



# CREATING A FAVOURABLE LEGAL ENVIRONMENT FOR CONTRACT FARMING

## The UNIDROIT/FAO/IFAD legal guide on contract farming

ROME, 27 April 2016

### Report

<b>1. EVENT OVERVIEW</b> -----	2
1.1. <i>Participants</i> -----	3
1.2. <i>Speakers</i> -----	3
1.3. <i>Material</i> -----	3
<b>2. SUMMARY OF PRESENTATIONS</b> -----	3
2.1. <i>Welcome and opening addresses</i> -----	3
2.2. <i>Session 1: Investing in Agriculture Responsibly through Contract Farming</i> -----	4
2.3. <i>Session 2: Contract Farming: What is at Stake?</i> -----	6
2.4. <i>Section 3: A Legal Tool for Good Practices in Contract Farming Operations:         the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming</i> -----	9
2.5. <i>Policy issues and legal approach of the Legal Guide</i> -----	9
2.6. <i>How to use the Legal Guide? Plans for implementation</i> -----	11
<b>3. STATEMENTS BY MEMBER STATES REPRESENTATIVES</b> -----	12
3.1. <i>Brazil</i> -----	12
3.2. <i>Germany</i> -----	12
3.3. <i>Indonesia</i> -----	12
3.4. <i>Spain</i> -----	13
<b>4. STATEMENTS BY NON-MEMBER STATE REPRESENTATIVES</b> -----	13
4.1. <i>Morocco</i> -----	13
4.2. <i>Philippines</i> -----	14
<b>5. STATEMENTS BY ORGANISATIONS' REPRESENTATIVES</b> -----	14
<b>6. CONCLUDING REMARKS</b> -----	15

Appendix I: Intervention by the representation of the Republic of Indonesia (*full text*)

Appendix II: Intervention by the representation of the Philippines (*full text*)

Annex I: Presentations and papers

Annex II: Programme

Annex III: List of participants

## Report on the International Conference

### **CREATING A FAVOURABLE LEGAL ENVIRONMENT FOR CONTRACT FARMING - THE UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING**

UNIDROIT, ROME, 27 April 2016

## **1. EVENT OVERVIEW**

*Background:* Contract farming, broadly understood as agricultural production and marketing carried out under a previous agreement between producers and their buyers, supports the production of a wide range of agricultural commodities and its use is growing in many countries. Mindful of the importance of enhancing knowledge and awareness of the legal regime applicable to contract farming operations, the International Institute for the Unification of Private Law (UNIDROIT), the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) have prepared the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming. The Guide is a useful tool and reference point for a broad range of users involved in contract farming practice, policy design, legal research and capacity-building. It can also contribute to the creation of a favourable, equitable and sustainable environment for contract farming.

This report summarizes the international conference entitled, "CREATING A FAVOURABLE LEGAL ENVIRONMENT FOR CONTRACT FARMING - THE UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING" which was organised by UNIDROIT,<sup>1</sup> in collaboration with the Food and Agriculture Organization (FAO<sup>2</sup> and the International Fund for Agricultural Development (IFAD)<sup>3</sup> under the auspices of the Ministry of Foreign Affairs and International Cooperation of Italy. UNIDROIT also acknowledges the support of the International Initiative for Impact Evaluation (3ie); Barry Callebaut & Cocoa Horizons Foundation; *Consiglio per la Ricerca in Agricoltura e l'analisi dell'economia agraria* (CREA) and LUISS School of Law in the holding the conference.

The conference had two main aims: 1: to provide information on contract farming and explaining the approach and practical usefulness of the Guide to potential stakeholders; 2: to provide information on current plans regarding the implementation of the guide in various countries.

---

<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, in particular the UNIDROIT Principles of International Commercial Contracts, 2010 (<[www.unidroit.org](http://www.unidroit.org)>)

<sup>2</sup> FAO co-authored the Guide together with UNIDROIT and provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. FAO promotes responsible contract farming by implementing domestic and regional development and capacity building programmes, issuing publications and maintaining a Contract Farming Resource Centre on the FAO website which gives access to bibliographical references, contract samples and general legal documents. See <[www.fao.org/ag/ags/contract-farming/index-cf/en](http://www.fao.org/ag/ags/contract-farming/index-cf/en)>

<sup>3</sup> Based on its mandate to mobilise and deploy resources to alleviate poverty, and in furtherance of its priority objectives to promote the inclusion of smallholder farmers in agricultural value chains and to facilitate access to markets, IFAD actively supported the work to prepare the Guide since the outset through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. In addition, IFAD provided substantial support to the preparation, organising and implementation of the consultations on the draft Guide in 2014 through a grant to FAO (recipient). The three author organisations (UNIDROIT, FAO; and IFAD have established a *Community of Practice on Legal Aspects of Contract Farming* (CoP/LACF) within the framework of the *Global Forum on Law, Justice and Development* (GFLJD).

## **1.1. Participants**

The Conference was primarily directed to diplomatic representations in Italy who deal with UNIDROIT, FAO and IFAD on a regular basis, and are ideally placed to convey the corresponding information to stakeholders in their respective countries; to international organisations; non-governmental organisations, and bilateral cooperation agencies involved in contract farming and the legal academic circles. Altogether, 73 persons participated in the conference.

## **1.2. Speakers**

Speakers, moderators and panellists included experts who have participated in the preparation of the Legal Guide, representatives from the Secretariat of the three author organizations (UNIDROIT, FAO and IFAD), as well as representatives from the farming community and the private sector, as well as from academic and scientific research institutions.

