAO believes that when properly structured, contract farming can offer many opportunities to farmers.

From a contract law perspective, the agricultural production contract presents original features because it involves a variety of interlinked obligations on the parties (not only the parties to the contract but often also other participants in the value chain), and is approached in a variety of manners under domestic law. Under many legal systems, the production contract is subject to traditional legal categories such as a sale or a contract for services, whereas others recognise its sui generis nature, and yet others have developed a special contract type to regulate such contracts.

From this broad, global introduction, the following sections will begin the focus on the legal dimension of contract farming in the African context.

### 3.1. The Historical and Economic Context for Contract Farming in Africa

Mr Perin Saint-Ange (IFAD Regional Director for Eastern and Southern Africa)

When beginning the discussion about contract farming in Africa, there is a need to have some focused discussion on the historical context. In the 1960s and 1970s, the African continent was a net exporter of major food and cash crops. In some food and cash crops, Africa is still exporting. But, in most food situations, Africa is a net importer today – a huge transformation in a matter of 50 to 60 years, going from a net exporter to a net importer in most countries on the continent. At that time, in the 1960s and 1970s, twenty percent of the national budgets would go to agriculture. The budget was destined to finance agricultural research, agricultural extension, providing support to small farmers, providing support to output marketing, providing support to community mobilization and infrastructure. Since the 1970s and until very recently, we had noticed, with a lot of regret and concern, a general decline with some levels of expenditure now stagnating and others continuing to decline. This has resulted in net productivity which does not reach the levels that we would have expected in this modern world. There is a lot of underinvestment; there is a lot of inefficiency in agricultural production. We need to take stock of that and recognize that if we are to transform this continent, we have to do so in this historical context.

So, what is happening today? At the present, there is a lot more investment in agriculture. The African Union has declared the year 2014 as the Year of African Agriculture and Food Security. It is also the United Nations International Year of Family Farming. All are important major thrusts, major strategic directions going in the right way. There are signs of change every day, all around the continent. Most of the change is Africa-led, inspired in the countries, which is a positive step because in previous times a lot of the changes were originating from Rome. Africans are leading by example on the frontline, though perhaps still not enough, but the changes are happening. The New African Partnership for Development represents another change as they are leading the process, with support from the international community; this is another signal that change is on the agenda and that it is Africa-led. Increasingly, we are seeing more and more leadership from African countries to make the CAADP process work.

There are new initiatives in agricultural risk management, financing, research, transformation planning; but the question is about how these can be translated, today, in the subcontinent. In Africa, there is a large emerging class of middle income countries for the first time in history. In Eastern and Southern Africa, nearly half of the countries are now classified as middle income, which was not the case five or ten years ago. There is therefore an increasing number of countries that are able to raise themselves up to middle income and even high middle income levels. Even in those countries that are not yet middle income, are aiming to become so and are witnessing significant growth rates that are far greater than Europe. In Ethiopia for example, growth rates have been about 10 percent, and many other African countries have followed a similar trend. While these growth rates may not be as high as one might hope, they are still much higher than those seen in some other regions. The positive news however is that, in general, in Africa the expected growth rate at the continent level is about 5 percent. These are the kinds of factors that are favourable for addressing the issues we are concerned about generally, and in particular contract farming.

IFAD is seeing a lot of changes and transformations taking place in the rural space and in the cities. The question regards however the reasons for an underperforming agriculture, when compared to other sectors and all the opportunities provided by this context of strong growth. A generic example can be noted, of disparities between the huge fraction of the workforce engaged in agriculture versus the limited contributions of the agricultural sector to GDP and growth. It is necessary to examine

closely how the contribution can be made to transforming agriculture. Some statistics show that Africa as a continent has the largest area of uncultivated arable land, measured approximately at half a billion hectares. There is no other continent that can claim today the amount of land available for agriculture that Africa has. A majority of the world's small holder farmers are located in sub Saharan Africa and this is a huge asset with potential in terms of people and available land. Irrigation could increase agricultural output in Africa by 50 percent but the greatest limitation remaining is the 65 percent of the farm work that is still done by hand. Complications brought on by climate change, drought, flooding, etc. pose another challenge, as well as conflicts in many of the countries in the area.

There is reason for optimism however, as the family farming model allows for adaptability and resilience. For contract farming to be effective, we need to appreciate, promote and practice core principles and we need to have a partnership dialogue agenda that facilitates and enables contract farming to operate in the best possible conditions. We need to appreciate that in Africa, 350 or more different organizations support smallholder farmers and contract farming either directly or indirectly. These organizations must promote the same message with a consistent agenda, but this is unfortunately often not the case. We still have a situation in Africa where a lot of the agencies are sending conflicting messages with their guidance.

Farmers need access to infrastructure, technology, processing, marketing, storage, financial services, electricity, and water. All of these elements can come as a result of contract farming. Access to land and access to water are still difficult resources to get right. Producer organizations play an important role in making contract farming feasible by lowering transactional costs. Yet, in order to make contract farming and the Legal Guide effective, will require the efforts of the participants involved presently, by taking this effort back to the country level. IFAD and its partners are going to give this initiative the necessary support, including tailoring advice to the contexts of different regions and countries, so that it can become effective.

### 3.2. Contract Farming and Inclusive Value Chain Development

Ms Eva Gálvez-Nogales (Marketing Economist, FAO)

In contract farming, the nature of the producer, whether individual or organized in a group of farmers, as well as the nature of the buyer, whether an exporter, trader, processor, will have important consequences for the content of the contract. Depending on these factors, there will be a different type of market specifications, resource provision (inputs, finance, and agricultural machinery), production management (technical assistance and oversight of production and marketing). All of this will lead us to the evidence we have of the increasing importance of contract farming in the context of value chain development.

As earlier mentioned, there are many countries in the Eastern and Southern Africa region that are becoming middle income economies, and as a consequence, consumers are changing, demanding more and safer products of increased good quality, and that implies a lot of changes also in the governance of the value chain. This is why contract farming is increasingly seen as a workable mechanism to govern transactions in this new age of modernizing value chains. FAO has been working on this issue for some time, and it asks itself the extent to which contract procurement may be an effective institution mechanism to enhance the chances of small holder farmers to be included in modern, higher paying value chains. FAO has carried out a series of contract farming case studies in countries around the world, studying the characteristics of the contractual arrangements, as well as the legal framework and the more general enabling environment in the country.

Several examples can illustrate the characteristics of the value chain which in turn can influence the content of the contract underlying contract farming. The first example is the barley value chain in



Argentina. This value chain is highly concentrated; there are very few manufacturing companies and they require a very specific type of variety for the production of malt beer. So the consequence is that the contracts will include detailed specifications for a certain type of seed to be used and all agricultural protocols that the farmer should follow. The price is determined through comparison with a substitute crop, the reference price here being wheat. The buyer will provide several services, such as the provision of seeds and technical advice. Only in rare occasions are other inputs such as finance or fertilizers provided. The farmer is encouraged to take out insurance. Another example is the pig value chain in China. China has become the largest producer of pork in the world, and following some problems several years ago and the growing middle class in China, the whole value chain is changing. The value chain is increasingly conscious of food safety, determined to invest in quality. As a result, the value chain is transitioning from a spot market governance to contract farming. In order to do that, due to the fact that it is a new operation, there are many inspections that take place as part of the contract farming arrangement to ensure that protocols are strictly followed.

Although there is convergence in the types of clauses that frequently appear in contract farming, despite commodity differences, it is important to be clear that the prevalence of contract farming and the contents of the arrangements, will essentially be a reflection of the type of value chain we are talking about, and this is very important when discussing inclusiveness, because not all contract farming operations have the same potential to be inclusive versus exclusive. Those that include, for instance, financing of inputs and technical assistance have the potential to be more inclusive.

Contract farming is being promoted in the framework of public private partnerships (PPPs) for agricultural growth, especially for value chain development. FAO has conducted a study of about 70 different cases of agribusiness PPPs and 40 of them supported value chain development; in all of them, contract farming took centre stage. In addition, FAO is investing considerable work on agri-territorial approaches, economic growth corridors, clusters, agri-industrial parks: contract farming is an essential building block also in these situations.

The reality is that contract farming is being promoted as a very inclusive mechanism, but there are challenges to this, and therefore it is necessary to be clear that business viability and the enabling environment, especially the legal framework, are key. And to this extent so are political and institutional sensitivity that allow contract farming to develop without clear interruptions. There are different ways to minimize the potential risks of contract farming, such as ways to enhance the bargaining power of farmers (collective action, provision of information), strict treatment of defaulters, group lending. Collective action in the form of farmer groups is important for reducing the inherent transaction costs of doing business with many different small holder farmers; here, public and private support is essential to allow that to take place.

It is very important that the legal framework is flexible enough to accommodate different types of engagement with farmers and different types of value chains. It is essential to promote good contractual practices for contract farming, to build capacity, including on the legal dimension, and to promote the social, economic, and environmental development impacts of contract farming.

### 3.3. Legal Frameworks for Contract Farming in Africa

The following section summarizes presentations on the existing legal framework for contract farming in several countries across Africa: Ethiopia, Malawi, Kenya, Tanzania, as well as the OHADA regional framework. Mr. Tito Arunga (FAO) served as the moderator for this presentation session.

#### 3.3.1. Ethiopia

Professor Tilahun Teshome, Addis Ababa University, School of Law, Ethiopia

Most relevant for the area of contract farming in Ethiopia, contract law is primarily contained in the 1960 Civil Code of Ethiopia which was drafted in the era of Emperor Haile Selassie, by one of the most distinguished jurists of the 20th century, Mr. Rene David of the University of Paris. Among the five books contained in the civil code, which has approximately 3,300 articles, two books are devoted to the area of contracts: special contracts and general principles of contract. The other provisions of the civil code deal with the law of status of persons, family, taxation, and property. Contract law, in general, is an aspect of the law of obligations. The policy considerations behind the law of contract in Ethiopia, as in many other systems, are the freedom of contract on the one hand, and the security of transactions on the other. As mentioned earlier, the part in the civil code dealing with the law of obligations is divided into general contracts and special contracts.

As far as the civil code is concerned, the specific area of contract farming is not directly addressed, but there are a multitude of provisions and concepts that can become very pertinent to contract farming. The civil code, especially in its special part, contains provisions on labour and contracts for the provision of services, contracts for possession of chattels, contracts relating to immovable property, etc. For example, in the Ethiopian civil code's section on sales contracts, Article 2270 states that "a sale may also relate to a future thing which the seller undertakes to make for delivery to the buyer." Contract farming may be viewed as just such a sale.

Contract farming can be defined as an agreement between farmers and processing or marketing firms for the production and supply of agricultural products under formal agreements frequently at predetermined prices. In the first place, it is a binding agreement between farmers (small holder or large scale) and purchasers (such as cooperatives, suppliers, distributors, etc.). Its nature is primarily as a forward contract. The contract is concluded and will be performed at some future date, and the price is usually predetermined. Thus, the formation of the contract underlying contract farming is not different from the formation of other types of contracts, as it relies on capacity, the consent of the parties, and the defined object and forms. The general provisions on effects and extinction of obligations are also applicable. As mentioned earlier, contract farming is based on a binding agreement, where the parties agree to bind themselves to the terms and conditions stipulated in the contract. A very important provision of the civil code that characterises the nature of contracts is that the provisions of a contract, lawfully formed, shall be binding on the parties as though they were law.

What makes contract farming different from other kinds of contracts is primarily the subject matter. Thus, it is imperative to take into consideration the following questions when considering whether to enter into a binding contract: On what subject is the contract to be concluded? With whom to conclude the contract? How to conclude the contract? What are the terms and conditions of the contract? What are the ways that the obligations of both parties are to be performed? What are the available means for guaranteeing performance? What civil sanctions should be imposed on a person who doesn't perform according to expectations? What form should communications of the parties assume? In what ways should disputes be resolved? Many of the provisions contained in Ethiopia's civil code are likely adequate to deal with any problems that may arise in the drafting of agreements for contract farming. The establishment of a government organ for looking after agricultural transformation including

agricultural marketing and promotion, through Regulation No. 198/2010, is a step in the right direction.

### 3.3.2. Malawi

Mr Mwiza Nkhata, Dean of Law, University of Malawi

From its independence in 1964 until about 1980, in Malawi contract farming was largely non-existent among smallholder farmers. Moving into the 1970s, showed evidence that there was some contract farming, but the kind of contract farming that was present was largely dependent on the state. Typical contract farming arrangements involved a few medium or large scale commercial farmers entering into contracts with the government directly; it was all premised on state intervention. From the 1980s onwards, with the wave of market liberalisation, contract farming was extended to smallholder farmers and by the early 1990s, contract farming had emerged in the country. In 2013, the government adopted a national contract farming strategy.

In terms of the legal dimension to contract farming in Malawi, one must keep in mind that the country's legal system is heavily influenced by the common law. In 1902, the British judicial model was transposed and brought into Malawi by an article in the British Central Africa Order in Council. The implication of this for contract farming in Malawi is that the English law of contract, not codified as in civil law systems, is still very applicable. The general principles of contract remain applicable for contract farming, with appropriate modifications taking into account the subject matter at issue. Malawi does not currently have a law that specifically deals with contract farming or contractual practices in the agricultural sector, meaning general law of contracts still is very much applicable.

It is necessary to reflect on general principles, such as the freedom of contract which requires that the parties to the contract may negotiate terms as they wish and bind themselves according to the terms agreed upon. If you transpose this to contract farming, the parties are starting off at an uneven disadvantage and the producer often will be the party in a weaker position. In a situation of uneven bargaining power, even the negotiations themselves tend to be skewed towards the more powerful party. It is suggested that the prevailing situation in Malawi is likely to work to the advantage of stronger parties, and it might be important for the government to consider adopting legislation that specifically regulates contract farming. The role of this legislation would be to provide the overarching framework within which contract farming would be negotiated by all players within the country, setting the basic requirements that all contract farming agreements would have to conform to.

In terms of the practice of contract farming in Malawi post-independence, contract farming was being practiced both informally and formally for a range of agricultural products. But there was huge divergence in terms of the actual practice as there was no single law for actors to look to. Each organization involved currently in contract farming formulates its own contracts with farmers. While there is nothing inherently wrong with this, there may be a need to create at least a minimum baseline to reflect common values and standards. When you assess the contracts, some are professionally prepared and others are not, and most tend to be prepared by the buyers and given to the farmers. In practice, there is very little negotiation, leading to a possibility that terms may be imposed on farmers in some cases. Some purchasers prefer to buy directly, whereas others prefer to deal with farmer organizations.

One particular novelty in the emerging contract farming discourse in Malawi is how contract farming is being used to attain other policy objectives supported by the government. In Malawi, the tobacco industry has been plagued by child labour issues; the obligations written into the contract and the buyer on-farm monitoring are seen as potential mechanisms to eliminate this issue. The Malawi case shows how contract farming can be a vehicle to attain objectives beyond increased agricultural productivity and market access.

### 3.3.3. Tanzania

Mr Charles Mpaka, Senior Lawyer, Ministry of Agriculture, Food Security and Cooperatives (MAFC)

In 2009, Tanzania enacted specific legislation to regulate contract farming (Crops Laws (Miscellaneous Amendments) Act, 2009 (No. 20 of 2009)). Prior to 2009, Tanzania relied on the general background legal framework for contract law, in the form of the Law of Contract Act of 1963, as revised in 2002. Tanzania began practicing contract farming in the 1990s, several years before the enactment of a specific legislation framework was drafted. In response to challenges that arose in practice in contract farming, the government decided to make amendments to the existing crop laws on aspects related to contract farming, including acts for the following sectors: tea, coffee, cotton, tobacco, sesame, and cashews.

Under the amendments, crop boards were given powers to regulate contract farming in their sectors, and they were tasked to promote the interests of both farmers and buyers. Agreements must meet requirements as to form and must contain set information about the parties, obligations of the parties, type of facilitation provided for the farmer, and any other conditions on the contracting parties. The law requires every contract to be submitted to the crop boards for scrutiny and registration. However, even in the short period since the enactment of changes in 2009, there have been problems with the implementation of contract farming. It has been suggested that Tanzania may want to consider a broad contract farming legislation that takes over from the current sector-specific focus, and extend to all commodities.

### 3.3.4. Kenya

Mr Justus Wabuyabo, General Manager – Corporate and Legal Services, National Water Conservation and Pipeline Corporation

Kenya is also a common law country from the British legal tradition. Therefore, the first basis for the legal framework for contract farming in Kenya can be found in the Law of Contract Acts, which essentially states that the common law of England and its rules of equity govern the law of contract in Kenya, notably bringing in the notion of freedom of contract. In Kenya, one would find contract farming in many of the major agricultural production sectors, from coffee to chickens to aquaculture.

Here, the focus will be on the example of sugar production. A unique feature of contract farming is that, in many cases, the responsibilities will extend beyond the two primary parties. When contract farming for sugar cane began in Kenya in 1974 with the Mummias sugar company, it was being produced on land given by the government. For a while, they depended primarily on their own plantation production. Initially, the company began a sort of benevolent provision of services to local growers, doing everything from input provision to processing. Gradually, farmers groups began to develop and come together to push for more order in the industry.

As a result, Kenya enacted the Sugar Act in 2001, which codified farming contracts and provided standard terms and conditions. The Act has introduced independent parties with other responsibilities, such as for example, the Kenya Sugar Board which plays the role of financier and provider of support to farmers. In addition, there is the Kenya sugar research foundation, as well as out-grower institutions which represent the interests of out-grower farmers, the millers, the Kenya sugar manufacturers association, and the growers association. The Law provides the price will be determined by the Sugar Board in consultation with organizations representing the growers and buyers. The Sugar Act was repealed last year by the Crops Act, but sugar contracts under the old law are still in use.

### 3.3.5. OHADA

Mr Alexis Ndzukenku, Head of Legal Affairs and Communication Services, OHADA

The Organization for the Harmonization of Business Law in Africa, better known as OHADA, is an international organization currently comprising of seventeen member states in Central Africa, West Africa, and the Indian Ocean. The organization aims to ensure legal security for economic activities and to stimulate investment. It has five institutions, among which is the Council of Ministers of Justice and Finance of each state member. The Council of Ministers acts like a parliament, in order to enact common rules that govern business activities in the member states, and those common rules are called uniform acts.

To date, OHADA has enacted nine uniform acts and some of them cover certain aspects of contract farming. The legal structure of the parties to the farming contract, for example, is determined by OHADA law. When such parties are established in any of the member states, both parties will operate under a structure provided by OHADA law, whether as commercial companies, cooperative societies, individual traders, or even business starters. Furthermore, certain relations relevant for contract farming are currently covered by OHADA law. For example, the pledge of farming products to a food industry in exchange for financing will be covered by the OHADA uniform act on security within the member states. The transportation of farming products by road will also be covered by the provisions of OHADA uniform acts, when the place of taking over of the goods or the place of delivery is located on the territory of a member state. Another example is the sale of farming products which, in the absence of specific legislation, falls under certain conditions within the scope of the commercial sale regulated by the uniform act on general commercial law. Another issue is the settlement of disputes arising from contract farming: those disputes can be submitted to official courts and in that case, the common court of justice and arbitration, the common Supreme Court for the seventeen member states in matters related to the application and interpretation of OHADA law, may intervene. If the parties prefer arbitration, OHADA has a uniform act on arbitration and also a specific arbitration system located in the common court of justice and arbitration.

Looking towards the future, OHADA is heading towards a more extended coverage of contract farming by its law. OHADA has a very conducive environment; from an economic point of view, farming in OHADA member states is a key sector of the economy, and development partners encourage partnerships between small farmers and agro-industries. From a legal point of view, works currently under development in OHADA focus on several aspects relevant for this type of contract. The preparation of an instrument on commercial mediation can be very useful in the context of contract farming. OHADA also is working in developing leasing, private public partnership contracts and joint venture, and is planning to study a possible harmonization of land laws. Some relevant issues for consideration are those of legal techniques and competent jurisdictions. If OHADA were to draft a uniform act on contract farming, then we would have to choose between uniformization that has been practiced so far, and harmonization. Finally, another related concern is that of the distribution of competence since a choice must be made between the common court of justice of OHADA and the national supreme courts to hear and determine litigations relating to contract farming.

### 3.4. Case Studies and Critical Issues for Contract Farming in Africa

The following section first summarizes initial presentations made during panel discussions at the workshop, and then consolidates issues raised during subsequent small group discussions and plenary discussions. These initial presentations provide useful snapshots and case studies of particular experiences with contract farming in Africa. Panellists were asked to share experiences, recommendations, and best practices focusing on issues related to the negotiation process, the

conclusion of the contract, the definition of reciprocal contractual obligations, performance of parties' obligations, as well as non-performance/breach – including excuses and remedies – and dispute resolution mechanisms. Ms. Patricia Nsiime (FAO) served as the moderator for this panel.

#### 3.4.1. Certification and Contract Farming

Mr Zachary Kiarie, Head of region, Eastern Africa, Fairtrade Africa

Fairtrade works with farmers who are organized into producer groups; these groups must comply with Fairtrade standards in order to use the Fairtrade mark. Fairtrade has three sets of basic standards. The first standard, touching on small producer groups, is called the generic standard for small producers. Secondly, Fairtrade has a standard aimed at plantations, dealing with workers on the plantation. The third standard is applicable to both groups, and this is the set of trade standards. This is where certification begins to intersect heavily with issues surrounding contract farming. Based on the product set up, as Fairtrade is for agricultural products, it has developed specifically in certain parts of the world, contract production standards (such as in Asia for contracts for rice, and India for cotton). From an African perspective, vegetable production would often be similar to contract production, as envisioned in these other regional standards.

From Fairtrade's standards, all processors must source a certain percentage of their produce from out-growers or small scale farmers; in the first year of certification, processors must source at least 10 percent from these small scale farmers. Processors have responsibilities for empowering the out-grower groups with concrete measures for six years until the groups are competent with clear structures to be certified independently. Thus, with tea out-growers (with examples in Rwanda, Kenya and Tanzania), these are normally organized initially by producers or by NGOs, and then eventually, Fairtrade will certify the grower organization independently, though still with a very strong business linkage with the processor.

The Fairtrade standards cover the pricing element, (since with certification comes a premium) pre-financing and the contracts themselves, whether directly between the processor and the farmer or the processor and the grower group. The contracts must be very clearly written, with clear indications of volumes, quality, price, payment terms, delivery conditions, dispute resolution mechanisms, inputs and reductions.

Major challenges for Fairtrade and contract farming include defaults by either party: the farmer, the farmer group, or the processor. The question arises of how Fairtrade can mitigate such defaults. In the event of a default on contractual obligations, Fairtrade will suspend the certification of the breaching party. If there is repeated non-conformity, Fairtrade will withdraw the certification. This measure has financial business implications, and Fairtrade has seen it work in practice to bring parties back into compliance. Particularly in the group context, peer pressure can be very effective to maintain certification and put pressure on breaching individuals within the group. Fairtrade, being a standards-based organization, awaits the development of the Legal Guide on Contract Farming, to inform as it continues to develop standards that relate to production under a contract.

#### 3.4.2. Seed Production under Contract Farming

Mr Matanda Wabuyele, MW Management Consultants

As a case study example, in Kenya, a large seed company has entered into contract farming with approximately 250 small and medium farmers to produce seeds. The contract is based on a seasonal crop with fixed pricing for each season up-front. It involves other parties, including a certification body (KEPHIS – the Kenya Plant Health Inspectorate Service), banks for financing, insurance

companies against weather and other disaster risks, suppliers of inputs, and in this case, a national cereals board. Technical support and inputs are provided to producers, and there is an annual conference held by the seed company for farmers to gather feedback from them as part of relationship building.

Regarding contract formation, there is an initial step where farmers fill out an application form to be vetted by the company. Then, if this is approved, the farmer is called upon to sign a contract provided by the company in English only. Some of the observed issues include that, once a contract is drafted in English, there is very little participation from the farmer, and the farmer may have limited understanding of what is in that contract. Farmers have little involvement even in negotiating the pricing aspect. It is crucial that the contract should be explained to the farmer in a simplified form, so that the farmer understands the obligations and is therefore more likely to perform.

Pricing is a challenge for farmers and buyers also because of the economic factors at play. In this case, it is recommended that alternative options be explored for the pricing aspect, such as fixed price plus bonuses. Typically, contracts do not deal with man-made hardships or challenges to performance of the contract, such as civil unrest or labour disputes, but it is recommended that contracts mention and allocate risks for such events. In general, open communication channels between the parties are critical, as are efforts by both parties to build trust in a lasting relationship. Governments have role to play in capacity building among the relevant parties and in creating an adequate enabling environment for successful contract farming.

#### 3.4.3. Capacity Building for the Parties

Prof. Esther Gicheru, Chairlady for gender and research interim committee, International Co-operative Alliance Africa

At the university level, there is work underway to develop a curriculum on contract farming, which aims at training producers and buyers to help them during the negotiation process. The curriculum development was informed by a study and survey completed by GIZ. In the study, when the producers and buyers were interviewed, they pointed to a number of advantages and reasons why they wanted to enter into contract farming. For producers, the primary motivation is that contract farming ensures a market for their produce. In most cases, producers perceive that they will receive higher prices through contract farming than through spot market transactions. Producers also value the potential for financing and input provision. For buyers, the primary motivation is securing the necessary quantities and qualities to supply up the chain, particularly when the goods must meet certain international standards requiring close monitoring.

The parties also perceived some risks and problems with contract farming that will have to be addressed in a training curriculum. For example, in some instances, the market will provide a better price than that agreed earlier under the contract, providing strong incentives for breaching the contract. Sometimes there have been reported cases where the field staff for contractors are corrupt and will favour some farmers over others. Some producers fear that the inputs provided by the contractor are overpriced compared to what the producer could buy on its own on the market.

The example of the Kenyan horticultural industry has also provided useful lessons for the curriculum development in terms of best practices that buyers and producers can adopt. The Horticultural Crops Development Authority is the relevant regulatory authority, and they have developed a code of conduct that caters to all parties involved, including buyers and producers. The code contains a checklist for obligations. It is hoped that the present Legal Guide can further inform the development of the curriculum.

#### 3.4.4. Good Practices for Implementing New Contract Farming Schemes

Ms Poorva Pandya, Head, ETG Farmers Foundation

In this case study on contract farming soy beans, maize, and oil seeds in Tanzania and Zimbabwe, contract farming typically begins with the submission of applications by interested individual farmers. Farmers are then organized by the company and divided into groups of 10 (maximum 12) farmers where the farmers choose their own lead farmer. This lead farmer is also given responsibilities, duties and expectations from the start, as well as given training on how to fill the role of lead farmer. The contract itself contains well defined grading systems, how much inputs are given, what is the expected minimum yield, what will be the profitability from implementing the entire package. The contracts are also negotiated with the farmers before the onset of the season, so that they have a full understanding. The price is guaranteed as a floor price based on four years of average price data. The price is set based on consultation with the farmers, along with national governmental and intergovernmental entities such as FAO. As a floor price only, the farmer will be entitled to the market price if the market price rises above the floor price when the time for payment arrives. Delivery points and inputs distribution points are also determined after consultations with the farmers. Contracts are written in the local language so that the producers can best understand. Each group contract is signed by the individual farmers and is also signed by several other parties, including local councils, the national Ministry of Agriculture and the farmers' union. In countries where farmers' unions are prevalent, the company will encourage farmers to become a member of the union.

ETG has had mixed results after implementing these practices. At the beginning of implementation, the repayment rate was about 68 percent on inputs provided to farmers. Currently it stands at about 93 percent, a good achievement for food crops. There have been instances where side-selling still occurs despite being guaranteed the market price, because farmers hope to avoid repaying inputs. The local chief is used to put community pressure on offenders. Defaulting producers were informed that they would be put on a list and shared with all competitor buyers in the area. The company also in some cases informs farmers at the area level that if systematic defaulting continues, the company will have to leave the local area, cutting off a major market link for the entire area.

It has been suggested that the legal framework for contract farming in several of these countries may be inadequate or missing key supportive components, particularly in the effectiveness of available dispute resolution and enforcement mechanisms. Furthermore, the company's experience has highlighted that some government actions can have a dramatic negative effect on the economic sustainability of contract farming, such as for example, forced market disruptions or poorly timed price setting.

#### 3.4.5. Evaluating Contract Farming as a Component of Agricultural Policy

Mr Antoine-Marie Moustache, Special Advisor to the Minister, Ministry of Natural Resources, Seychelles

The Seychelles, a SIDS in the Western Indian Ocean, has seen much transformation in its agricultural sector in the last 25 years, both in terms of modality of production and produce disposal. Although contract farming is not currently practiced in the Seychelles, the Government is beginning to consider whether contract farming should be somehow incorporated in its policies for agricultural development moving forward.

Its agricultural sector is characterised by some 700 odd small mixed farming entities with an average size of 0.5 ha producing a range of raw foods, meeting some 100 percent of the table eggs, 60 percent of the fresh fruit and vegetables, 15 percent of the pork, 10 percent of broiler poultry and less than 2 percent of the beef consumed by an indigenous population of 90,000 and an annual tourist



population of 240,000. However some 72-75 percent (by weight) of the food consumed is imported and largely covers items for which Seychelles does not have a comparative advantage for growing.

At the turn of the 1980s the socialist State marketing structures which had been obliged to buy all of the farming entities' produce were dismantled and gave way to a certain type of protected free market system. Farming entities were at odds on how to best market their farm produce, this leading then to periods of gluts and scarcities of produce. Frequent disruptive weather patterns throughout the 1990s and 2000s and the introduction of a liberalised policy of imports, in 2008, threw the national agricultural sector into complete chaos leading to a gross decline of a sector that also competed with very cheap imported equivalents. The difficulty question is on to how to entice, presently, a revival of the sector, convincing the small farmer to produce at least for the select local niche markets. Additionally, could contract farming provide the solution on the eve of the Seychelles acceding to the WTO?

It is noted that the forthcoming Legal Guide can only provide basic indications of the way ahead; each participant will need to apply it to the particular circumstances and needs of their region, country, and even local areas. In the Guide and its application, it is important to keep small farmers in mind, keeping things simplified and accessible, and extracting the elements of utmost importance. Small farmers represent the overwhelming majority of all farmers, and contribute to 56 percent of the global food production. Africa has a long way to go in terms of food and nutrition security; it is crucial that the small farmers be empowered as a major objective of food and nutrition security in Africa and globally. In the African context, there cannot be further national development without agricultural development. By empowering the small farmers, perhaps through inclusive contract farming, this will enable us to pursue the objective of food security.

#### 3.4.6. The Importance of Organizing Farmers

Mr Alexis Ndagijimana, PRICE project, Program and contract manager, Rwanda

For Rwanda, contract farming was introduced recently as part of plans and strategies for agricultural transformation. The government is encouraging agricultural cooperatives and facilitating the introduction in the market for potential contract farming buyers. Through this new initiative, farmers will be supported to determine market prices and access inputs and extension services, among other features. Contract farming is seen as the main alternative to consolidating land holdings for agricultural production, and it is consistent with initiatives to promote family farming.

From the tea sector, which is experiencing the greatest success, farmers are well organized and the farmers sign an agreement with factories for production and the supply of inputs (pesticide, fertilizer and seedlings). The main motivation for the success of these initiatives is the guaranteed supply of raw materials for the factory and the guaranteed market for the producers. There is a strong partnership between farmer cooperatives, factories and the government. Price determination is made through consultation with all stakeholders. For coffee, there is a lot of price fluctuation and competition between buyers, so producers are currently unlikely to find sufficient incentives to enter into contract farming at prearranged prices. For the horticultural sector, there are many challenges in Rwanda in terms of export promotion. The government has an important role to play in promoting contract farming by grouping farmers in order to build capacities and improve bargaining powers during contractual negotiation.

#### 3.4.7. Public Private Partnerships

Ms Connie Masaba, Vegetable Oil Development Project, Uganda

Uganda is promoting vegetable oil crops through a project partially funded by IFAD and private sector partners. A major component of the project is a very structured private public partnership which incorporates the government, a private sector partner and a farmer organization.

The private sector has committed to a number of obligations, such as ensuring that all the crop produced by the farmers is purchased, ensuring that technical know-how is passed on to the farmers, ensuring that facilities are available for adding value to the produce. The government is to ensure that the farmers are trained and have access to production credit that they use to grow the crop, that there is adequate support infrastructure such as access roads, and also support for small holder farmer organizations. The farmer organizations also have a role in making sure that the farmers abide by the technical advice that is given, to ensure that the farmers use the advanced funds given for proper purposes, and that the money is paid back.

The farmers sign an agreement with the farmer organization to sell the crop to the mill for an agreed price, and they agree to follow the technical advice that is given. The pricing mechanism is particularly sensitive and important because, under the project, the farmers are only dealing with a single miller. The pricing mechanism is based on a formula tied to international prices, rather than left to negotiations between farmers and the miller. However, price fluctuations tied to international prices create challenges for both parties. Side-selling represents another challenge, although there are limited buyers available. Again, here, trust building between the parties is essential for sustaining long term relationships.

#### 3.4.8. Additional Issues and Recommendations from Discussion

This subsection attempts to summarize and distil many of the key points made during large group discussions, small group discussions, and question and answer sessions. These comments, issues, and recommendations are roughly organized below by topic area according to the breakdown of chapters in the forthcoming Legal Guide. However, it is acknowledged that many of the comments will touch on several topic areas or chapters from the Guide.

##### 3.4.8.1. Introduction / Overarching Concerns

Regarding the definition of the agricultural production contract under the Legal Guide, one commenter noted that the Guide's focus on the relationship between the producer and the contractor could be misleading by being too narrow. The broader concept of contract farming incorporates relationships with many other potential parties.

It was suggested to include a page or box at the beginning of the Guide which summarizes the major assumptions underlying the Guide, including its scope limitations, and its focus.

It was noted that the term "crop purchase agreement" is frequently used in Eastern and Southern Africa to refer to the contract underlying contract farming.