## **1.3. Material**

The following documents were provided at the meeting:

- The final programme (reproduced in Annex II) as well as a provisional participants' list. The final participants' list is attached in Annex III.
- A hard copy of the *UNIDROIT/FAO/IFAD Legal Guide on Contract Farming*
- An informational flyer as well as a six-page brochure prepared by UNIDROIT providing an overview of contract farming, the importance of the legal framework, a summary of the Legal Guide content, the project history
- A flyer presenting the *FAO Guiding principles for responsible contract farming operations*
- A flyer presenting the *Principles for Responsible Investment in Agriculture and Food Systems*, developed and adopted in 2014 by the Committee on Food Security
- A flyer presenting the *Community of Practice on Legal Aspects of contract farming*

## **2. SUMMARY OF PRESENTATIONS**

### **2.1. Welcome and opening addresses**

**2.1.1. Mr. José Angelo Estrella Faria (Secretary-General of UNIDROIT)** began by greeting, thanking and welcoming participants to the international conference, jointly held by UNIDROIT, FAO and IFAD. He observed first that the World was increasingly faced with food insecurity and that an adequate legal framework in the investment of agricultural production has a role to play in ensuring that sufficient capital is directed to the real economy to produce enough food to feed the world. He however noted various challenges like how to ensure increased productivity that is both environmentally and socially sustainable; how to extend the agricultural frontier without displacing small farmers; how to guarantee small farmers income and urban population food security at the same time and lastly how to bring the crops produced by small farmers to the food markets.

He stated that contract farming has helped address some of the challenges because it has become a widely used supply chain governance model to link agricultural producers and increasing global integrated market for food and agricultural commodities and the socio-economic benefits of contract farming have led to the promotion of sustainable contract farming models by both domestic policy makers and international organisations. He went on to observe that the Legal Guide on contract farming which was adopted by UNIDROIT Governing Council in May 2015 is not a panacea for all problems of agricultural production and does not interfere with domestic rules, but it can be recognised as a reference for good practice reflecting the minimum international standards on fairness and transparency by parties to assess their rights and obligations under the

contract. He noted that the conference brought together thirteen speakers and moderators with vast experience and knowledge about economic, social policy and legal aspects of contract farming and concluded by thanking them and the audience for their presence and observing that he looked forward to an informative discussion. <sup>4</sup>

**2.1.2. Ms Stefania Rosini (First Counsellor, Service for Legal Affairs, Ministry of Foreign Affairs and International Cooperation)**, on behalf of *Min. Plen. Mr Andrea Tiriticco*, (Head of the Legal Department, Ministry of Foreign Affairs and International Cooperation of Italy), greeted all the participants and thanked UNIDROIT for the very extensive organisation of events in the framework of its 90<sup>th</sup> anniversary celebrations which have testified its dynamism and capacity to adapt to the challenges of the international community. Referring to the 2030 Sustainable Development Goals especially Goal 16, she observed that UNIDROIT has been able to seize the moment through the elaboration of the Legal Guide on Contract Farming which was inspired by the previous publication of the UNIDROIT Principles of International Commercial Contracts that is aimed at harmonising international commercial contract law.

She noted that the Legal Guide is valuable in so far as it represents a testimony of the ability of multilateral organisations to engage in multidisciplinary tasks *i.e.* the blend of the expertise in agriculture and law with a solid theoretical background which is in line with Goal 2 on the promotion of sustainable agriculture to achieve food security. She then highlighted the added value in the analysis of the Legal Guide which is the provision of the broad context of the principles for public governance in the field of sustainable agriculture development and the elaboration of terms and references by bilateral, multilateral or non-governmental agencies with programmes in contract farming in the developing world. Counsellor Rosini noted that the conference was an occasion for stressing again the commitment of the Italian government to supporting UNIDROIT. She concluded her remarks by thanking the Secretary General for having allowed her participation in the event and commended the attitude of UNIDROIT of being ready to find a common path through law to reach a better and sustainable future like its collaboration with FAO and IFAD to come up with the Legal Guide on Contract Farming. <sup>5</sup>

## **2.2. Session 1: Investing in Agriculture Responsibly through Contract Farming**

*Contextualizing contract farming against the global concerns regarding food security issues, small farmers' inclusion in value chains and policy orientations of each organization*

**2.2.1. Mr Idès de Willebois (Director, West and Central Africa Division, IFAD) – Key speaker/Moderator of the Session.** Mr de Willebois thanked Counsellor Rosini and the Italian Government for hosting UNIDROIT, FAO and IFAD and for its continuing support for the joint institutions. He also thanked UNIDROIT for the initiative and FAO for the joint co-operation as regards contract farming. He started by observing that IFAD advocates that agriculture especially small holder agriculture is business and that this means that smallholder farmers need contracts so as to operate in markets. He noted that although IFAD considers agriculture as a major employer and driver of economic growth and also as a sector on which global food security and nutrition depends, agriculture especially small holder agriculture will require profound changes to survive harsher environmental conditions, demographic and market transformations. He went on to observe that responsible investment in agriculture requires private investments which depend on decisions made by private operators including farmers themselves, an enabling institution and policy environment that defines and protects the entitlements of all operators in the sector, sets

---

<sup>4</sup> See Full Text of Intervention as Annex I/A to this Report.

<sup>5</sup> See Full Text of Intervention as Annex I/B to this Report.

incentives and safeguards for responsible investments and shows provisions of public goods, foster trust based markets, relationships and promotes good governance.