There is a very wide diversity in the forms that contract farming can take, based on the commodity and the socioeconomic and geographic contexts. It is for this reason that flexibility is important in the legal environment and for any attempts to address or regulate contract farming.

It was noted that contract farming tends to be more successful for high value crops, also for crops where the producer benefits from having the technical know-how of the contractor.

Organizing farmers is crucial for improving the attractiveness and success of contract farming in the context of Africa, where there are many small holder farmers. Producer organizations can be a

facilitating factor for achieving group certification, educating farmers and providing extension services, and reducing the transaction costs for companies in managing contracts with many different smallholders.

The aspect of youth and particularly gender in contract farming inclusiveness was noted, as the statistic was given that over 80 percent of the small holders in Africa are women, and they produce over 70 percent of the food on the continent.

It was asked how contract farming can contribute to food security and increasing intra-African trade. It was then noted that there is some evidence that contract farming boosts production and yields with improved technologies and knowledge transfer.

Participants raised the issue of the usability and the practicality of the Legal Guide, because of its length but also because of the very technical contents. Several participants raised the issue of potential end users as governments, and the related possibility to have check lists or tools allowing countries to be able to see at a glance the essential provisions a regulatory framework on contract farming should encompass.

#### 3.4.8.2. The Legal Framework

There are many possible ways for a country's legal framework to address or regulate contract farming. The absence of a specific law on contract farming is not necessarily a hindrance, but it can become a hindrance to effective contract farming outcomes if the existing framework is missing key components, such as effective contract enforcement mechanisms. When evaluating the legal framework for contract farming, in-depth country-specific assessments are essential.

There are many potential connections between contract farming and human rights concerns. Contract farming intersects with concerns about the right to food and the right to work, among others. The example was highlighted of the Malawi case, where the government is attempting to reinforce its attempts at eliminating child labour in agriculture by mandating contractual provisions in contract farming that prohibit child labour from being used to satisfy the obligations under the contract.

Regarding the enabling framework in the African context, it is important to highlight intersections with the Comprehensive Africa Agricultural Development Programme (CAADP) and its Results Framework.<sup>6</sup>

#### 3.4.8.3. Parties, Formation and Form

In many contexts, particularly with small holder farmers in Africa, those engaged in contract farming often do not realize what they are committing to. There is a challenge in ensuring sufficient levels of understanding of the legal obligations created by contracts. Here, it was recommended that simple checklists for extension workers can be used to inform farmers about the content of contracts and ensure a certain minimum level of awareness when entering into contract farming, especially in situations where contract farming is new to the area.

The many possible roles of government were highlighted, from facilitator to promoter to regulator to a party in the agreement.

It was noted that outcomes could be improved if the negotiation process were to be guided by third parties. Here, there is an important role for extension workers. Often the contracts are

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<sup>6</sup> For more information, see: <http://www.caadp.net/>, <http://pages.au.int/caadp>.

standardized, and the farmers may not have a meaningful choice because there are few if any other competitors in the area. Using simplified contracts and training the farmers on basic legal concepts will help to empower them.

It is important that the parties negotiate in good faith, and the terms must be economically viable and sustainable for both parties from the outset in order for contract farming to remain successful in the long term. However, illiteracy and a lack of extension services can be major barriers for the sustainability of contract farming.

#### 3.4.8.4. Obligations (and Breach)

In the African context, it was noted that obligations related to the mandatory processes for production are typically the most difficult provisions in the contract for producers to understand, because of the often technical and legalistic language used in such provisions.

The relationship between land rights and contract farming is particularly complicated in the African context, as land tenure issues, land registration initiatives, and inheritance rules are just some of the aspects which have important consequences for the enabling environment for contract farming.

The role of “neutral” price mechanisms was discussed along with the advantages and disadvantages of determining the price through an equation or through tracking with some reference price. This avoids some problems with the lack of awareness of producers of the prevailing market prices.

It was noted that finance-related obligations may often be contained in a separate agreement with a bank or from a three way scenario of multiple contracts between the parties.

Producer breach (side-selling) is a major and widespread problem in many situations. It is easy to forget that the contractor may not always be a very large company, and thus can also be viewed as exposed and vulnerable in certain situations.

Continual and widespread breaches by either or both sides of the relationship will lead to a situation where everybody loses, not just the directly involved parties. Eventually nobody would be willing to take the risks of entering into contract farming from either side, and this market linkage will not be available.

One approach that was mentioned as a mechanism to reduce the prevalence of side selling was building some space into the contract’s quantity term to allow the producer to sell some excess on the market if chosen (thus, contracting for a specific quantity or percentage of output rather than for the whole production). However, this may also pose risks.

It was noted that in many countries in the region, insurance schemes are not widely available for risk mitigation in contract farming. The issue of climate change was specifically raised as adding to the need for risk mitigation mechanisms such as insurance.

#### 3.4.8.5. Remedies and Dispute Resolution

Various groups discussed the objectives of remedies that terminate the relationship, versus cooperative remedies that preserve the relationship. It was noted that many or most of the traditional remedies under academic contract law (such as rescission mid-season) are not useful in practice and are not helpful for the goal of trying to repair and preserve the relationship between the parties. Here, graduated pricing mechanisms can be very helpful.

Law alone will not ensure that contracts will be implemented, and thus it is important to ask the question of, what beyond legal mechanisms can be put in place to improve contract implementation and enforcement. Social factors have a role to play, including in situations where peer or group pressure is important. There is a need for building trust among the partners to ensure that the relationship is stable and productive over the long term.

It was noted that the threat of withdrawal of certification and blacklisting are important means for ensuring or improving levels of compliance with contracts.

In many instances, arbitration will be too expensive or inaccessible in the African context. Here, mediation and traditional forms of dispute resolution fill the gap.

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## THE LEGAL DIMENSION OF CONTRACT FARMING

### Promoting Good Contract Practices between Producers and Buyers in Contract Farming Operations in the African Context

ADDIS ABABA, 31 October 2014

#### ANNEX I : Presentations and Papers

Eva Gálvez (10 pages)

Tilahun Teshome (8 pages)

Mwiza Jo Nkhata (4 pages)

Justus A. Wabuyabo (6 pages)

Alexis Ndzuenkeu (5 pages)

Matanda Wabuye (10 pages)

Wamalwa Kinyanjui (7 pages)

Joyce Cacho (8 pages)



Rural Infrastructure and  
Agro-Industries Division (AGS)

## Session I

### Contract farming: An economic and legal introduction


# Contract farming and inclusive value chain development

Eva Gálvez, PhD.



Food and Agriculture Organization  
of the United Nations

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Rural Infrastructure and Agro-Industries Division (AGS)

## Contents\*

- Contract farming: concepts & definition
- Importance of CF in modernizing value chains
- Supply chain governance & coordination
- Use of CF in value chains in a variety of contexts
- Challenges for successful and responsible CF
- Legal guide on CF
- Conclusions

\* Material draws heavily on previous CF presentations prepared by Carlos da Silva, PhD, Senior Agribusiness Economist, FAO.



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Rural Infrastructure and Agro-Industries Division (AGS)

## Contract farming: concepts & definition

**What:** *“agricultural production carried out according to an agreement between farmers and a buyer, which places conditions on the production and marketing of a farm product or products”*

**Who**

- Farmers
- Processors
- Traders, retailers / wholesalers
- Exporters

**How:** Formal and informal agreements

- Market specifications
- Resource provision (inputs, finance)
- Production management (technical assistance)



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## Importance of CF schemes in value chains

- Contracts are not a new concept
- Agri-food systems are being reshaped in response to global trends
- Supply chains need better coordination to promote efficiency
  - lower costs by improving productivity
  - improve and ensure quality throughout the chain
  - control risks associated with markets and food safety
  - enhance responsiveness to demand
- Interest in inclusiveness and social responsibility

**Contract farming as a workable mechanism to govern transactions in modernizing supply chains**

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## Supply chain governance & coordination

- How to coordinate the flow of products, resources and information between farmers and consumers?
- What are the alternative forms of coordination?

The diagram illustrates the relationship between external markets and internal vertical integration. On the left is a light blue circle labeled 'External (markets)'. On the right is a light blue circle labeled 'Internal (full vertical integration)'. A double-headed arrow connects these two circles, passing through a central dotted circle. The central dotted circle contains the text 'Contracts, Alliances, etc.'.

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## CF & agrifood value chains

The image shows the cover of a report titled 'CONTRACT FARMING FOR INCLUSIVE MARKET ACCESS'. The cover features a photograph of a green field with small huts, a line graph showing an upward trend, and icons of a tractor, a person, and a truck at the bottom. The FAO logo is in the bottom right corner.



- **Can contract procurement be an effective institutional mechanism to enhance prospects for participation of small farmers in modern agrifood value chains?**
- *Case studies based on real world CF examples from developing regions*

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## Example: Barley in Argentina

- **Malt-beer value chain**
  - Market for malt barley highly concentrated
  - Patterns of resource use (hired labour, agricultural contractors...)
  - Specificity to meet manufacturer requirements
- **Specifications**
  - Type of seed, quantity and type fertilizer, weed control strategies, timing of harvest
  - Price based on wheat as reference (substitute crop)
  - Discounts / premiums according to protocols
- **Services**
  - Seed, agronomic advice
  - Some cases: co-finance fertilizer and agro-chemical inputs – but require farmer to buy insurance



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## Example: Pigs in China



- **Slaughterhouses targeting middle-class and premium markets**
  - Increasingly stringent quality and safety requirements
  - Need to source better quality pigs
  - Rapid switch from spot markets to contracting
- **Inspections**
  - Feed quality, disease control and medicines used, production hygiene and facilities, animal welfare
- **Services**
  - Feed supply, transport, extension training, veterinary support – not all processors offer
  - Information on prices, quality standards




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## What are we finding?




- The characteristics of the VC do influence the pervasiveness of CF & the content of the contracts.
- Convergence in clauses & conditions despite commodity differences.
- CF does not necessarily exclude smallholders from agrifood supply chains.
- Provision of technical assistance and pre-financing of inputs as essential requirement for inclusive market access.
- New roles for third parties in CF operations.
- Side-selling inevitable but may not impede successful implementation & sustainability.

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## Pro-inclusive CF being promoted in...

- CF operations with pro-inclusive potential (TA, financing...) are being promoted in a variety of contexts:
  - In the framework of public-private partnerships (PPPs) for developing agrifood chains.
  - In the framework of agro-spatial initiatives such as agricultural growth corridors, clusters & agro-industrial parks.

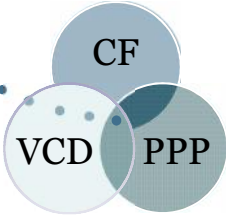


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## CF & PPPs for agrifood chain development

- 57% of public-private partnerships (PPPs) for agricultural development analyzed by FAO (out of 70 cases) were devoted to value chain development.
- Rationale: increased public-private dialogue required to solve coordination issues and aligned partners objectives.
  - **Private sector:** *U governance/coordination* between VC actors to meet consumer demands
  - **Public sector:** *inclusiveness* + food security + broad-based industry development
- All 40 cases involved CF operations
- CF's key role also in PPPs for agricultural R&D (e.g. development and marketing of seeds)



The diagram consists of three overlapping circles. The top circle is labeled 'CF', the bottom-left circle is labeled 'VCD', and the bottom-right circle is labeled 'PPP'. The circles overlap in the center, and there are small dots along the lines connecting the circles.

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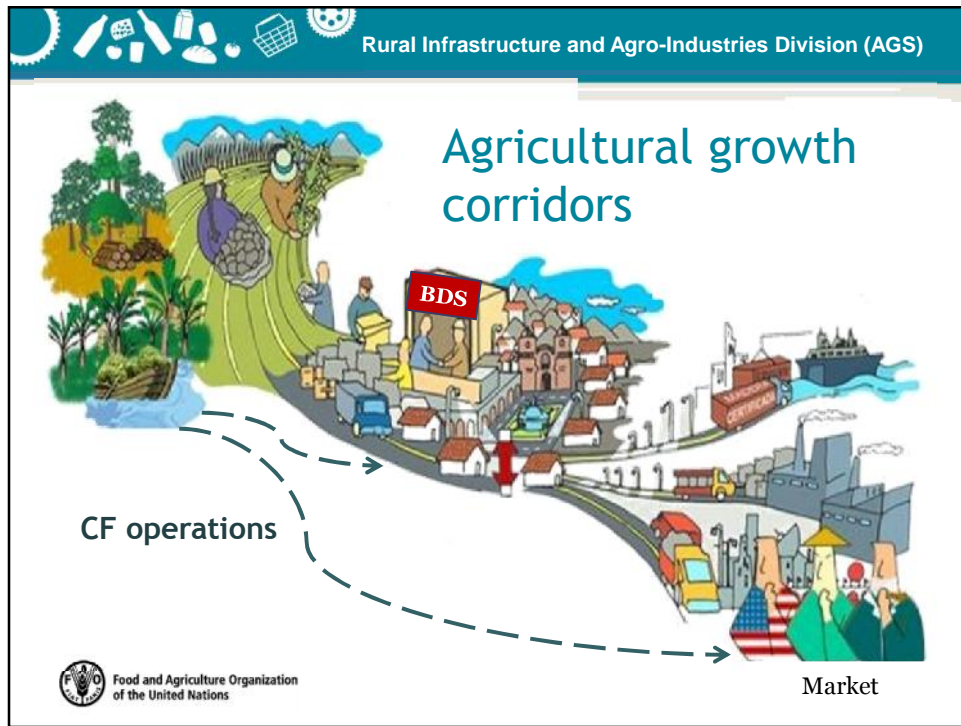
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## CF & the territorial dimension

- **CF is a critical element for the success of agro-spatial development initiatives.**
- Promoters of corridor, cluster and park initiatives are increasingly incorporating services and efforts aiming to support the **creation and strengthening of linkages along selected VCs** using **support systems such as CF** and warehouse receipts.
- **CF is seen as a tool to:**
  - promote **inclusion of smallholder farmers in VCs** present in selected territories
  - to **help upgrade VCs** in combination with infrastructure improvements & investment promotion initiatives.

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### CF operation btw park tenants & farmers

- **Jamaica:** Three-pronged strategy of the MoA to foster agribusiness investments in selected territories & agrifood chains (e.g. Irish potato, ginger and turmeric):
  - Establishing 6 agrifood parks;
  - Promoting CF agreements btw irrigated farmers & park tenants;
  - Developing irrigation systems to expand crop yields.

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## CF operation btw agroparks firms & farmers

- **India:** Yes Bank & the IFFCO KISAN agropark have teamed up to foster CF operations between park firms & farmers that bring their raw materials to a network of Rural Transformation Centres, which act as collection points & services provision hub (e.g. agriculture extension services, warehousing and banking).



The diagram illustrates a network where an 'agropark' (represented by a central square) is connected to multiple 'CF' (Contract Farming) nodes (represented by circles with flowers). These CF nodes are further connected to 'RTCs' (Rural Transformation Centres), represented by a larger square on the right. The entire network is set against a background of agricultural icons.

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## Challenges for CF success

**Not a panacea:**

- Should be a good business proposition for all engaged: only sustainable if both partners perceive they are better off
- Mutual trust and reciprocal dependency
- Taking into account VC characteristics

**An enabling environment (EE) should exist:**

- Institutional and political setting must be conducive to promote long-term sustainability
- Legal framework must be in place

**Appropriate consideration of production, marketing and people-related risks in the CF planning strategy**

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## Overcoming challenges for CF success

- Minimize potential for contractual hold-ups (farmer & firm)
- Countervail uneven balance of power
  - promote group action
  - third party mediation
  - legal provisions
- Ensure gender equality
- Take into consideration environmental concerns
- Reduce transaction costs of dealing with multiple contracting parties
- Choice of enterprise
  - no a priori exception
  - yet high value, processing and exports firms better candidates



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## Legal Guide on CF

### Guide to help address enabling environment issues

- Define CF from a legal stand point (typify CF contracts)
- Identify essential elements of CF contracts
- Promote good contractual practices for CF
- Present options for Govts to support/enhance/regulate CF

### Caveats

- Avoid over-protection of farmers/excessive regulation of firms
  - Can act as a disincentive for companies to participate in CF
- Potential for negative impact on farmers' access to finance, technical advice and markets
- Guide should promote trust building rather than confrontation

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## Conclusions

- As agri-food systems change, supply chains will become increasingly coordinated.
- Contracts are an appealing mode of VC governance.
- Consequently, CF is increasingly being used in different contexts (e.g. agribusiness PPPs, agro-spatial development).
- CF not a panacea.
- Good planning and sound implementation essential to address production, marketing and people-related risks.
- Appropriate legal framework is necessary.
- Need for measures to maximize development impact.
- Need for improved M&E systems → impact assessment: economic, inclusiveness/social & environmental.

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## For more information

[www.fao.org/ag/ags/contract-farming](http://www.fao.org/ag/ags/contract-farming)



The screenshot shows a web browser displaying the 'Contract Farming Resource Centre' page. The page features a header with the FAO logo and the title 'Contract Farming Resource Centre'. Below the header, there is a main content area with a large image of people working in a field. The page includes a navigation menu on the left, a search bar, and a main text area with a 'Home' section. A 'Contract Farming flyer' is also visible on the right side of the page. The browser's address bar shows the URL 'http://www.fao.org/ag/ags/contract-farming'.



# **CONTRACT FARMING**

A Brief Presentation of the Scenario in  
Ethiopia

Tilahun Teshome  
Professor of Law  
Addis Ababa University

October 31, 2014

Cont'd...

## **I. Basics of Contract Law**

**“The Law of Contracts may be described as the endeavor of the State.... to establish a positive sanction for the expectation of good faith which have grown up in the mutual dealings of men of average right-mindedness... He who has given the promise is bound to him who accepts it, not merely because he had or expressed a certain intention, but because he so expressed himself as to entitle the other party to rely on his acting in a certain way.” Sir Fredrick Pollack**

Cont'd...

- **Contract law as an aspect of the law of obligations.**
- **The Ethiopian Civil Code as the most important source.**
- **The five books of the Code:**  
Books One (On the Law of Persons) and Two (On the Law Family and Successions) are essentially the domain of the Law of Status; Book Three (On the Law of Goods) is that of the Law of Things; while Books Four (On Obligations) and Five (On Special Contracts) are in the realm of the Law of Obligations.

Cont'd...

- **Policy considerations: Freedom of contract v. security in transactions.**
- **The sovereignty of the human will and the sanctity of promise.**
- **Private autonomy. Parties are delegated by the state to make their own laws with respect to the relationship they intend to create in a contract.**
- **Needs of business. Once it is affirmed that parties have freely consented to the making of a contract, the full force of the law backs its enforcement; because the smooth functioning of business requires so.**
- **This is what is known as the theory of security in transaction.**

Cont'd...

- **Types of contracts under Ethiopian laws.** Difficulty in characterization and some major ones.
  - **In the Civil Code:**
    - **Contracts relating to the assignment of rights**
    - **Contracts for the performance of services**
    - **Contracts for the custody, use and possession of chattels**
    - **Contracts relating to immovable property**
    - **Administrative contracts**
    - **Contracts on compromise and arbitral submission.**

Cont'd...

- **In the Commercial Code**
  - **Contracts on sale, hire and mortgage of business.**
  - **Contracts on formation of business organizations.**
  - **Contracts of carriage and insurance.**
  - **Contracts relating to negotiable instruments.**
  - **Contracts on banking transactions.**

Cont'd...

- **In other laws too, we have:**
  - contracts of employment,
  - collective bargaining,
  - intellectual property and
  - cyber contracts
  - maritime contracts.
- **The limit is boundless.**

Cont'd...

## **II. The Place of Contract Farming under Ethiopian Law**

Contract Farming can be defined as an agreement between **farmers and processing or marketing firms** for **the production and supply of agricultural products** under forward agreements, frequently at predetermined prices.”

The elements:

- a. **An agreement** - a binding one.
- b. **The parties** - farmers and purchasers.
- c. **The object** – production and supply.
- d. **Nature of K** – forward.
- e. **Price** – pre-determined (normally)

•Cont'd...

- Neither the Book of the Civil Code on Special Contracts, nor the Commercial Code, nor any other piece of legislation in Ethiopia has much to offer on the special situation of Contract Farming.
- Because contract farming is by and large characterized as a **forward contract** of sale, the most pertinent provision of the Code is Art. 2270(2), in which it is specified that a contract of sale **“may relate to a future thing which the seller undertakes to make for delivery to the buyer”**.
- **A forward contract** is one concluded between two parties to buy or sell something at a specified price on a future date.

Cont'd...

- Another rule, Art. 2267(1) prescribes that the provisions of the Code on the Law of Sales (Arts. 2266 – 2407) do apply to the sale of corporeal chattels (movable property)
- According to Art. 1127, corporeal chattels are things which have a material existence and can move themselves or be moved by man without losing their material character.
- **Contract farming is thus essentially a sales contract.** As such, the general provisions of the Code on contracts do *mutatis mutandis* apply to contract farming in as much as they do to other kinds of contracts.

Cont'd...

- **Rules on capacity, on consent, on objects of contract and on form are, therefore, required to be met.**
- **Likewise, it is also natural for rules on effects and extinction of obligations to apply on contract farming.**
- **Provisions governing the contract formation process regulate the mode of creating a valid contract - the birth of a contract. Those on effects lay down the multitude of consequences that follow the creation of a contract.**

Cont'd...

- **Art. 1731(1) of the Code provides thus: “The provisions of a contract lawfully formed shall be binding on the parties as though they were law.” The elements of this provision are thus:**
  - **“A contract lawfully formed”** – an obvious reference to the legality of formation.
  - **“Binding on the parties”** – an exposition of the doctrine of privity of contracts.
  - **“As though they were law”** – the theory of sanctity of contracts.

Cont'd...

- The Code also prescribes that the **contents of a contract are to be freely determined by the parties, the architects of the instrument,** (freedom of contract) subject to mandatory provisions of the law (limitations to contractual freedom) – Arts. 1711 and 1731(2).
- As such, **parties have full measure of autonomy to determine the subject matter of their K.**
- **Following are some questions to be considered.**

Cont'd...

**The following are some questions to be considered.**

- **On what subject matter to conclude a contract?**
- **With whom to conclude a K?**
- **How to conclude?**
- **What its terms and conditions may be?**
- **In what ways should the obligations be performed?**
- **What additional means of guaranteeing performance should be ensured?**
- **What civil sanctions should be imposed on a recalcitrant?**
- **What form should communications of the parties assume?**
- **In what ways may disputes be resolved?**

Cont'd...

- **Core obligations in contract farming:**
  - Identification of the commodity
  - Price including terms and modalities of payment
  - Quantity and quality
  - Duration of the contract
  - Terms and conditions of delivery
  - Passing of risk
  - Logistical, financial and technical support
  - Force majeure
  - Provisions on breach of contract
  - Clauses on guarantee
  - Dispute settlement

Cont'd...

**With the appropriate regulatory framework, the Ethiopian Civil Code is, therefore, an instrument good enough to cover the legal worries that stem from contract farming.**

**Thank you!!**



A LEGAL PERSPECTIVE TO CONTRACT FARMING IN MALAWI

Dr. Mwiza Jo Nkhata  
Dean of Law, University of Malawi

A presentation made at the UNIDROIT Workshop on Promoting Good Contract farming Practices Between Producers and Buyers in Contract Farming Operations in the African Context, Addis Ababa, Ethiopia 31 October 2014.

## 1. INTRODUCTION

From independence in 1964 to the mid 1980's the concept of contract farming was largely non-existent among smallholder farmers in Malawi.<sup>1</sup> This, however, is not to suggest that contract farming was non-existent in the country. There is evidence to support the existence of contract farming in Malawi dating back to the 1970s. However, what is notable about the contract farming that existed in Malawi in the period after independence is the heavy role that the State played in facilitating contract farming arrangements. Typical contract farming arrangements from this period involved medium and large scale commercial farmers entering into contracts with State-sponsored buyers of agricultural produce. It was only in the mid-1980s with the advent of market liberalisation that contract farming was extended to smallholder farmers for crops such as tobacco and tea. As noted by the Ministry of Agriculture, Irrigation and Food Security (MoAIFS) contract farming arrangements in Malawi, both formal and informal, gathered pace from the 1990s to the present. Arguably, it is the continued prevalence of contract farming arrangements in the country that prompted the adoption of The Malawi National Contract Farming Strategy (NCFS) in February 2013.

## 2. THE LAW AND CONTRACT FARMING IN MALAWI

### 2.1 The legal dimension to contract farming in Malawi

Malawi's legal system is heavily influenced by the common law. By virtue of article 15(2) of the British Central Africa Order in Council of 1902 the British judicial model was introduced to Malawi. The effect of the 1902 Order in Council was that English law became automatically applicable in Malawian courts. To date, the Malawian legal system is premised on principles directly deriving from English law and the law of contract is no exception. There is thus no civil code in Malawi and in terms of the law on contract this is fully informed by principles of contract as developed by English courts and accepted in Malawi.

Malawi does not, presently, have a law specifically dealing with contract farming or contractual practices in the agricultural sector. The absence of contract farming-specific legislation begs the question whether the common law principles on contracts are sufficient to regulate contract farming in the country. It must immediately be highlighted that the present body of law regulating contracts at common law is the product of years of judicial endeavour and represents a fairly comprehensive body of law. Given, the general principles of contract law were not developed to regulate contract farming and in some instances would benefit from specific regulations to enable them function properly in the context of contract farming. Nevertheless, since the essence of contract farming involves agreements between buyers and producers for the production of particular merchandise often with defined conditionalities for production, the general principles of the law of contract remain applicable to contract farming.

In practice, the closest current example to contract farming legislation in Malawi is covered by the Tobacco Industry (Integrated Production System) Regulations (IPS). The Tobacco Industry (Integrated Production System) Regulations are meant to support the Integrated Production System (IPS) for tobacco. The IPS has already rolled out in the country and it is estimated that presently, 80% of the tobacco grown in the country is produced and marketed through the IPS. The IPS is premised on a contract farming model for the growing and marketing of tobacco in the country. The regulations provide for the minimum terms that must be contained in contracts for the growing and marketing of tobacco as well as the means for identifying farmers and the manner for resolving disputes in relation to the growing and marketing of tobacco. Farmers and buyers that commit to the IPS bind themselves to conducting their farming in line with the stipulations in the IPS. Aside from the infancy of the IPS what can also be noted is that this is regulation specific to the tobacco industry and thus does not cover the production of other agricultural commodities.

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<sup>1</sup> Government of Malawi The Malawi National Contract Farming Strategy (2013) 10.

As earlier intimated, the absence of specific contract farming legislation setting out the basic conditionalities that all contract farming arrangements must comply with leaves the field subject to general contractual law. In many contract farming arrangements, farmers are, invariably, the weaker party and the lack of express regulation by law entails that the parties are free to do as they please in negotiating their contracts. It is not the freedom of contract that is being bemoaned here but rather the skewed power relations between the parties to contract farming arrangements. Invariably, the prevailing scenario is likely to work to the advantage of the more powerful party as it may result in the one party imposing terms of the contract without properly negotiating them in the true spirit of contracting. Considering the respective power positions of the parties, it is not far fetched to imagine that farmers stand to lose out in the absence of express regulation. The prevailing situation in Malawi calls for government intervention by way of adoption of legislation on contract farming. The role of legislation on contract farming would be to provide the overarching framework within which contract farming arrangements must be concluded emphasising the basic requirements that all agreements must comply with. To effectively regulate contract farming, it would, therefore, be important to approve specific contract farming legislation based on the general principles of contract law, complemented by all the regulatory specificities unique to contract farming.

## 2.2 The practice of contract farming in Malawi

As earlier pointed out, contract farming has been practised in Malawi since independence both formally and informally. In recent years, however, there has been a resurgence of contract farming across a range of agricultural products in the country. In terms of the practice of contract farming in Malawi there is a wide range of divergence among the contracts that are being used by the various players in the country. It seems to be the case that each of the organisations involved in contract farming formulates its own contract(s) according to its needs and proceeds to negotiate the contract with the farmers that it deals with – there is nothing wrong with this per se, however, one can still question whether this approach is desirable in the country. Some of the contracts that the author was able to analyse - during another study on contract farming - did evidence proof that they had been professionally prepared while others seemed to be simple and crude agreements most probably prepared without the assistance of a law professional. The adoption of a law to regulate contract farming may be useful in the sense that it could be used to stipulate the basic minimum that all contract farming agreements must contain. The law, it is argued, may help bring about some consistency and uniformity in the contract farming regime.

What can also be noted about the current contract farming in Malawi is that the contracts that are currently being used are almost uniformly prepared by the organisations involved and presented to the farmers as complete documents only requiring the farmers to endorse them by signing. Of course by signing the contracts the farmers bind themselves to follow the terms of the contract. Admittedly, in some instances, farmers have conceded that the contracts are open to negotiations but at the same time it has been pointed out that it is not often that the contracts have been changed simply because they have objected to some clauses in the contracts. The unpleasant truth here is that the buyers routinely 'impose' contracts on the producers.

Finally, it is also important to note that the players in contract farming in Malawi favour two broad types of arrangement; firstly, there are those organisations that enter into contracts directly with the farmers and provide them with extension services on the undertaking that the farmers will sell their produce to them; secondly, there are those organisations that enter into contracts with farmers associations/clubs and never directly with the farmers. Once a contract is entered into with a farmer's association, the organisation proposing the contract then would help facilitate the receipt of extension services by the farmers' organisation or the accessing of credit at a financial institution in return to the farmers selling them their produce. In the second instance, if the farmers need access to financing, the buyer negotiates on their behalf with a financial institution which may then advance the farmers' association the needed financing. In this context the role of the buying organisation then is two-fold; firstly, to negotiate access to financing on behalf of farmers and secondly, to guarantee part of the financing extended to the farmers.

### 3. CONTRACT FARMING AND OTHER POLICY GOALS IN MALAWI

A particular novelty in the emerging contract farming discourse in Malawi is how contract farming is being used to attain other policy objectives that the Government supports. Using contract farming to fulfil other policy objectives entails locating contract farming within the objectives of the Malawi Growth and Development Strategy (MDGS).<sup>2</sup> Looked at from the MDGS perspective, contract farming is meant to be employed as a strategy for economic growth and development but in a holistic manner. This highlights the need to harmonise contract farming strategies with other policies.

For example, the Constitution, in section 31(1) guarantees every person the right to fair and safe labour practices which includes fair remuneration. In section 23 of the Constitution children are entitled to be protected from economic exploitation and any hazardous work. The Employment Act also regulates the employment of children such as children are protected from all hazardous work. At the international level, Malawi has also signed up to several instruments that also protect the rights of children including the right to be protected from child labour.<sup>3</sup>

The totality of the legal provisions referred to above is that Malawi is committed to protecting the rights of children generally including the elimination of child labour. In an interesting development, contract farming arrangements in Malawi are being utilised to eliminate child labour. This has already manifested itself in the tobacco industry as well as in the tea industry. In many contracts for the production of tobacco or tea the buyers require that the producers should not utilise child labour. Failure to adhere to this requirement disqualifies the producer from selling his merchandise. Many of the buyers have also set up structures to monitor farmers' compliance with the terms of the contracts including the proscription on child labour. By way of illustration, the IPS have provided a clear indication of the direction in which contract farming will proceed in Malawi especially in connection with child labour by requiring all farmers to comply with Good Agricultural Practices (GAP) in their farming. The enforcement of the contractual terms in agriculture, therefore, can also serve governmental goals such as elimination of child labour.

### 4. CONCLUSION

The Malawian experience with contract farming, though not yet very intense and extensive, lends credence to the fact that contract farming can be used to attain a multitude of objectives. The clearest manifestation of the preceding is how contract farming is being used to combat child labour predominantly within the tobacco and tea estates in Malawi. Another important facet emerging from the Malawian experience is the importance of having a clear framework to regulate contract farming. The existence of such a framework, invariably grounded within legislation, ensures that the players in contract farming follow agreed upon minimum standards at all times. This in turn creates conditions whereby contract farming arrangements can be structured in a way that benefits all parties involved.

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<sup>2</sup> Government of Malawi The Malawi Growth and Development Strategy

<sup>3</sup> Among these instruments would be the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

Overview of the Legal Framework for Contract Farming in Kenya.

Presented by Justus A. Wabuyabo at the Workshop on the Legal Dimension of Contract Farming (A Consultation Workshop on UNIDROIT/FAO Legal Guide on Contract Farming held in Addis Ababa (Ethiopia) on 31<sup>st</sup> October 2014.

Introduction

In Kenya most agricultural producers are small scale holders. These farmers consist of poor people who live from hand to mouth. Unfortunately, they also have capital needs that are costly and way out of their reach. Examples of capital needs include need to build decent houses, taking their children to school, paying dowry or bride price and paying court fines or meeting other judicial obligation when one gets in conflict with the law.

Many of these farmers cannot afford access farm inputs such as seeds, fertilizer and farm implements. In many cases they depend on manual labour and natural soil and rainfall for their produce. Yet in Kenya we have many agribusinesses which are hungry for farm produce. These capitalistic organizations cannot wait for production to take place naturally which is a blessing to the poor farmers. That is because the big business organizations are forced to join in – albeit not directly, in the production process to guarantee regular supply of raw materials for their industries and markets. In some instances they intervene to ensure quality of the produce and the reasons are many. How they achieve this in a legal framework is what the present concern is.

The big businesses come in to support the struggling farmers to nurture their crop, assist in harvesting and accessing markets. This is found with reference to many crops and other agricultural produce but I will focus on the legal framework in respect contract farming in relation to sugar cane in Mumias District in the Republic of Kenya

Legal Framework

Probably the first place to find the legal framework of contract farming in Kenya is the Law of Contract Act (Cap. 23) which affirms the freedom of contract for citizens of the country. Around Kenya will be found different versions of contract farming – in the chicken industry, livestock farmers, fish farmers and so on. However, when you come to the sugar industry, one sees a very overt move by the Government to try to codify sugar cane farming contracts. As I am more familiar with this area and since it is the one that appears to have been directly addressed by the Kenyan Parliament, I will say more on it in my presentation following.