He pointed out that the benefits associated with inclusion of small farmers in value chains are limited by the lack of trust-based relationships which creates a perception of risk. He stated that although enforceable contracts foster long ideal behaviour of market players, they are not a solution to the problem. He highlighted that the policy agenda should aim to create conditions for the development of the investment and capacity of smallholder farmers so that they can be able to respond to incentives related to growing demand in higher prices. According to Mr de Willebois, the main challenge for policy makers and development actors is to facilitate, support and govern the processes to ensure positive development impact. He concluded by observing that international collaboration setting standards for responsible sustainable investment is key for small holder agriculture and its role in global food security and nutrition and that he was confident that by continuing to build on the already strong relationships built with other organisations and partners many of whom were present, more effective investments in agriculture could be achieved. <sup>6</sup>

### **2.2.2. Mr Jesper Karlsson (International Consultant, Trade and Markets Division, FAO)**

addressed the importance of responsible investments in agriculture. He observed that investment in agriculture is among the most effective way to eradicate hunger and poverty and achieve sustainable development. He explained that although most investment is done by the domestic private sector notably the farmers themselves, there is need for the farmers to be supported by public investment and foreign investment. He emphasized that whilst investors play a key role in ensuring that investment is responsible, an enabling environment and good governance in the target countries of investment is crucial. He highlighted the benefits of corporate agriculture as employment and livelihood opportunities and the biggest risk as the loss of land and resources.

Following the food price hikes of 2007 and 2008 and associated risks, he said that calls were made for the development of international normative frameworks that would tackle the risks and promote better reforms of agriculture investment. These calls have led to the emergence of voluntary principles and guidelines like the *CFS Principles for Responsible Investment in Agriculture and Food Systems*, the CFS-RAI Principles that were endorsed in 2014. He went on to observe that these principles and guidelines promote business models that involve local farmers and small enterprises as equal partners and that contract farming can be a viable modality organising such business models. Mr. Karlsson concluded by suggesting that the voluntary instruments can only be most meaningful if they are operationalised on the ground for instance the interagency working group consisting of FAO, UNCTAD and the World Bank carries out field research and field work to infuse responsible investment principles into agribusinesses. <sup>7</sup>

### **2.2.3. Ms Marlo Rankin (Agriculture Economist, Agricultural Development Economics Division, FAO)**

presented an overview of contract farming. She observed that essentially contract farming is an agreement either written or verbal, between farmers as individuals or as in groups and buyers as producers, exporters, processors, traders, retailers, wholesalers, to carry out agricultural production based on a set of conditions. She went on to highlight the three common components that are usually identified in any contract farming agreement as market specifications; resources and production management (technical assistance) provisions. She went on to note that due to an increase in the demand for more processed and specialized food products, the need to secure supply of raw materials through contract farming has become relevant for buyers in both domestic and international markets. She noted that although contract farming can be beneficial and challenging to both the farmers and the buyers, in general, the balance seems to favour more

---

<sup>6</sup> See Full Text of Intervention as Annex I/C to this Report.

<sup>7</sup> See Full Text of Intervention as Annex I/D to this Report.

of the positive aspects. She concluded by presenting two video testimonials showing contract farming experiences on a vegetable and potatoes farms from Kenya and India respectively.<sup>8</sup>

### **2.3. Session 2: Contract Farming: What is at Stake?**

*A review of experiences illustrating how to maximize benefits and minimize risks of contract farming from the perspective of economic, social and environmental development. Issues intended for discussion were the type of model that produced the best results; the crops most suitable for contract farming and the types of contract that are relevant in different countries and circumstances*

**Mr Andrew Shepherd (Agribusiness Consultant), Moderator of the Session**, introduced the panelists, and provided a short introduction to each of the Panelists' interventions.

**2.3.1. Mr Shepherd** noted that crops that appeared to be most suitable for contract farming were often those that required processing or other handling soon after harvest. In part, this was because when the product needed to be passed almost immediately from the producer to the buyer, side-selling was much more difficult. Examples of such crops were rubber, oil palm, sugar, and perishable fruits and vegetables for processing or export. He also noted that a common source of disagreement between farmers and buyers related to the assessment of quality. In some cases friction could be reduced by having farmers or their representatives, and even the extension staff who worked with them, present when the products were inspected. But for crops such as rubber and sugar it was less easy. For example, payments for liquid latex rubber depend on the Dry Rubber Content; payments to sugar farmers depend on the sucrose content of the cane. Mr Shepherd noted that the first panellist, Mr Charles Ogang, would present a sugar scheme in Uganda that, at first glance, appeared to be a very typical out-grower operation. However, the way in which it was developed was far from typical and the way relationships were managed between farmers and the company had good lessons for others wanting to be involved in contract farming.

**Mr Charles Ogang (President, Uganda National Farmers Federation, World Farmers' Organisation (WFO) Board Member)** discussed contract farming arrangements involving the Kinyara Sugar Company and farmers in Masindi district, Uganda. He began by giving a historical background of the relationship between the sugar company and the farmers which involved farmers producing and selling sugarcane individually to the company without an advance contract. This led to farmers facing problems such as delays in payments, and unfavourable terms and prices. Eventually the situation prompted some of the sugarcane growers to form an association called Kinyara Sugarcane Growers Limited, which entered into contract with Kinyara Sugar Company. Under the contract, Kinyara Sugar Company undertook to support the farmers with production, including through like land clearing and preparation, provision of planting material and transportation of the cane to the factory and the Kinyara Sugarcane Growers Limited undertook to sell all the cane produced to the company.