The legal framework for contract agreements in sugar cane farming was provided for in the Sugar Act (Act No. 10 of 2001). This Act was in force in Kenya until last year when it was repealed by the Crops Act (Act No. 16 of 2013). That law provided as follows Section 29:

“Sugar industry agreements

- 1) There shall be, for the purposes of this Act, agreements to be known as the sugar industry agreements negotiated between growers and millers, growers and out-grower institutions, and millers and out-grower institutions.
- 2) ...
- 3) ... the matters to be provided for in the agreements shall include—
  - a) the designation of any agricultural crop from which it is possible to manufacture sugar which is subject to the agreement;
  - b) a sugar-cane farming contract providing for the terms and conditions of the production of sugarcane and sugar and prescribing the rights and obligations of growers and millers;
  - c) a formula for determining the price to be paid by millers to growers for sugarcane or any other designated agricultural produce, which may include any factor related to the sale or other disposal of sugar industry products;

- d) the functions to be executed by the (Kenya Sugar) Board (which acted as a neutral party in such agreements) in the execution of the agreement;
- e) the granting of powers to the Board to impose penalties prescribed in the agreement for the contravention of, or failure to comply with any term of the agreement; and
- f) the imposition of levies upon growers and millers for the purpose of enabling the Board to fulfil any obligation incurred by it in accordance with its constitution."

Even though the Sugar Act was repealed as indicated above, the Agreements which it codified continue to be used and applied in the sector and that is bound to continue, I think, forever. These agreements usually define the linkages among the different institutions in the industry and govern the operations of interested parties in. They also deal with how disputes arising in relation thereto shall be settled.

### Parties to a Contract Farming in Sugar cane Farms in Mumias

Typically a contract has two parties – promissor and promisee or offeror and offeree. Sugar contract farming Agreements in Kenya are somewhat different. They have other “parties”. Beyond the sugar cane farmer and the sugar cane company (millers) we have other actors such as Industry Regulators and farmers/millers organizations. Although the contract is signed by the farmer and the miller, the other players have a role in the execution of the contract. Sometimes that role is not plain as one may not know whether the other actors are financiers/regulators or arbitrators.

In this case I will take the example of a farming contract between a cane farmer in Mumias in Kenya and Mumias Sugar Co Ltd which is the leading sugar producer in Kenya. Other “parties” are the Kenya Sugar Board and famer organizations which for our case Mumias Outgrowers Company (MOCO) and another neutral body known as Kenya Sugar Research Foundation.

The rights and liabilities of the parties to the sugar cane farming contracts are described in the signed document itself but some of those rights were codified in the then Sugar Act. Based on the provisions of the Act then, one would, as it were consider that the provisions of the Act were implied in every sugar farming contract especially where the signed document was silent on the point. Although the Sugar Act was repealed, the Sugar institutions were preserved and their roles remain by and large the same.

Below I examine briefly how the Sugar Act defined the roles of the various institutions within the sector:

### Roles of Various Institutions to a Sugar Cane Farming Contract

As already observed, the Sugar Act has made extensive provisions on the kind of terms and conditions expected to be covered in a sugar cane farming contract. Even without mentioning them all, those terms and conditions are implied in ever sugar cane farming contract. Below we look at the role of some of the key institutions in the sugar sector in Kenya.

#### 1. The Kenya Sugar Board

The role of the Kenya Sugar Board is to—

- a) co-ordinate the activities of the various organizations involved with sugar issues both in the private and the public sector;
- b) support the general development of out-grower institutions and enable them become effective intermediaries for providing financial assistance and extension services to sugar cane growers;
- c) review, on a regular basis, the economic and financial performance as well as the problems and prospects of the industry;
- d) promote a more extensive use of sugar and its by-products;
- e) promote the manpower development of farmers and employees in the industry

## 2. The role of the Sugar Research Foundation

The role of the Kenya Sugar Research Foundation includes:

- a) breeding of sugarcane varieties suited for various agro-ecological zones of Kenya;
- b) conducting research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- c) appraising technologies on land preparation, drainage and water management for economical cane production;
- d) studying and monitoring of pests and diseases that affect sugarcane and recommending appropriate control strategies;
- e) developing agronomic packages for sugarcane maintenance and management;
- f) instituting socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;
- g) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- h) promoting the transfer of sugar technology based on applied research through relevant extension mechanisms;
- i) fostering research on sustainable productivity, environmental issues, human safety at field and factory levels; and
- j) collaborating with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Foundation's mission;
- k) raise funds to support research;
- l) analyse soil and plant samples for advisory purposes; and
- m) offer modular courses on various aspects of cane management and practices

## 3. The role of out-grower institutions

The functions and role of out-grower institutions include:

- a) promoting and representing the interests of growers;
- b) negotiating or arranging, on behalf of such grower members, the terms of supply of sugar-cane to the factory and the co-ordination of the production, harvesting and transport thereof;
- c) providing financial credit or otherwise arranging finance for such grower members in connection with the production of their sugar-cane, including land clearance and preparation, planting, cultivation and tending, harvesting, transport and the supply of goods and services relating thereto;
- d) providing or procuring services, advice and assistance for such grower members as may be required, to carry out or procure the carrying out of such operations for such members;
- e) providing or procuring accounting services and books or records for members in respect of their individual operations;
- f) purchasing, selling or otherwise dealing in, securing or providing such goods, materials, supplies and services a may be required by members;
- g) negotiating cane prices with millers through the Kenya Sugar-cane Growers Association;
- h) effectively participating in lobbying for favorable Government policies in the industry through the Kenya Sugar-cane Growers Association;
- i) during each harvest period, deliver to the miller from the grower, sugarcane in the quantities and on the dates agreed upon between the miller and the out-grower institution;
- j) within the limits imposed by the condition of the roads, provide and operate an efficient system of transport from the field to the mill;
- k) cause the grower's sugar-cane to be weighed and tested on arrival at the buying point, allow the grower or his representative access to the weighbridge to check the weight, maintain in duplicate a written or printed record of the value of each load of sugar-cane delivered and give to the grower or his representative on the day of delivery one copy of such record;

- l) establish seed cane 'B' Nurseries on growers plots for bulking of seed cane to be supplied to other farmers, and for this purpose to purchase, harvest and transport such seed cane after certification by the out-grower institution's agronomist as to its suitability for planting; seed cane which fails to be used for seed will be used for milling;
- m) have absolute charge and control of all equipment, machinery, staff and labour concerned with operations on the growers land;
- n) be entitled, in the event that the grower does not prepare, plant and maintain his land and sugar-cane in accordance with the agreement, to carry out all and any such operations on the grower's land which the out-grower institution shall consider necessary to ensure that the grower's quota of sugar-cane of satisfactory quality will be delivered on the due date, in which case the out-grower institution shall be further entitled to deduct the cost, including a penalty for these operations, from the payment to be made for the grower's sugar-cane;
- o) charge interest on any credit that may be granted by the out-grower institution to the grower, such credit being only granted in exceptional circumstances at such rate as may, from time to time, be notified by the out-grower institution and be entitled to deduct such interest from the payment due to the grower in respect of the first cane harvest from the grower's land subsequent to the grant of the credit;
- p) be entitled to charge the grower for all works, goods and services supplied to the grower by the out-grower institution in accordance with the out-grower institution's schedule of charges from time to time in force at the date the agreement signed.

#### 4. The role of the miller

The role of the miller is to:

- a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;
- b) maintain and develop adequate milling capacity for sugar-cane planted on the basis of agreed planting plans with the growers and the out-grower institution;
- c) mill the sugar-cane efficiently so as to realize maximum returns for the millers and the growers;
- d) pay the sugar-cane farmer within 30 days of accepting delivery or otherwise pay interest on the sum due at market rates, plus a penalty of 3 per cent per month on late payment;
- e) participate in lobbying for favorable Government policies in the industry through the Kenya Sugar Manufacturers Association;
- f) maintain accurate weighbridges to ensure correct weight of sugar-cane;
- g) install and maintain appropriate systems and technologies for sampling sucrose content in sugar-cane delivered; and
- h) negotiate the sugar-cane price with the growers through the Kenya Sugar Manufacturers Association and formulate policies related to sugar marketing, distribution and pricing. buy all sugar-cane of requisite quality harvested from the area specified in the supply contract in accordance with the program provided for herein;
- i) notify the out-grower institution in advance of any planned closure of the mill for any reason;
- j) advise the grower of any change in planned activities as soon as the need for such change becomes apparent;
- k) pay the out-grower institution within thirty days of sugar-cane delivery

The Sugar Act also provided for a number of things which would have a direct bearing on the contracts between farmers and millers such as defining harvesting programs which was to be adhered to by the farmers' outgrower institutions and provided conditions on what would happen when a farmer's cane was burnt. This was to respond to a common practice where farmers would sometimes burn their cane purposely to force the millers to harvest them before time – usually prompted by a farmer's urgent need for money coming before his/her cane was mature for harvesting. To deal with this situation (with a view of discouraging the same) the law provided that only cane of acceptable quality will be accepted and that payment for burnt sugar-cane would be made one month from the date of the



scheduled harvest of the sugar-cane. The law also provided for a detailed formula for calculating the sugar prices.

The law allowed for farmers to join an out-grower institution which was to act as his representative in all matters of sugar-cane development and the financing of sugar-cane supply, including negotiations for the price of sugarcane, costs of farm inputs and related services. Out grower institutions are found in all sugar growing areas in Kenya. In Mumias we had Mumias Out growers Company Limited (MOCO). The growers were expected to enter into contract which out grower institutions and such agreements would have an effect on the sugar contract farming. For instance, an out-grower institution and the grower were at liberty to agree on a specific period of maturity for purposes of harvesting, delivery and payment for their crops.

The grower was at liberty to terminate the production of sugar-cane or terminate the relationship with an out-grower institution by giving a three months' notice of his intention to do so. The contract would stand terminated once the farmer had paid all his dues before the expected time of harvest. Thereafter, the out-grower institution was to harvest cane in the normal harvesting manner. Such termination of the contract was to be without prejudice to all rights accrued and obligations incurred to or by either party prior to the date of termination and would not prejudice any claim for damages for such breach of contract.

#### 5. Obligations of the grower

- a) plant or cultivate the most suitable variety of cane recommended by the Kenya Sugar Research Foundation;
- b) allow the cultivation of seed cane nurseries, if the out-grower institution desires, for the multiplication of seed sugar-cane material to be supplied to other growers;
- c) allow the cutting of commercial sugar-cane of both plant and first ratoon only to supply seed to other growers in the absence of suitable nurseries;
- d) at all times allow the out-grower institution to enter upon his land together with any vehicles, machinery or livestock which the out-grower institution may require to inspect the land and the cane growing thereon; sample the sugar-cane; gain access to other grower's land, including such construction of access tracks as may be required for the transport of sugar-cane produced by the grower or other grower;
- e) maintain his sugar-cane cultivation in a manner which will enhance a satisfactory yield;
- f) offer for harvest and transport by the out-grower institution all such cane as is derived from his contracted sugar-cane plot and no other for use either as seed cane or mill sugar-cane;
- g) not sell his sugar-cane through a middleman nor dispose of it or any interest therein to any other parties without the written permission of the out-grower institution specifying the tonnage of sugar-cane which may be sold, the date on which the sale may take place and destination of the sugar-cane;
- h) either attend himself or send an authorised representative to the buying point to witness the condition of the sugar-cane at the time of delivery and to obtain a ticket showing the value of sugar-cane delivered in the absence of an official representative appointed for the purpose;
- i) bear all direct and indirect costs of the works, goods and services supplied by the out-grower institution as specified in the agreement and unless the same are paid earlier allow such costs to be deducted from payment for sugar-cane supplied by the grower;
- j) be responsible for maintaining suitable permanent boundary marks and cleared firebreaks for his sugarcane crop;
- k) be liable to pay the cost of any damage suffered by other growers as a result of failure to comply with the terms hereof;
- l) take precautions against fire according to the advice of the out-grower institution;
- m) not assign his land or any interest therein or any of his rights or obligations under the agreement without the written consent of the out-grower institutions; and
- n) attend meetings and field days convened by the out-grower institution for the purpose of learning the proper sugar-cane husbandry, operation and application of goods and services obtained from the out-grower institution for the satisfactory yield of sugar-cane.

Force Majeure

Section 14 of the Sugar Act provided for force majeure. It stipulated that neither the out-grower institution nor the miller would be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of force majeure. It went on to provide that any event of force majeure was to be reported by the affected party to the other party within seven days from the date of its occurrence and the said event would be certified by the competent authorities of both parties. During the event of force majeure, the law provided that the obligations of the parties under an agreement would remain suspended for the period during which the said event of force majeure persists.

The Sugar Act was repealed by the Crops Act (Act No. 16 of 2013) which received Presidential Assent on 14<sup>th</sup> January, 2013. However, there is nothing in the new law to suggest that sugar farming contracts are now abolished. In fact the Act stipulates that the Cabinet Secretary may make any regulations for among other things to provide for the relationship between farmers and other dealers in crops, the formula for the pricing of scheduled crops and the regulation of standard industry agreements.

Attached is a sample of the sugar farming contract between millers and growers.

# OHADA Law and Contract Farming

Alexis NDZUENKEU

## Abstract

OHADA is gradually harmonizing business law in its 17 Member States through Uniform Acts that directly integrate domestic legal orders and override any contrary national law. OHADA has not legislated on contract farming which regulation should, essentially, be sought in the internal law of Member States. However, several Uniform Acts are likely to apply to various aspects of contract farming, especially its formation, execution or resolution of litigation arising therefrom. The proposed extension of business law areas to be governed by OHADA reinforces this trend and raises the important question about the relevance of uniform rules on this special contract within the geographical area covered by the Organization.

## I. AN OVERVIEW OF OHADA

### 1. Creation, Objectives and Member States

The Organization for the Harmonization of Business Law in Africa, better known by the acronym OHADA was established by the Treaty of October 17, 1993, revised in October 17, 2008. To date, it comprises the following 17 Member States from Central Africa, West Africa and the Indian Ocean: Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Democratic Republic of Congo, Senegal, Chad and Togo, and is still open to the accession of new States<sup>1</sup>.

Established in response to the legal and judicial insecurity deplored by economic actors, the Organization aims to ensure legal security for economic activities and to stimulate investment. To achieve these objectives, OHADA:

- produces a common business law for its Member States;
- Unifies the methods of settling business disputes;
- Organizes trainings, skills development sessions and research in business law.

### 2. Institutional System of OHADA

The tasks set out in the Treaty are performed by five institutions:

- The Conference of Heads of State and Government, the supreme body that gives momentum to the actions of the Organization;
- The Council of Ministers comprises the Ministers of Justice and the Ministers of Finance of Member States; it acts as a parliament for the adoption of common rules on business law;
- The Permanent Secretariat is the executive and coordinating organ;
- The Common Court of Justice and Arbitration, is the common Supreme Court of Member States in the area of business law;

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<sup>1</sup> As a Treaty whose accession is « opened », OHADA may accept any other State member of the African Union and even a State which, though not a member of the African Union, might be invited, with the consent of all Member States, to adhere (Article 53).

- The Higher Regional School of Magistracy is a center for training, skills development and research in OHADA law and other African community laws.

### 3. The OHADA normative system - Uniform Acts

In addition to the Treaty, the OHADA normative system includes Regulations, Decisions, and, especially, Uniform Acts.

Uniform Acts are laws stipulating common rules adopted by OHADA. Once adopted by the Council of Ministers and published in the Official Gazette of OHADA, Uniform Acts become directly applicable in each Member State and prevail over conflicting domestic laws<sup>2</sup>.

To date, nine Uniform Acts have been adopted in the following areas: general commercial law<sup>3</sup>, company law and economic interest group<sup>4</sup>, securities law<sup>5</sup>, law on simplified recovery procedures and measures of enforcement<sup>6</sup>, law on collective proceeding for the wiping-off debts<sup>7</sup>, arbitration law<sup>8</sup>, accounting law<sup>9</sup>, transport law<sup>10</sup> and cooperative law<sup>11</sup>. New Uniform Acts are underway.

## II. THE CURRENT SITUATION: ASPECTS OF CONTRACT FARMING COVERED BY THE OHADA LAW

Contract farming, which is already in use in most OHADA countries encouraged by development partners, generally refers to an agreement under which a farmer consents to produce and deliver to the other party agricultural products that comply with contract specifications, while the latter takes the commitment to purchase the product at a price and carry various forms of control over production. Although the OHADA law does not regulate this agreement as a nominate contract, it indirectly captures the actors (1) and certain relating operations (2), and may be resorted to for the settlement of disputes arising therefrom (3).

### 1. The legal structure of the parties to the farming contract

It is worthy of note that the structures involved in farming production will be governed by the OHADA law if they are established in any of the Member States. The purchaser of farming products, when he operates as a corporation, will necessarily choose among anyone of the various types of companies provided by the Uniform Act relating to commercial companies and economic interest groups, adopted on January 30, 2014.

As for the farming company, it can also take the form of a partnership or a limited liability company governed by the Uniform Act. Most often, the collective exploitation of farming products will fall within the framework of a cooperative society, which will therefore be subject to the provisions of the Uniform Act of 15 December 2010 on Cooperatives Societies law.

Very often, the farming company is an individual or a family business with a more or less modest size. In this case, the farmer who does not have the status and obligations of a trader

<sup>2</sup> Article 10 of the OHADA Treaty.

<sup>3</sup> Uniform Act on General Commercial Law adopted on December 15, 2010 to substitute the Uniform Act of 17 April 1997.

<sup>4</sup> Uniform Act on Commercial Companies and Economic Interest Groups adopted on 30 January 2014, to replace that of 17 April 1997.

<sup>5</sup> Uniform Act of 15 December 2010, to replace that of 17 April 1997 on the same subject.

<sup>6</sup> Uniform Act of 10 April 1998 on Simplified Recovery Proceedings and Measures of Execution.

<sup>7</sup> Uniform Act of 10 April 1998 on Collective Proceedings for the Wiping-off debts.

<sup>8</sup> Uniform Act of 11 March 1999 on Arbitration Law.

<sup>9</sup> Uniform Act of 24 March 2000 to organize and harmonize company accounting rules.

<sup>10</sup> Uniform Act of 22 March 2003 on the Carriage of Goods by Road.

<sup>11</sup> Uniform Act of 15 December 2010 on Cooperative Societies.

acquires the status of a business starter. This status was established by the OHADA Uniform Act of December 15, 2010 on General Commercial Law in a bid to promote the migration of economic actors from the informal sector into the formal economy<sup>12</sup>. It is acquired by a mere declaration of business without cost at the Trade and Personal property Credit Register. The status of business starter is kept as long as the turnover does not exceed the fixed threshold over two consecutive years, with the understanding that if the business prospers, the producer will change the status.

## 2. Operations related to contract farming

Considering that the agreement between the producer and the buyer of farming products is first and foremost a contract, it is governed by the fundamental principles of the general law on contract and other applicable special laws, if any. Nevertheless, certain acts and transactions within the framework of this contractual relationship are likely to fall under the remit of OHADA law.

The OHADA Uniform Act Organizing Securities applies as well to transactions related to agriculture financing. Pursuant to Article 120 of the said Uniform Act, for example, a producer can pledge stocks of farming products, present or future, to a food industry in exchange for a financing that may be in the form of farming inputs supply.

The contract of sale of farming products may also, in the absence of specific laws, fall within the scope of the commercial sale regulated by the Uniform Act relating to general commercial law. The OHADA law on commercial sale will govern the sale of farming products subject to the following conditions being fulfilled:

- The producer and the buyer both qualify as traders<sup>13</sup> operating as natural person or moral entity;
- Contracting parties have their headquarters in a Member State of OHADA or the rules of private international law lead to the application of the law of a Member State;
- The parties have not agreed in their contract to waive the application of the OHADA Uniform Act<sup>14</sup>.

Finally, the carriage of farming products by road will be governed by the provisions of the Uniform Act relating to contracts of carriage of goods by road when the place of taking over of the goods or the place of delivery are located on the territory of a Member State, without regard to the quality of the shipper and the carrier (natural person or moral entity, trader or not). The recipient of the goods becomes party to the contract if he accepts. The Uniform Act

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<sup>12</sup> Besides the status of trader, the UA on General Commercial law of 15 December 2010 establishes that of the business starter defined in Article 30 as "a sole business operator, natural person who, upon simple declaration at the Trade and Personal property Credit Register, carries out a civil, commercial, craft or farming activity" provided the annual turnover generated by his activity on two successive years does not exceed the threshold set by the uniform Act organizing and harmonizing companies accounting under the minimum system flow. These thresholds are 30 million F for trading companies, 20 million F for craft businesses, and 10 million F for service companies. A business starter, who has lawfully declared his activity may benefit from the rules on professional lease, evidence among traders, commercial prescription, and may only keep a very simplified accounting called cash basis, which is based on receipts and disbursements. In addition to access to social protection and reduced taxes, acquiring the status of business starter gives access to markets, including financial services markets. The OHADA legislator encourages Member States to implement all incentives to promote the activities of business starters, especially tax incentives and social security charges.

<sup>13</sup> Following Article 234 of the Uniform Act, the provisions relating to commercial sale apply "to sale contracts of goods among traders, operating as natural persons or moral entities; this includes contracts for the supply of goods intended for the manufacturing or production".

<sup>14</sup> The commercial sale is subject to the provisions of the OHADA Uniform Act "only if there is no contrary provision in the contract" (Article 234, para.2 in limine), in such a way that the parties are free to subject their commercial sale contract to a different law.

encourages the use of arbitration for the settlement of disputes arising from the carriage of goods (Article 26).

### 3. The settlement of disputes arising from contract farming

Disputes arising from the conclusion, interpretation or execution of contract farming may naturally be submitted to the appropriate Member State court at first instance or on appeal. However, where there is an appeal to nullify the decision of the State court of appeal, the CCJA, which is an independent and common Supreme Court of the 17 Member States regarding the interpretation and application of OHADA business law, will solely be competent if the contract in issue is not specifically named and regulated under domestic law and provided the disputed operation is covered by an OHADA Uniform Act<sup>15</sup>. Recent reforms tend to reinforce the effectiveness of the Court. They include, among others, the quantitative and qualitative strengthening of its human resources, the improvement of its organization and procedure, with the introduction of the possibility to manage proceedings electronically.

If the parties so wish, they may submit any dispute arising from contract farming to arbitration. In this case, they will have a choice between arbitration under common law and the specific arbitration under the auspices of the CCJA.

Indeed, the OHADA Treaty overtly encourages the use of arbitration as a means of settling contractual disputes<sup>16</sup>. Not only was a Uniform Act relating to arbitration adopted<sup>17</sup>, but also, the CCJA was made a permanent arbitration center<sup>18</sup>. The CCJA does not itself resolve disputes, it administers arbitration proceedings and follows up the course of such proceedings, appoints or confirms arbitrators, examine draft awards; it also acts as support judge and litigation judge in case of dispute relating to the validity of the award. Another very significant and original feature of the CCJA arbitration is that awards made under its auspices enjoy a community exequatur that eases their enforcement: an exequatur granted by an order of the President of the Court is valid in all member States and enables to mobilize the award in each of these countries<sup>19</sup>.

## III. LOOKING FORWARD: TOWARDS AN EXTENDED COVERAGE OF CONTRACT FARMING BY THE OHADA LAW

The legal and economic environment of OHADA Member States is conducive to contract farming. The legal framework of this instrument of productive sector development requires that significant legislative policy and legal techniques options be considered.

### 1. A conducive environment

From an economic point of view, farming in OHADA Member States is a key sector of economy with very significant potentials that are still largely under-exploited. Development partners encourage a partnership between farmers and agro-industry operators perceived as a means to transform the traditional agricultural system into a more productive business so

<sup>15</sup> This may, for instance, be a dispute arising from the sale of farming products, carried out within the scope of their professional activity by the producer and the market operator where they both qualify as traders and provided they did not waive, in their contract, the application of the OHADA Uniform Act on General Commercial Law.

<sup>16</sup> OHADA Treaty preamble and Article 1.

<sup>17</sup> The Uniform Act of 11 March 1999 on arbitration which is the law on arbitration in Member States, has a particularly innovative approach about the subjective arbitrability (Article 2) and an extremely wide scope of application, which includes and goes beyond commercial arbitration; it also regulates domestic arbitration as well as arbitration under private international law, civil arbitrations and commercial arbitrations, ad hoc arbitration and institutional arbitration – with the exception of the specific arbitration under CCJA which has its own arbitration Rules.

<sup>18</sup> Articles 21 – 25 of the OHADA Treaty and the Rules of Arbitration of CCJA, 11 March 1999.

<sup>19</sup> Article 30.2 of the Rules of procedure of CCJA, 11 March 1999.

as to unlock the potential of the agricultural industry and make it an engine of economic growth, job creation and income generation<sup>20</sup>. However, the imbalance in the bargaining power of the parties involved calls for an adequate legal framework that takes into account the specific risks inherent in this type of contract. OHADA, which aims to ensure legal certainty for economic activities, cannot therefore remain indifferent to this concern.

From a legal point of view, and beyond the aspects of contract farming already captured by the OHADA law, the ongoing works of the Organization also focus on several other aspects of this contract type. Indeed, the preparation of an instrument on commercial mediation is being envisaged; also, the feasibility and suitability of regulating tools of financing (leasing contracts, public-private partnership contracts) or collaboration platforms (joint venture) are being considered and may be of interest to contract farming. The planned study on a possible harmonization of land laws of OHADA Member States could also impact the legal environment of farming contracts considering its implications on access to land.

More generally, the flexibility of Article 2 of the OHADA Treaty gives the possibility to capture virtually every need, from the legal standpoint, required for the development of economic activities in the territory of Member States<sup>21</sup>. From this perspective, a specific regulation on farming contract is theoretically possible<sup>22</sup>. However, certain issues need to be considered.

## 2. Relevant issues for consideration

To examine the feasibility and suitability of common contract rules on agricultural production in OHADA, two issues must be considered:

The issue of legal technique: choice between uniformization and harmonization

The choice of the approach requires an in-depth consideration. Since the Conference of Heads of State and Government held on October 17, 2013, the choice is now between the rigid technique of legislative uniformity that has been practiced till now and a more flexible harmonization techniques such as the model law, which Member States would be encouraged to incorporate into domestic law after making the required amendments of domestic laws.

The issue of jurisdiction: between national Supreme Courts and CCJA

The issue of the choice of legislative technique touches on another related concern, i.e. the distribution of competence between the CCJA and national Supreme Courts to hear and determine litigations relating to contract farming when there is an appeal to nullify a decision. Unification would transfer de facto this competence to the CCJA while harmonization would attribute to national Supreme Courts, with all the stakes involved in such devolution. / -

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<sup>20</sup> In September 2014, for example, the World Bank Group granted a loan of 100 million US dollars for a project on agricultural markets development in Cameroon.

<sup>21</sup> Article 2 : « For purposes of this Treaty, regulations falling within the ambit of business law shall include those relating to company law and the legal status of traders, debts recovery, securities and measures of execution, legal redress of companies and liquidation, arbitration, labor law, accounting law, transportation and sales laws, and any such matter that the Council of Ministers would decide, unanimously, to so include as falling within the ambit of business law, in conformity with the objective of this Treaty and the provisions of Article 8 below.

<sup>22</sup> It is worthy of note that special contracts such as commercial sale or the carriage of goods by road contracts have already been regulated by Uniform Acts and there are ongoing studies to explore the feasibility and suitability of a general law on special contracts: factoring, financial leases, franchising, subcontracting, and PPP, namely.




# THE LEGAL DIMENSION OF CONTRACT FARMING

## PRACTICAL EXPERIENCES IN KENYA - CASE STUDIES OF SEED MAIZE, SEED BEANS AND COFFEE

By  
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CONSULTATIVE WORKSHOP ON  
UNIDROIT/FAO LEGAL GUIDE  
ON CONTRACT FARMING

ADDIS ABABA, 31 October 2014  
UNITED NATIONS CONFERENCE  
CENTRE (UNCC)



### Table of Content

- Case Studies Overview
- Contract Formation Process
- Experiences/Issues and Challenges
- Recommendations
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## Case Studies Overview

- Seed Maize
- Seed Beans
- Coffee




### Case Studies Based on .....

- Seed Maize – Kenya Seed Company Based in Trans Nzoia County, North Rift Region of Kenya
  - Contracted Farmers: 250 -Small Medium and Large Scale Farmers
  - Contracts based on Seasonal Crop
  - Fixed pricing for each season
  - Involves other Parties – KEPHIS, Banks, Insurance companies, Input Suppliers, National Cereals Board (NCPB)
  - Support Provided: Technical, Inputs, Inspection, Finance and Insurance , training
  - Holds Annual Growers Events
  - Language of contract is in English

*...existing examples of contract farming in Kenya for seed maize, seed beans and coffee for small, medium and large scale farmers*

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### Case Studies Based on .....

- Seed Beans – Egerton University – Seed Unit, Nakuru County, Rift Valley Region of Kenya
  - Contracted Farmers: 500+, Small Scale including both Individual and Groups
  - Crop Seasonal Contracts
  - Price fixed for each season
  - Involves **Limited other** Parties – KEPHIS, and KARI
  - No Growers Events
  - **Limited** Support Provided: Technical ,Inspection and some training
  - Language of contract is in English

*...existing examples of contracting farming in kenya in the maize, beans and coffee sub sectors for small, medium and large scale farmers*

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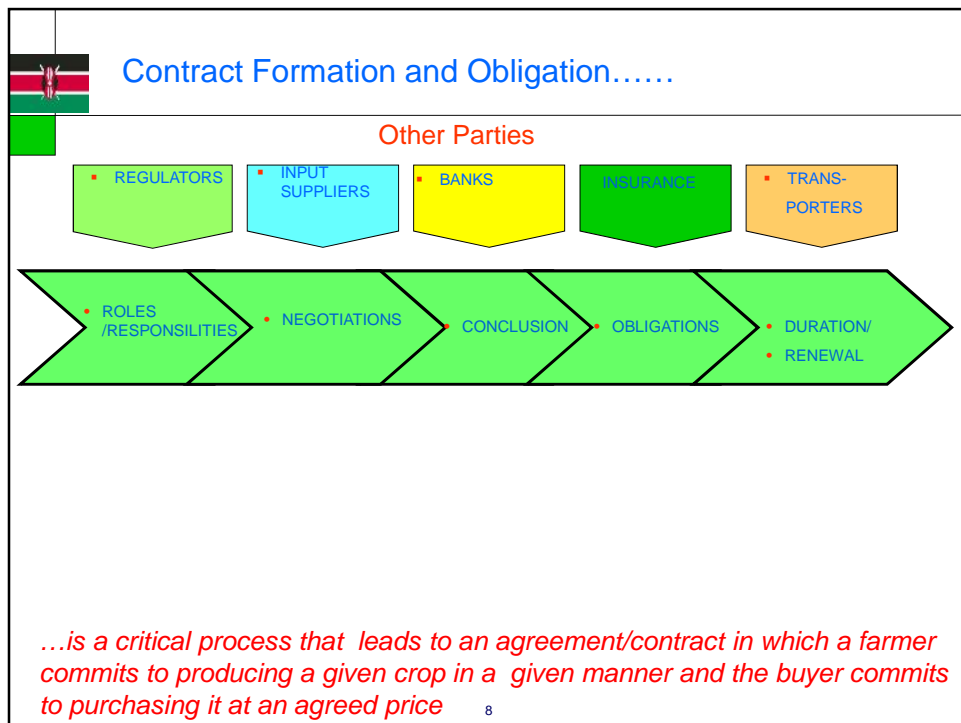



### Case Studies Based on .....

- Coffee – Coffee Management Services – Coffee Milling and Marketing Company, Eldoret and Ruiru based in Eldoret and Kiambu Counties respectively
  - Contracted Farmers: 1,000+, Co-operatives, Small Medium and Large Estates
  - Crop Seasonal Contracts
  - Includes both milling and marketing agreements
  - Price not fixed dependant on the Auction
  - Involves **Limited other** Parties – CBK, Ministries, Banks, Input Suppliers, Transporters
  - Annual Growers Meetings organised by the Regulator
  - **Moderate** Support Provided: Technical ,Extension Services, Inputs and some training
  - Language of contract is in English

*...existing examples of contract farming in Kenya for seed maize, seed beans and coffee for small, medium and large scale farmers*

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### Contract formation and Obligations .....

- An application is made via an application form or letter by the farmer to the buyer to enter into a written contract
- A due diligence/selection process is undertaken by the buyer on the farmer
- A contract is drawn up by the buyer or lawyer using a standard template in most cases
- Clear responsibilities and obligations of parties are specified i.e. covenants of the farmer with the buyer and vice versa
- The Covenants include: timeframe, agronomy practices, records, monitoring, financing, inputs, payment, transportation,

...that each part will need to bear and commit

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### Contract formation and Obligations .....

- Contract specifies prices, payments and obligations and other financial issues
- The parties should determine prices to be paid including price discounts for variation of quantity, quality and timing of payment where applicable
- The duration of contract should be defined
- Reference should be made to dispute settlement mechanism including arbitration
- The contract should have signature and witness close

...that each part will need to bear and commit

10




Experiences/Issues .....