Mr Ogang noted that the arrangement supported farmers and encouraged an assured market and payment for their cane although it had weaknesses as farmers could not sell to higher-priced alternative markets and charges by the Sugar Company for services provided were considered excessive. He stressed that the Kinyara scheme had led to the formation of the National Sugarcane Growers Association which embraced other sugarcane growers within the country. He concluded by highlighting what the Uganda National Farmers Federation had done as regards building capacity of smallholder farmers and the general lessons learnt from the Kinyara scheme.<sup>9</sup>

---

<sup>8</sup> See Power Point presentation as Annex I/E to the Report.

<sup>9</sup> See Full Text of Intervention as Annex I/F to the Report.

**2.3.2. Mr Shepherd** noted that one of the reasons for the recent apparent rapid growth of contract farming was the fact that companies were more and more being required to comply with a range of quality standards. As the Legal Guide pointed out, the food industry had developed private standards regarding particular attributes, qualities or geographical origin of a product or the process of its production. In particular, sustainability was an increasingly used component of certification. He reported that he had recently been in Cambodia, where he met a rice miller and exporter with a contract to supply a major European rice marketing company. By 2020, all of its exports needed to comply with standards established by the Sustainable Rice Platform and the only way the company could see to achieve this was to develop contract farming.

Cocoa is an industry that is at the forefront of the emphasis on both sustainability and traceability. At the same time, cocoa is not a commodity automatically associated with contract farming. In inviting Mr Michael Schlup to report about some of his company's new developments with regard to contract farming for cocoa, Mr Shepherd noted that a recent World Bank paper on large-scale agricultural investments in Africa and Asia reported that for some tree crops the harvest was more or less continuous, whereas for cocoa it was seasonal. The Bank found that because of this cocoa farmers often experienced cash flow problems.

**Mr Michael Schlup (Partnerships Coordinator Cocoa Sustainability, Barry Callebaut & General Manager, Cocoa Horizons Foundation)** presented contract farming in cocoa production in Côte D'Ivoire. He began by observing that contract farming was ideal for cocoa because it allowed processors to supply and satisfy the market demand. He clarified that Barry Callebaut was not only a chocolate producer, but also a cocoa producer. He noted the peculiarity in the organisation of value chain for cocoa compared to crops such as sugarcane and palm oil as farmers could produce a crop ready for export without any particular processing required. He also observed that in the past there had been no affiliation between the farmer and the buyer and cocoa sourcing worked on a first-come-first-buyer basis. However, this had changed with the increasing demand for traceability and standards from customers. According to Mr Schlup, this had led to the establishment of relationships with farmers, especially as part of certification programmes. However, training in traceability and on sustainability was achieved at a very high cost.

Mr Schlup stressed that the Legal Guide on Contract Farming had informed a lot of the contracts that his company had made with farmers. It provided good advice on how to structure pre-financing, financing and repayments, what milestones to include and how to enforce them. He concluded by observing that the greatest challenge was how to break down the information in the Guide so that it was usable in the field by the company's staff and understandable to farmers. Responding to a question from the audience about the selection policy of farmers at Barry Callebaut, he said that the company selected farmers depending on how much cocoa they had delivered previously but also it was in the process of mapping and surveying all its farmers in order to understand the size of their farms and age of the trees. On a question of the contract as a risk-management tool, he observed that the company worked with micro-finance institutions where farmers have to open a savings account and deposit a share of the loan package they get upfront from the company.

**2.3.3. Mr Shepherd** noted that although the Legal Guide addressed the topic from a worldwide perspective, this meeting had tended to concentrate on contract farming in the so-called developing countries. However, contract farming largely began in more developed countries. Before World War II, there were vegetable contracts in the US and seed contracts in Europe, and pork contracts were introduced in America soon after the war. Like the rest of Europe, Italy had many cases. Canned tomatoes, for example, were likely to have been grown under contract, as was wheat used for pasta. He invited Ms Gaetana Petriccione to provide an overview of the situation in Italy.

**Ms Gaetana Petriccione (Senior Researcher, Council for Agricultural Research and Economics (CREA) Italy)** on behalf of *Prof. Michele Pisante (Deputy Commissioner, Council for Agricultural Research and Economics (CREA))* presented the Italian experiences on contract farming concerning the durum wheat chain and the tomato processing chain. She began by observing that production and marketing contracts had been used in Italy for a long time, especially for perishable products delivered to the processing industry such as fruits and vegetables. Referring to a study carried out by CREA, she noted that one of the major issues that emerged from the study was the limited use of written contracts between durum wheat and downstream operators because the farmers did not want to be tied to one buyer and they preferred to sell their products to a local buyer with whom they had a long-standing and solid relationship of trust, rather than to a more remote contract buyer.

Ms Petriccione also talked about the tomato processing chain, which was found in two basic areas, one in the north and one in the south of Italy, together accounting for more than 80% of the entire production. She observed that these two areas showed different features with regard to production and supply chain organisations and also the functioning of contract relationships. She was of the view that these differences could be due to the fact that the Northern provinces had a long tradition of production and processing which had led to the setting up of the tomato cluster. She concluded her presentation by giving an insight into how the contract relations in the northern districts were regulated.<sup>10</sup>

**2.3.3. Mr Shepherd** then noted that there had been an enormous number of studies of contract farming that had tried to identify whether smallholders were able to benefit from contracts. But realistically analysing benefits presented a number of complications. In the first place, academics were not without their biases. Some were fairly critical of the private sector and tended to stress what they saw as unequal power relationships between buyer and seller. In addition, measuring benefits presented many difficulties, especially regarding what economists called the “counterfactual”: that is, what would have happened if there had been no contract? And while contracting farmers often showed benefits, was that because of the contract or because companies usually preferred to work with the richer, cleverer farmers with more assets? Would poorer farmers benefit in the same way? These were some of the questions that Mr Giel Ton had been grappling with during research that Wageningen University had been carrying out.

**Mr Giel Ton (Senior Researcher, LEI, Wageningen University and Research Centre Nijmegen, the Netherlands)** discussed observations and conclusions from a systematic literature review of 22 studies on 28 empirical instances of contract farming, aimed at exploring the incentives and disincentives for farmers to organise themselves to access more stable markets, and for firms to work with small holder farmers in developing countries. Most of the studies found that contract farming had strong positive effects on contract farmers’ household income, compared to non-participants. The pooled response ratio was 1.62 (CI=1.40-1.88) indicating that farmers have a 62% higher income due to the contractual arrangement. The farmers who benefitted more overall were better-off farmers, since they could afford the investments and comply with the company’s technological requirements. Where poorer smallholders were included, in many cases these were supported by development NGO’s.

Apart from the findings in the (ongoing) systematic review, Mr Ton pointed to a number of good practices, based on earlier research in 2008 on a “contract farming checklist” for firms, which emphasised the importance of trust enhancing mechanisms to secure loyalty by firm and farmer. Particularly relevant examples of good practices included: providing for dispute resolution methods in

---

<sup>10</sup> See Full Text of Intervention as Annex I/G to the Report.

the contractual arrangement, organising contracted farmers separately when linkages with cooperatives and farmer organisations were made. To build this capacity, it is important to strengthen the organisation's internal capacities such as: manage a seed fund; credit and savings clubs; farmer field schools. To reduce side-selling the firm may decide to offer multiple benefits linked to the continuation of the contract, such as the facilitation of access to credit institutions based on the contract. To enhance trust in farmers, it is important to define prices in a transparent way, including a matrix to convert (international) reference prices into farm-gate prices. To become sustainable and scalable in the future, contracting firms should consider, from the start, to incorporate the costs of donor-funded activities in these price-calculations, for example by including a levy/item for extension/certification costs provided by the firm. Especially in contract farming arrangements concerning perishable products, it proves to be a good practice to provide a market for second grade in order not to spoil the local market.<sup>11</sup>

## **2.4. Session 3: A Legal Tool for Good Practices in Contract Farming Operations: the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming**

### **2.4.1 Policy issues and legal approach of the Legal Guide**

*Linking the economic and social dynamics of the contract farming operation with the legal dimension. How a legal approach-regulatory and contractual-can make a difference, focusing on selected issues*

**Prof. Fabrizio Cafaggi, (Italian School of National Administration, University of Trento (on leave) (Italy)) – Key speaker/Moderator of the Session** noted that the work on the Legal Guide reflected the following dimensions which had been beneficial both regarding the drafting process and the content of the Guide: an inter-organisation cooperation, an interdisciplinary work, and a comparative perspective. He stressed that the Guide approached the contract as part of a broader phenomenon which is the supply chain, and intended to promote the contract as an instrument which can give access to financial resources, new skills and development opportunities. The Guide, therefore, had the objectives to set legal standards that promote a stable relationship, reduce opportunism, increase loyalty and promote cooperation between the parties.

Prof. Cafaggi noted that the Legal Guide aimed not only at encouraging the parties to establish a cooperative relationship, but also in the event of breach, not to perceive the breach as a disruptive event leading to the breakdown of the relationship. He explained that this was done by defining a hierarchy of remedies which promote and favour corrective actions, action plans and common understanding of breach or default instead of punishing it, where termination is a last resort remedy. He also noted that the Guide acknowledges the importance of process in agriculture in securing conforming goods, based on quality and quantity requirements, but also increasingly as a result of sustainability requirements, as the cocoa example clearly demonstrated. The Guide explains how these requirements are integrated in the contractual structure, and the resulting obligations for the parties.<sup>12</sup>

Prof. Cafaggi invited Ms Marlo Rankin (FAO) and Ms Frederique Mestre (UNIDROIT) to provide a highlight on a few of the key challenges that arise from a practical perspective when designing and implementing contract farming agreements and how these are dealt with from a legal perspective in the Guide.

---

<sup>11</sup> See Full Text of Intervention as Annex I/H to the Report.

<sup>12</sup> See Power Point presentation as Annex I/I to the Report.

**Ms Marlo Rankin (Agriculture Economist, Agricultural Development Economics Division, FAO)** under an economic and practical viewpoint, noted that price setting and price mechanisms, and quality issues are two particular elements at the heart of any contract farming agreement and need to be agreed upon and clearly understood by the farmer and buyer. Farmers need to be able to understand how the price is set, be able to assess the expected payment under the contract, when and where payments will be made and any deduction of costs charges associated with inputs. However coming to an agreement on how this price is determined in a transparent and mutually beneficial manner to both parties can be a critical challenge to the sustainability of the contract on both sides. She noted that there are a range of ways in which prices can be determined. The most commonly used price mechanisms include fixed prices, and flexible or market-based pricing. All of these factors need to be specified in the contract, and a combination of both fixed and flexible pricing may also be used within the same contract.