- Contracts are developed using a template where a farmer has little input
- Contracts tend to favour the buyer rather than the farmer
- Contracts are written in one language mainly English which disadvantages the academically challenged farmers
- Contract use technical and legal clauses that are difficult for a farmer to comprehend and interpret
- Some Oral Contracts may be valid but incase of disputes , it may be difficult to enforce as there is no tangible evidence
- Farmers have little involvement in pricing - cost escalation (inputs, labour, etc) not factored in

...that need to be addressed in contract formation

12




### Experiences/Issues .....

- Pricing is also a challenge to buyers due economic factors such as exchange rates, inflation, etc
- Farmers at times have limited production process capacity to deliver a guaranteed good crop yield of high quality with financial benefits
- Farmers lack of capacity in contracting process
- Risk allocation is a challenge in most contracts
- No liability to either party in the event of “force majeure” i.e. way, civil unrest, fire, storm, labour disturbances. etc

...that need to addressed in contract formation

13




### Challenges.....

- Farmers do not adhere to the contract obligations such production of the crop according to the stipulated standards.
- Buyers may delay payment
- “Abnormal” requests ( i.e. additional funds, inputs, etc ) made by farmers that are not catered for in the contract
- Farmers may have a shortfall in quantity delivered resulting a “debtors” situation
- Ad-hoc Interventions by buyer i.e. provision of labour for harvesting to avert loss of crop
- Collateral (a land title deed) provided may have some issues i.e. lack of full disclosure

...faced that may not clearly be spelt out in the contract

14




### Challenges.....



- Handling of diseases (i.e. Maize Lethal Necrosis (MLN) is challenge since insurance companies do not provide such a cover
- Climate/weather changes could affect the crop
- Coordination/monitoring on phone is difficult because of distance and lack of adequate field personnel
- Pricing/price adjustments
- Isolation to avoid cross pollination incase of beans and maize
- Compensation to neighbours to achieve the minimum isolation distance
- Farmers divert the crop i.e. side marketing or consume it as food!



...faced that may not clearly be spelt out in the contract

15



### Recommendations/ Best Practices

	<h3>Recommendations/Best Practices.....</h3>
	<ul style="list-style-type: none"><li>▪ There should be an application form completed by a farmer and details vetted by the buyer through Panel</li><li>▪ There should be commitment from both parties</li><li>▪ The farmer should have an input and involved in the development of the contract</li><li>▪ Clear roles and responsibilities should be defined for all parties</li><li>▪ Contractual obligations should clearly be defined for all parties</li><li>▪ Contract duration should be clearly defined</li><li>▪ Contract termination aspects should clearly be defined i.e. termination on notice, automatic termination, etc</li><li>▪ Oral contracts should be avoided. However if such contracts are required they should be witnessed by “an independent witness”</li></ul>
	<p>....provided for improvement in contracting</p>

	<h3>Recommendations/Best Practices.....</h3>
	<ul style="list-style-type: none"><li>▪ All Stakeholders should be engaged in the process of contracting</li><li>▪ Contract negotiation is a critical step in successful contracting</li><li>▪ Open communication channels are critical contracting</li><li>▪ Buyer should incorporate elements of corporate social responsibilities (CSR) as a form goodwill to the community</li><li>▪ Contracts should be drawn in a language that is understood by all parties or a provision for interpretation should be factored in</li><li>▪ Risk sharing mechanism include: use of producer organisations, staple price index Versus spot market rates plus bonus in price rise above price index.</li></ul>
	<p>....provided for improvement in contracting</p>



	<h2>Recommendations/Best Practices.....</h2>
	<ul style="list-style-type: none"><li>▪ Contracts should be designed and enforced under a legal framework i.e. contract laws and relevant regulatory laws i.e. seed crops - Seed and plants Variety Act Chapter 326 of the Laws of Kenya and Coffee Act 2001</li><li>▪ The contract should be clear in terms of Arbitration process under Arbitration Act 1995 of Kenya</li><li>▪ Insurance cover against an act of God "force majeure" should be provided by third parties such as Africa Trade Insurance (ATI)</li><li>▪ There should be a risk analysis and mitigation process</li><li>▪ Government should provide a desirable environment i.e. regulations, incentives for contract farming</li><li>▪ Government may facilitate contract farming through capacity building in terms of arbitration of disputes and provision of extension services</li></ul> <p>....provided for improvement in contracting</p>

Promoting Good Contract Practices  
between Producers and Buyers in Contract  
Farming Operations in the African  
Context

LEGAL DIMENSION OF CONTRACT  
FARMING

Addis Ababa (UNECA), 31st October 2014

Dr Wamalwa Kinyanjui

Fertile eggs production through  
Contract Farming (CF) in Kenya by  
DOREP;

- ▶ Contract farming (CF) is a forward agreement specifying the obligations of producers and buyers as partners in business.
- ▶ The producer agrees to provide agreed quantities & of quality standards of a specific product while the purchaser agrees to buy the product and sometimes provide some inputs and technical service on need basis

## Advantages

- ▶ Producers have a guaranteed market outlet with reduced uncertainty regarding prices and with a provision of farming inputs such as chicks, feeds and technical advice etc.
- ▶ Purchasing firms have a guaranteed supply of products that meet their specifications regarding quality, quantity and timing of delivery.

## Disadvantages

- ▶ Failure by each party to meet its obligation; producers not meeting the buyers demand and buyers not paying for the produce as agreed or defaulting all together
- ▶ Buyers lacking steady market outlet constrains meeting their contractual obligations with producers
- ▶ Buyers being overwhelmed by products

## Producer organization

- ▶ DOREP was a local organization with office in Kikuyu town; Kiambu county; Kenya
- ▶ The organization formed women groups (25 members each group) for production of fertilized high grade eggs whose chicken matured in 5–6 months before laying whereas those for slaughter took 3–4 months to attain a weight of 3–4 kg for cocks and 2.5–3.5 Kgs for layers
- ▶ The groups were encouraged to register with government and open bank accounts to make monthly contribution towards their welfare

## Types of products under CF

- ▶ Fertilized high breed eggs that could be sold to DOREP under contractual written & signed agreement at a price double that of the ordinary eggs
- ▶ Grow chicks to maturity and sell to consumers as poultry meat
- ▶ Sell cockerels for breeding to other members or neighbourhood
- ▶ Sell the old layer stock for meat
- ▶ The groups could lent money to group members at an interest

## Types of services under CF

- ▶ DOREP offered training & extension services to members about breeding of the layers, housing, feeding, watering, general cleanliness, routine disease control through vaccination, medication & deworming, local market requirements and how to hatch own eggs using incubators etc.
- ▶ The groups were trained on group formation/dynamics, financial management, accountability, conflict resolution, governance, transparency and marketing strategies etc- at a fee

## Marketing CF strategies

- ▶ All eggs will be sold to DOREP only
- ▶ Buy breeding chicks only from DOREP
- ▶ Seek professional veterinary services only from DOREP technician at no fee except refund of transport cost
- ▶ Source feeds and other inputs from the organization- optional
- ▶ Group deposited fund was used to bail out members or offered loans to purchase stock for members at an interest

## Marketing products under CF

- ▶ Innovator members sold their eggs to DOREP at a good fee (KSh 20 per egg as compared to market price of KSh 10 for ordinary eggs)
- ▶ DOREP supplied chicks to members at KSh 100 for one day old chick or KSh 200–250 for one month old pullets
- ▶ DOREP technicians offered veterinary & extension services to group members free of charge save for transport cost only
- ▶ Group members were given tour learning trips to a few innovators who had succeeded for learning purposes– each member paid own transport cost

## Challenges for DOREP contract farming

- ▶ Group members over subscribed
- ▶ A glut of eggs by members to DOREP
- ▶ DOREP had few and poorly functioning incubators to meet contractual obligation
- ▶ Private incubators offered to hatch the eggs for DOREP members at a fee of KSh 21 for each
- ▶ Private incubators could only hatch less than 20% of what was presented
- ▶ Some members had started side selling or stop marketing of eggs at better price than offered by DOREP
- ▶ Members started hatching chicks and side selling

## Challenges for DOREP members

- ▶ Lacked where to sell their eggs at anticipated higher price
- ▶ Sold their eggs at the ordinary market price at a loss
- ▶ Lacked where to hatch chicks from since DOREP incubators were defective or management was playing a game on gullible members
- ▶ Private hatching fee was very high for members which was paid in advance whether an egg hatches or not
- ▶ Members lacked strong legal backing to bring charges to DOREP directors

## Challenges DOREP members

- ▶ Members incurred financial losses through construction of poultry housing
- ▶ Members lost through purchased equipment, feeds, employees' salaries, medication etc
- ▶ Members lost through creditors who took chicken/eggs on credit but failed to pay or delayed payment or offered low prices
- ▶ The group association died a forced death when members could not market their products and withdrew their share contributions

## Conclusion

- ▶ The *ad hoc* contract farming was likened to pyramid schemes where investors were conned of billions of cash
- ▶ Proper legal dimension should be put in place to protect both producers and purchasers
- ▶ Massive extension services should be done to alert susceptible farmers from unscrupulous purchasers out to fleece

End

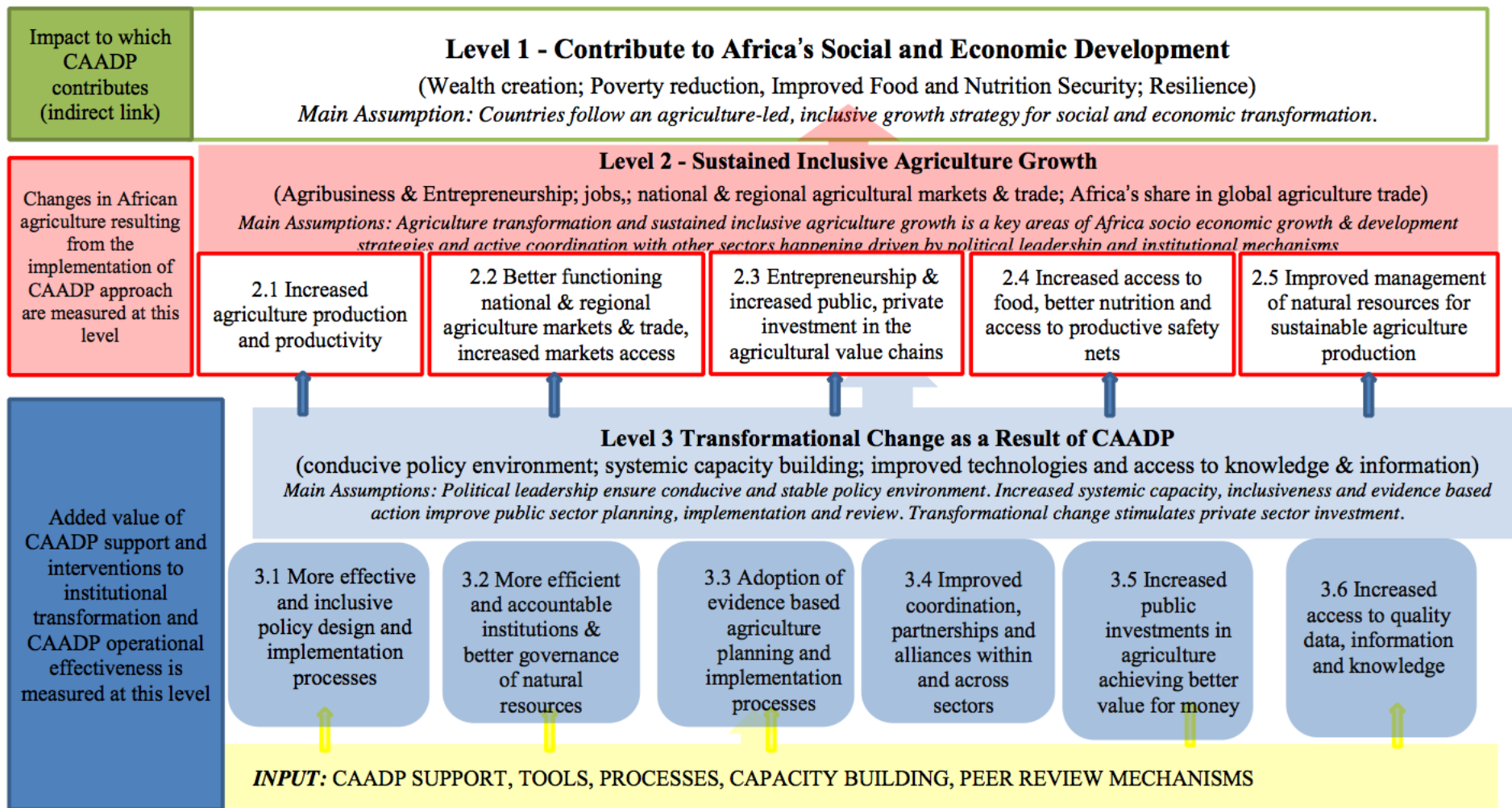
Thanks





Joyce Cacho

## ANNEX 1: CAADP 2015-2025 RESULTS FRAMEWORK



**MALABO DECLARATION ON ACCELERATED AGRICULTURAL  
GROWTH AND TRANSFORMATION FOR SHARED  
PROSPERITY AND IMPROVED LIVELIHOODS  
Doc. Assembly/AU/2(XXIII)**

**We**, the Heads of State and Government of the African Union, having met at our Twenty Third Ordinary Session of the AU Assembly in Malabo, Equatorial Guinea, from 26-27 June 2014, on the Theme of the African Year of Agriculture and Food Security: *“Transforming Africa’s Agriculture for Shared Prosperity and Improved Livelihoods through Harnessing Opportunities for Inclusive Growth and Sustainable Development, also marking the tenth Anniversary of the Adoption of the Comprehensive Africa Agriculture Development Programme (CAADP)”*.

**Recalling** our previous Decisions and Declarations on agriculture and food and nutrition security, in particular the 2003 Maputo Declaration on Agriculture and Food Security in Africa [Assembly/AU/Decl.7 (II)]; the 2004 Sirte Declaration on the Challenges of Implementing Integrated and Sustainable Development in Agriculture and Water in Africa [Ex/Assembly/AU/Decl. 1 (II)]; the 2009 Sirte Declaration on Investing in Agriculture for Economic Growth and Food Security [Assembly/AU/12 (VIII)]; the 2007 Decision on Abuja Special Summit of the AU on Fertilisers [Assembly/AU/Dec.117 (VII)]; the 2007 Decision on the Abuja Summit on Food Security in Africa [Assembly/AU/Dec.135 (VIII)]; among others.

**Acknowledging** the persistent efforts made in implementation of the CAADP at national and regional levels, and the positive growth performance that our agricultural sector has been registering in recent years.

**Also acknowledging** the challenges faced in the implementation of many of those Decisions and Declarations, in particular on progress made in attaining the minimum targets of public investment in agriculture that should demonstrate Africa’s ownership and leadership to the achievement of goals as enshrined in the 2003 Maputo commitments.

**Recognising** the dire situations that obtain with regard to Africa’s capacity to generate analyse and manage data and information to facilitate evidence based policy development and tracking of progress of implementation, and hence **affirming** our commitment to enhance such a capacity.

**Noting with Concern** that the results of the Cost of Hunger Study in Africa (COHA) conducted by the AUC revealed the degree to which child under-nutrition influences health and educational outcomes; the additional barrier it has on children’s ability to achieve their full potential; and the impact it has on national productivity.

**Concerned** that a significant proportion of our population still remains vulnerable to the challenges of economic marginalization, hunger and malnutrition, despite the positive achievements registered recently in agriculture and economic growth; and **reiterating** our resolve to ending hunger and improving nutrition consistent with our 2013 Decision

on Renewed Partnership for a Unified Approach to End Hunger in Africa by 2025 under the CAADP Framework [Assembly/AU/Dec.490-516(XXII)].

**Reaffirming** our resolve towards ensuring, through deliberate and targeted public support, that all segments of our populations, particularly women, the youth, and other disadvantaged sectors of our societies, must participate and directly benefit from the growth and transformation opportunities to improve their lives and livelihoods.

**Reflecting** that hunger and malnutrition are major causes of poverty and underdevelopment in Africa by causing poor health, low levels of energy, and mental impairment, all leading to low productivity and low educational attainment all of which can in turn lead to even greater hunger and malnutrition, thereby creating a vicious cycle.

**Noting** the progress made towards alignment, harmonisation and coordination of initiatives and activities of stakeholders and partners with our priorities as defined in the National and Regional Agricultural and Food Security Investment Plans that have been developed through the CAADP process, and **stressing** on the significance of sustaining this momentum.

**Concerned** that there is limited progress made in agro-industries and agribusiness development, which hampers value addition and competitiveness of our products in trade both local, regional, and international; and undermines the potential of the sector in transformation and generation of gainful employment opportunities for the growing African youth and women, hence **reaffirming** our resolve to the achievement of goals as provided in our Decision on 2010 Abuja Declaration on Development of Agribusiness And Agro-Industries In Africa [Assembly/AU/Decl.]

**Also concerned** over the heavy and growing dependence of our production systems and consumption patterns on external factors (weather, global markets, amongst others,) and their associated vulnerabilities to such external factors as climate variability and change as well as to global economic and political shocks.

**Stressing** the significance of enhancing conservation and sustainable use of all of our natural resources including land, water, plant, livestock, fisheries and aquaculture, and forestry, through coherent policies as well as governance and institutional arrangements at national and regional levels, to realise their huge potential to generate wealth, social benefits and contribute to the development of our economies.

**Recognising** the importance of multi-sectoral engagement and co-ownership of this agricultural transformation agenda within our public sectors, including infrastructure, energy, trade, industry, health, science and technology, education, hence the importance of putting in place a coherent inter-sectoral coordination of the efforts and initiatives for optimising resource use, synergy and maximising outcome and impact.

**Further recognising** the complementary roles and responsibilities that should be enhanced among the relevant stakeholders, including public, private, civil societies, farmers, pastoralists, fishers, in driving this agricultural transformation agenda.

**Welcoming** the Resolutions of the African Union Joint Conference of Ministers of Agriculture, Rural Development, Fisheries and Aquaculture, held in Addis Ababa, Ethiopia from 01 to 02 May 2014, endorsed by the Executive Council, and in particular their recommendations calling for our Assembly to consider adopting commitments along specific and concrete priorities.

We hereby adopt the following Declaration:

**I. Recommitment to the Principles and Values of the CAADP Process**

1. We recommit to the key principles and values that define the CAADP process which include, among others:
  - a) the pursuit of agriculture-led growth as a main strategy to achieve targets on food and nutrition security and shared prosperity;
  - b) the exploitation of regional complementarities and cooperation to boost growth;
  - c) the application of principles of evidence-based planning, policy efficiency, dialogue, review, and accountability, shared by all NEPAD programs;
  - d) the use of partnerships and alliances including farmers, agribusiness, and civil society; and
  - e) support implementation at countries levels, and regional coordination and harmonisation.

**II. Commitment to Enhancing Investment Finance in Agriculture**

2. We commit to enhance investment finance, both public and private, to agriculture; and to this end we resolve:
  - a) to uphold our earlier commitment to allocate at least 10% of public expenditure to agriculture, and to ensure its efficiency and effectiveness;
  - b) to create and enhance necessary appropriate policy and institutional conditions and support systems for facilitation of private investment in agriculture, agri-business and agro-industries, by giving priority to local investors;
  - c) to fast-track the operationalization of the African Investment Bank, as provided for in the Constitutive Act of the African Union, with a view to

mobilizing and disbursing investment finance for priority agriculture related investment projects.

### III. Commitment to Ending Hunger in Africa by 2025

3. We commit to ending hunger in Africa by 2025, and to this end we resolve:

a) to accelerate agricultural growth by at least doubling current agricultural productivity levels, by the year 2025. In doing so, we will create and enhance the necessary appropriate policy and institutional conditions and support systems to facilitate:

- sustainable and reliable production and access to quality and affordable inputs (for crops, livestock, fisheries, amongst others) through, among other things, provision of 'smart' protection to smallholder agriculture;
- supply of appropriate knowledge, information, and skills to users;
- efficient and effective water management systems notably through irrigation;
- suitable, reliable and affordable mechanization and energy supplies, amongst others.

b) to halve the current levels of Post-Harvest Losses, by the year 2025;

c) to integrate measures for increased agricultural productivity with social protection initiatives focusing on vulnerable social groups through committing targeted budget lines within our national budgets for:

- strengthening strategic food and cash reserves to respond to food shortages occasioned by periodic prolonged droughts or other disasters/emergencies;
- strengthening early warning systems to facilitate advanced and proactive responses to disasters and emergencies with food and nutrition security implications;
- targeting priority geographic areas and community groups for interventions;
- encouraging and facilitating increased consumption of locally produced food items, including the promotion of innovative school feeding programs that use food items sourced from the local farming community.

- d) to improve nutritional status, and in particular, the elimination of child under-nutrition in Africa with a view to bringing down stunting to 10% and underweight to 5% by 2025.

**IV. Commitment to Halving Poverty by the year 2025, through Inclusive Agricultural Growth and Transformation**

4. We resolve to ensure that the agricultural growth and transformation process is inclusive and contributes at least 50% to the overall poverty reduction target; and to this end we will therefore create and enhance the necessary appropriate policy, institutional and budgetary support and conditions:

- a) to sustain annual agricultural GDP growth of at least 6%;
- b) to establish and/or strengthen inclusive public-private partnerships for at least five (5) priority agricultural commodity value chains with strong linkage to smallholder agriculture;
- c) to create job opportunities for at least 30% of the youth in agricultural value chains;
- d) to support and facilitate preferential entry and participation for women and youth in gainful and attractive agri-business opportunities.

**V. Commitment to Boosting Intra-African Trade in Agricultural commodities and services**

5. We commit to harness markets and trade opportunities, locally, regionally and internationally, and to this end we resolve:

- a) to triple, by the year 2025, intra-African trade in agricultural commodities and services;
- b) to create and enhance policies and institutional conditions and support systems:
- to simplify and formalize the current trade practices;
  - to fast-track the establishment of Continental Free Trade Area (CFTA) and transition to a continental Common External Tariff (CET) scheme;
  - to increase and facilitate investment in markets and trade infrastructure;
  - to promote and strengthen platforms for multi-actors interactions;

- to strengthen and streamline the coordination mechanism that will facilitate the promotion African common position on agriculture-related international trade negotiations and partnership agreements.

**VI. Commitment to Enhancing Resilience of Livelihoods and Production Systems to Climate Variability and other related risks**

6. We commit to reduce vulnerabilities of the livelihoods of our population through building resilience of systems; and to this end we resolve:

- a) to ensure that, by the year 2025, at least 30% of our farm, pastoral, and fisher households are resilient to climate and weather related risks;
- b) to enhance investments for resilience building initiatives, including social security for rural workers and other vulnerable social groups, as well as for vulnerable ecosystems;
- c) to mainstream resilience and risk management in our policies, strategies and investment plans.

**VII. Commitment to Mutual Accountability to Actions and Results**

7. We commit to a systematic regular review process, using the CAADP Results Framework, of the progress made in implementing the provisions of this Declaration; and to this end we resolve:

- a) to conduct a biennial Agricultural Review Process that involves tracking, monitoring and reporting on progress;
- b) to foster alignment, harmonization and coordination among multi-sectorial efforts and multi-institutional platforms for peer review, mutual learning and mutual accountability;
- c) to strengthen national and regional institutional capacities for knowledge and data generation and management that support evidence based planning, implementation, monitoring and evaluation.

**VIII. Strengthening the African Union Commission to support delivery on these commitments**

8. We will strengthen the capacity of the African Union Commission to help it fulfil the growing roles and mandates we have been ascribing to it, through this Declaration as well as other relevant previous Declarations and Decisions; and to this end we invite the Chairperson of the Commission to submit a proposal with a view to enhancing the institutional capacity of the lead Department as well as other relevant units, for consideration and approval by the January 2015 Ordinary Session of the Executive Council.

**IX. A Call for Action**

9. We commit to an expedient process of translation of these commitments into results; and to this end we call upon:

- 
- a) the AU Commission and NEPAD Planning and Coordinating Agency (NPCA) to develop an implementation strategy and roadmap that facilitates translation of the 2025 vision and goals of Africa Accelerated Agricultural Growth and Transformation into concrete results and impacts, and report to the January 2015 Ordinary Session of the Executive Council for its consideration;
  - b) the AU Commission to fast-track the operationalization of the African Investment Bank;
  - c) the AU Commission and RECs to facilitate the acceleration of economic integration to boost intra-Africa trade in food and agriculture;
  - d) the AU Commission and NPCA, in collaboration with partners:
    - to develop mechanisms that enhance Africa's capacity for knowledge and data generation and management to strengthen evidence based planning and implementation;
    - to institutionalize a system for peer review that encourages good performance on achievement of progress made in implementing the provisions of this Declaration and recognize biennially exemplary performance through awards;
    - to conduct on a biennial basis, beginning from year 2017, Agricultural Review Process, and report on progress to the Assembly at its January 2018 Ordinary Session.
  - e) the African stakeholders, including farmers, pastoralists, fishers, private sector operators in agriculture, agribusiness and agro-industries, civil society organisations, and financial institutions, to rally behind the realization of the provisions of this Declaration and take advantage of the huge opportunities that it presents;
  - f) the African Agricultural Research and Knowledge Institutions to vigorously support the realization of this agenda through an integrated and coherent manner, building on national systems and capacities;
  - g) the Development Partners to rally and align their technical and financial support in a harmonized and coordinated manner to support the implementation of the provisions of this Declaration.



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**Promoting Good Contract Practices between Producers and Buyers  
in Contract Farming Operations in the African Context**

**THE LEGAL DIMENSION OF CONTRACT FARMING**

**Consultation Workshop on the  
UNIDROIT / FAO Legal Guide on Contract Farming**

**ADDIS ABABA, 31 October 2014**

**Venue: United Nations Conference Center (UNCC-AA) – UNECA  
Menelik II Avenue**

**Room 6**

**Presentation**

The practice of engaging in crop or animal production based on contract farming arrangements has developed very significantly in many developing and emerging economies. Under agricultural production contracts, agricultural producers undertake to engage in production and deliver, at a future time, goods meeting designated specifications. The purchaser – typically a food processor, an exporter or a retailer – commits itself not only to acquire the product for an agreed price, but also to provide a certain level of guidance and support during the production process, typically by supplying agricultural inputs, technology, or agronomical supervision. While the success of contract farming may depend on many elements, one key element is the ability of the parties to build stable, commercially-sound and fair relationships based on clear commitments and mutual compliance. The cornerstone of the relationship is the agreement.

This workshop will focus on the legal aspects of the parties' agreement based on practical experiences and the treatment of contract farming in domestic legislation. It is addressed to a broad audience of stakeholders in contract farming relationships in the Eastern African region, *i.e.* producer organizations, private sector representatives, IGOs and development agencies, NGOs, public entities and the legal academic circles.

Notably, this workshop will inform the drafting of the UNIDROIT/FAO *Legal Guide on Contract Farming* which intends to provide soft guidance and an internationally-recognised reference with a fair and balanced approach against which contract practices and relevant public policy instruments could be assessed. The *Guide* is being prepared by the International Institute for the Unification of Private Law (UNIDROIT), together with the Food and Agriculture Organization (FAO), and the participation of the International Fund for Agricultural Development (IFAD).

At the workshop, a draft abstract of the forthcoming *Guide* will serve as a reference for the discussion. Participants are invited to actively take part in the workshop by sharing experience and knowledge.

## PROGRAMME

### 9:00 – 9:30 Welcome and Opening

Ms Susan MINAE  
FAO Subregional Coordinator for Eastern Africa OiC  
Food and Agriculture Organization of the United Nations (FAO)

Mr Perin SAINT-ANGE, IFAD  
Regional Director for East and Southern Africa  
International Fund for Agricultural Development (IFAD)

Mr Marcel FONTAINE  
Emeritus Professor of Law, University of Louvain  
Member of the UNIDROIT Working Group on Contract Farming

### 9:30 – 9:45 Objectives for the day and introductions

An overview of the objectives for the day, explaining how the workshop will be structured, and how the outputs from the day will help to inform the drafting of the Legal Guide on Contract Farming, as well as how the Guide will be implemented and utilized in future work and projects. Participants will then be encouraged to briefly introduce themselves.

Ms Marieclaire COLAIACOMO  
Legal Counsel  
IFAD

### 9:45 – 10:15 Session 1 – Contract farming: An Economic and Legal Introduction

An overview of the potential of contract farming to promote more efficient agricultural supply chains and economic and social inclusion of small farmers; and an overview of the main legal issues involved in contract farming under the transactional perspective, with a presentation of the forthcoming UNIDROIT/FAO Legal Guide on Contract Farming: its scope, purpose and content

#### Contract farming and inclusive value chain development

Ms Eva GÁLVEZ-NOGALES  
Marketing Economist  
Rural Infrastructure and Agro-Industries Division (AGS)  
Food and Agriculture Organization (FAO)

#### Contract farming: a legal approach. The forthcoming UNIDROIT/FAO Legal Guide on Contract Farming

Mr Marcel FONTAINE  
Emeritus Professor of law  
Member of the UNIDROIT Working Group on Contract Farming

**10:15 – 10:30 Refreshments****10:30 – 11:15 Session 2 – The Legal Framework for Producer-Buyer Relationships – Country Overview**

An overview of the diversity of approaches in the legal regime applicable to contract relations between producers and buyers, against the backdrop of the economic and social functions of contract farming. And a tentative assessment as to whether the mandatory rules and existing gap-filling methods applicable to contract farming relationships – including in case of dispute – provide adequate solutions to enhance fair terms and behaviours.

**Moderator** – Mr Tito ARUNGA, Agribusiness Coordinator, *FAO Kenya*

**Ethiopia**

Professor Tilahun TESHOME  
Addis Ababa University, School of Law, *Ethiopia*

**OHADA**

Mr Alexis NDZUENKEU  
Head of Legal Affairs and Communication Services  
Yaoundé, *Camerun*

**Malawi**

Mr Mwiza NKHATA  
Dean of Law, University of *Malawi*

**Tanzania**

Mr Charles MPAKA  
Senior Lawyer  
Ministry of Agriculture, Food Security and Cooperatives (MAFC)  
Dar Es Salaam, *Tanzania*

**Kenya**

Mr Justus WABUYABO  
General Manager – Corporate and Legal Services  
National Water Conservation and Pipeline Corporation  
Nairobi, *Kenya*

**11:15 – 12:45 Session 3 – Breakout discussions on the legal framework, contract formation and obligations of the parties**

Participants will be divided into small groups of 6 – 8 persons, with a facilitator, to discuss core issues and practical examples related to the background legal framework for contract farming, as well as contract formation and the obligations of the parties.

**11:15 – 12:15** Discussion in small groups

**12:15 – 12:45** Presentation of results to the full group. One member on behalf of each small group will briefly present the major issues and any recommendations that have been distilled from the group discussion. Questions and answers will follow.

**12:45 – 14:15****Lunch offered by UNIDROIT****14:15 – 15:30****Session 4 – Special Topics in Contract Farming**

*Practical Experiences Panel:* A moderated panel, as well as the full group of participants, will share experiences, recommendations, and best practices focusing on issues related to the negotiation process, the conclusion of the contract, the definition of reciprocal contractual obligations, performance of parties' obligations, as well as non performance/breach – including excuses and remedies – and dispute resolution mechanisms.

**Moderator** - Ms Patricia NSIIME, Value chain expert, FAO *Uganda*

**Panelists**

Mr Zachary KIARIE  
Head of region, Eastern Africa,  
Fairtrade Africa  
*Tanzania*

Mr Matanda WABUYELE  
MW Management Consultants  
*Kenya*

Prof. Esther GICHERU  
Chairlady for gender and research interim committee  
International Co-operative Alliance Africa

Ms Poorva PANDYA  
Head, ETG Farmers Foundation  
*Tanzania*

Mr Antoine-Marie MOUSTACHE  
Special Advisor to the Minister  
Ministry of Natural Resources  
*Seychelles*

Mr Alexis NDAGIJIMANA  
PRICE project  
Program and contract manager  
*Rwanda*

Ms Connie MASABA  
Vegetable Oil Development Project  
*Uganda*

**15:30 – 17:00      Session 5 – Breakout discussions on performance, non-performance and dispute resolution**

Participants will be divided into small groups of 4 – 8 persons, with a facilitator, to discuss core issues and practical examples related to the performance of obligations, non-performance and remedies, and dispute resolution.

**15:30 – 16:30** Discussion in small groups

**15:30 – 16:00** Light refreshments provided during discussions

**16:30 – 17:00** Presentation of results to the full group. One member on behalf of each small group will briefly present the major issues and any recommendations that have been distilled from the group discussion. Questions and answers will follow.

**17:00 – 17:30      Overview of recommendations from the workshop**

A representative from UNIDROIT will identify the key messages from the day's discussions, and connect these to relevant sections in the Guide, or highlight areas which the Guide could still address better.



UNIDROIT is an intergovernmental organisation that prepares draft harmonised rules of private law as well as softlaw guidelines and principles to assist in the modernisation of domestic legal frameworks. UNIDROIT is coauthoring the Guide and serves as primary project organizer.



FAO focuses on achieving food security for all. FAO devotes resources to contract farming by implementing development programmes, issuing publications and running a Contract Farming Resource Centre. FAO is coauthoring the Guide and has provided support through the sharing of expert knowledge and the participation of delegations of experts and providing comments and inputs on the drafts.



IFAD mobilises and deploys resources to fight rural poverty. IFAD has provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. In addition, IFAD is providing substantial support to the preparation of the Guide through a grant to FAO (recipient)

More detailed information about this project can be found on UNIDROIT website at:

<http://www.unidroit.org/workinprogressstudies/currentstudies/contractfarming>

Check out FAO's Contract Farming Resource Centre for more information:

<http://www.fao.org/ag/ags/contract-farming/en/>

For any questions or comments regarding this project, please contact:

[info@unidroit.org](mailto:info@unidroit.org)

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**Promoting Good Contract Practices between Producers and Buyers  
in Contract Farming Operations in the African Context**

**THE LEGAL DIMENSION OF CONTRACT FARMING**

**Consultation Workshop on the  
UNIDROIT / FAO Legal Guide on Contract Farming**

**ADDIS ABABA, 31 October 2014**

**UNECA**

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