Another key element relates to quality. She noted that contractors expect farmers to engage in production practices and procedures that are conducive to producing good quality products that meet the needs of their downstream customers. From the buyers' side, they need to adhere to the final product quality grades that they have agreed upon with farmers. It is important that a fair and transparent way of assessing the quality of the produce delivered be agreed upon. Quality at delivery is a key and often disputed issue which the parties face in the contract farming relationship. She concluded her presentation by inviting Ms Frederique Mestre to give her perspective on how the Legal guide deals with price and quality issues and what happens in the event of a disagreements and disputes between the parties.

**Ms Frederique Mestre (Senior Officer, UNIDROIT)** as a preliminary comment, recalled that the Guide describes a variety of issues that parties (or other stakeholders) should bear in mind when drafting and implementing the contract, and for each of the subject matters, the Guide explains the interplay between the applicable law and contract provisions. Some rules are mandatory, for example contained in contract farming specific legislation adopted in a number of countries, while others apply as default rules, meaning when parties have not covered a particular issue. For example, the Guide discusses whether the absence of price may indeed render the agreement unenforceable; the extent to which the contractor should disclose detailed complete and understandable information about the price formula - for example the share relating to payment of supplied inputs, applicable interest, etc.; what may be considered as "unfair price terms" and whether duress and gross disparity of bargaining power may be the basis to invalidate a price term. The Guide discusses under what circumstances an agreed price may be adapted or modified, and how parties should deal with this possibility in their agreement, should they wish to do so.

As regards safety and quality, the Guide explains that agricultural production is subject to ever more stricter standards, which are differently addressed depending on the country and the specific relationship. As Marlo has emphasised, the production process is essential in determining the quality of the final product: therefore for example, not only has the producer to use the supplied inputs but the contractor has to supply the adequate inputs – in quantity, quality and time. The mutual and interlinked obligations of the parties are described under a legal perspective, especially in case of breach, with an analysis of the range of remedies that may be available for the parties. Here again, the various ways for the parties to cooperate and remedy the default, to the extent that this is possible, are illustrated and promoted as good practices. The Guide also devotes a chapter to dispute resolution, which illustrates the variety of mechanisms that may apply. The Guide all along emphasises the importance for the parties to cooperate and come to mutually agreed solutions.

**Prof. Fabrizio Cafaggi** provided additional comments on three aspects that are also illustrated in the Legal Guide. 1. – the importance of contractual design in organising the cooperation between the parties and in fixing efficiently the problems that may arise at different stages of the production. 2. – the importance of the existence of secondary and tertiary markets has a potential way to respond to quality breaches. 3. – the importance that the buyer has direct contact with the farmer to increase cooperative express breach attitude towards joint problem solving.

Prof. Cafaggi introduced the following topic with a note regarding challenges facing the implementation of the Legal Guide. 1. – being a global guide for local production systems, the Guide needs to be implemented by adjusting into local context. Implementation cannot only be limited to translation, it is process of adaptation of the general categories presented in the Guide into specific categories that come from different legal traditions. 2. – implementation of the Guide should consider also commodity adaptation, as some of the principles might be articulated differently depending on the type of commodity, the particular supply chain and geographical environment. 3. – a good understanding of enforcement policies is key in contract design. He stressed that international organisations should have a role in supporting the creation of specialised institutions with dispute resolution mechanisms and having best practices collected and disseminated.

#### **2.4.2 How to use the Legal Guide? Plans for implementation**

*A presentation of the author organisations' current plans to disseminate the Legal Guide and ensuring that it brings benefits to the intended users*

**Ms Eva Galvez Nogales, (Agribusiness Economist, Agricultural Development Economics Division, FAO)** presented the framework of implementation of the Legal Guide by FAO, under a IFAD grant. She began by reiterating Professor Cafaggi' view on the need to simplify the Guide and adapt it to several contexts. She explained that the Guide is presently available in English and French and a translation into Spanish was underway. FAO is also finalising *Guidelines on sustainable contract farming operations* which basically summarizes the Guide with key messages, and will be accompanied with two policy briefs to target regulators and farmers. FAO will prepare a generic contract template, with detailed explanatory notes so that it can be adapted to the different legal systems, the different commodities and also taking into account the type of the particular relationship, with market specifications and also input resource provisions aspects. FAO will also develop a training programme where the various tools will be used. FAO will prepare a study of the legal and regulatory framework for contract farming that is intended for regulators to assess their legal framework and use in possible regulatory reforms. FAO was also one of the initiator of the *Community of Practice on Legal Aspects of Contract Farming* which was coordinated by UNIDROIT, as an implementation tool of the guide.<sup>13</sup>

**Ms Frederique Mestre (Senior Officer, UNIDROIT)** observed that the *Community of Practice on Legal Aspects of Contract Farming* aims to promote the Legal Guide through bringing awareness of its content and generally of the legal relevance of contract farming to various stakeholders and governments in particular, private sector representatives, the farmers, the regulators, the academia and practising lawyers. The CoP is also intended to create a network of members and encourage the development of projects to strengthen the legal framework for contract farming operations. The Conference that was being held was a telling example of the activity that the Community of Practice was uniquely placed to hold.<sup>14</sup>

---

<sup>13</sup> See Power Point presentation as Annex I/J to the Report.

<sup>14</sup> See the presentation of the Community of Practice as Annex I/K to the Report.

**Ms Marieclaire Colaiacomo, (Procurement Officer, East and Southern Africa Division, IFAD)** presented the approach that is taken by IFAD to implement the Legal Guide. This essentially takes place at two levels; on the one hand as part of IFAD's development programmes in countries and on the other, through a grant to FAO and through other implementing project partners to develop a set of implementation tools. As to the former, IFAD engages in policy dialogue with Governments and works with them to generate country strategies in the area of agriculture, and based on the agreed strategy provides financing for development programmes. In this context, the Guide had been promoted recently in two particular countries, i.e. Tanzania and Mozambique, where it was being used in the context of developing specific regulation. As to the latter, IFAD has given FAO as the main recipient, together with UNIDROIT and the International Institute for Sustainable Development (IISD), a grant for the development of tools to implement the Legal Guide, as presented by Ms Gonzales and Ms Mestre above. She concluded by noting that in addition to the work that will be done to develop implementation tools distilling the messages of the Legal Guide, maintaining old and building new partnerships will help foster a conducive environment for contract farming.

### **3. STATEMENTS BY MEMBER STATES' REPRESENTATIVES**

#### **3.1. Brazil**

**Mr Vinicius Cardoso (Secretary, Embassy of Brazil in Italy)** thanked UNIDROIT for organizing the Conference. He was very pleased to report that an implementation project of the Legal Guide has been initiated by a group of professors of economics and of law in Brazil. The project consists of four steps: 1. – the translation of the Legal Guide on Contract Farming from English into Portuguese so that it can be more widely used. 2. – the elaboration of a document comparing the legal aspects dealt with in the Guide and the Brazilian principles of law so as to make a balance between the Guide and what is due to be applied in Brazil. 3. – the elaboration of an introductory document that will be written in simple language and used to promote the dissemination and application of the Guide. 4. – field work involving a programme of meetings and reunions to disseminate and promote the Guide. He explained that the first two steps are expected to be completed in June 2016 and the last two steps will be implemented subject to availability of funds. He concluded his presentation by stressing the importance of contract farming to Brazil and also thanked UNIDROIT, IFAD and FAO for the work done.

#### **3.2. Germany**

**Ms Louisa Froelich (Advisor, Deutsche Gesellschaft fuer Internationale Zusammenarbeit GmbH– GIZ, Germany commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ))** thanked UNIDROIT for the invitation to the Conference and congratulated UNIDROIT, IFAD and FAO for drafting the Legal Guide on Contract Farming. She indicated that GIZ supports the German Federal Ministry of Economic Cooperation and Development to devise ways of promoting inclusive business models and contract farming has been identified as one special instrument of inclusive business. GIZ has also published two volumes of handbooks on contract farming which are practical guides for linking small-scale producers and buyers through business model innovation and to assist contract farming practitioners with developing informed and tailor-made business models during the different stages of contract farming schemes. GIZ has launched a virtual Community of Practice where practitioners from the various fields of agribusiness, value chains and contract farming are provided with the opportunity to get in contact with professionals members are not yet acquainted with, exchange knowledge, to enter into a critical discourse with fellow members and to have access to unique training opportunities and publications. She concluded by calling for a discussion of further ways of collaboration between UNIDROIT, FAO and IFAD on the combination of legal and business approaches of contract farming

### **3.3. Indonesia**

**Mr Royhan N. Wahab, (Alternate Permanent Representative of the Republic of Indonesia to the Rome-based UN Agencies, Embassy of the Republic of Indonesia in Italy)** commended UNIDROIT for holding the Conference. He stressed that Indonesia values the joint effort made by UNIDROIT, FAO and FAO with the involvement of many experts, including *Professor Paripurna P. Sugarda*, Professor of Law, University of Gadjah Mada, Faculty of Law, Yogyakarta, Indonesia, in developing the Legal Guide on Contract Farming. The Guide was to be considered a very important tool in the achievement of international goals generally and in the increment of agricultural and related products in countries. He noted that principles such as good faith and fair dealing, as well as trust are considered the main components to the success of the traditional agricultural business, and the Legal Guide, has indeed accommodated these concerns for the benefit of all stakeholders in Indonesia, but also for many other countries. He went on to observe that the importance to promote and disseminate the Legal Guide to policy and regulation makers, business people, farmers and/or smallholder farmers, as well as many other stakeholders in countries. He concluded his intervention by congratulating UNIDROIT on its 90<sup>th</sup> anniversary of its establishment.

**The Indonesian Government has released an official statement which is reproduced in full text as Appendix I to this Report.**

### **3.4. Spain**

**Mr Antonio Lizcano Palomares (Counsellor for Agricultural Affairs, Embassy of Spain in Italy)** introduced himself by stating that he had dealt with contracts in agriculture and related policy issues in the International Affairs Division in the Spanish Ministry of Agriculture. He explained that Spain has an extensive experience in contracting farming, and adopted the first legislation more than three decades ago and was successful as a result of the EU Common Agricultural Policy that required farmers to formalise contracts in order to be eligible for payments and market support in crops such as sugar and olive oil. Very recently in August 2013, Spain passed the law 12/2013 on measures to improve the food chain operation, that requires all farmers (except cooperatives and producer's associations) to enter into a formal contract in advance of production. This law has had a very beneficial impact in fostering trust between the parties, especially by ensuring a market to the producer. Mr Lizcano advocated an application of the regulation and good practices on a voluntary basis, which was in the line of the approach of the Legal Guide. He concluded by congratulating the author organisations for this excellent achievement which will certainly provide a very useful tool in policy design.

## **4. STATEMENTS BY NON-MEMBER STATES' REPRESENTATIVES**

### **4.1. Morocco**

**Mr Mostafa Nahi, (Minister Plenipotentiary and Representative of the Kingdom of Morocco to FAO)** indicated that his country was following with great interest the codification and drafting effort of the Legal Guide on Contract Farming in view of the experience of Morocco. In 2007, Morocco set up a programme called 'Plan Maroc Vert' (Green Morocco Plan) which is an innovative plan to modernise agriculture production and, based on a law passed in 2012, relies upon the concept of agricultural aggregation that is in line with the concept of contract farming dealt with in the Legal Guide. The aggregation scheme consists of a partnership between the government through the Agency for Agriculture Development, "aggregators" – most often a group of agricultural producers at the national level or a local or foreign investor – and the "aggregated" producers, implemented through two types of contracts: one development agreement between the agency for agricultural development and the aggregator, and the agreements entered into between the aggregator and the aggregated producers.

The 2012 law establishes a number of requirements regarding the form and content of the aggregation agreement, regarding for example, the description of the land plot or the livestock, the type of technical assistance to be provided by the aggregator, the agreed prices, payment modalities, standards of minimal quality of the product and the duration of the contract. In case of dispute, the law also provides for compulsory mediation for the parties before resorting to arbitration or to state courts. It was worth noting that non-performance of the aggregation agreement between the aggregator and the producers entails the automatic avoidance of the aggregation certificate and renders void the whole aggregation project. Mr Mostafa Nahi concluded his intervention by thanking UNIDROIT for its invitation to take part in the Conference, underscoring the relevance of the Legal Guide on Contract Farming in development programmes pursued by Governments.

## **4.2. Philippines**

*Mr Lupino Lazaro, Jr. (Agricultural Attaché, Embassy of the Philippines in Italy)* extended his Government's gratitude to FAO, IFAD and UNIDROIT for crafting the Legal Guide on Contract Farming and enhancing the understanding of its use and implications. He noted that the Philippine government utilizes the Legal Guide in framing the issues and setting the benchmarks on contract growing arrangements entered into by smallholder farmers, including those that are family farmers. He emphasized that the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), the CFS Principles for Responsible Investment in Agriculture and Food Systems (RAI) informed the regulations being crafted on agribusiness investments with smallholder farmers who are property rights owners of lands emanating from the agrarian reform program. Mr. Lazaro provided a brief description of the forthcoming Administrative Order, including its major parts, the government's role in the negotiation and execution process, and the emphasis on important mechanisms.

**The Government of the Philippines has released an official statement which is reproduced in full text as Appendix II to this Report.**

## **5. STATEMENTS BY ORGANISATIONS' REPRESENTATIVES**

*Prof Gustavo Ghidini, (Coordinator of Master in Food Law, LUISS University in Rome)* stated that LUISS University was proud to participate as a sponsor at the Conference, thus showing the importance that the Academy gives to supporting the legislative work undertaken by organisations like UNIDROIT. He emphasised the role of specialised curricula in understanding and divulging the *UNIDROIT/FAO/IFAD Legal Guide on Contract Farming*, for example in specialised courses such as the Master in Food Law that will be launched at LUISS University in the forthcoming semester. Introducing the LUISS Master in Food Law, he stated that the academic programme will cover a broad range of legal aspects of the food chain, from production until distribution including contract farming, information, advertising, controls and certification, food safety and quality control issues with the lessons given (in English) by renowned professors. He went on to stress that in addition to the academic programme, the curriculum will include visits to firms, internships and expert lectures and will also be organized over the weekends in order to allow people engaged in professional activities to attend. He concluded by inviting participants to refer to the brochure for further information and thanked the audience for its attention.

## 6. CONCLUDING REMARKS

*Mr. José Angelo Estrella Faria (Secretary-General of UNIDROIT)* concluded by emphasizing the contribution of UNIDROIT in private law matters, in light of the broader work of the international community. He observed that the approach of UNIDROIT has always been through cooperation, with the specific concern of bringing in its expertise and not duplicating work. He specifically noted how cooperation was useful in tackling such crucial subject of food security through the process of drafting the Legal Guide on Contract Farming. Although it was a challenging process, it had been mastered very well due to the commitment of the Working Group for a period of two years. He expressed his satisfaction that the Guide is already being read, used, consulted and applied in practice and was looking forward to the future implementation activities that are being developed under the grant provided by IFAD to FAO and UNIDROIT, and by the Community of Practice to which he invited the participants to join.

He concluded by thanking all presenters at the Conference, with a special appreciation expressed to FAO and IFAD as partner organisations. He extended particular words of gratitude to Ms Marieclaire Colaiacomo (IFAD) for her outstanding contribution and dedication to the project since the outset, also in raising awareness within her organisation and securing support which is instrumental to the implementation of the Legal Guide. He thanked all participants at the Conference for their interest and assured that the UNIDROIT Secretariat would be happy to follow-up implementation initiatives that would be organised in countries.

\* \* \* \*

**Intervention by  
the representation of the Republic of Indonesia  
to the International Institute for the Unification of Private Law (UNIDROIT)  
“Creating a Favourable Legal Environment for Contract Farming”  
Rome, 27 April 2016**

-----

I thank you for the opportunity. I will not make comments on the previous specific subject and presentation. I will only deliver this intervention on a more general perspective.

First of all, on behalf of my country, I would like to commend UNIDROIT for holding this very important event, "Creating a Favourable Legal Environment for Contract Farming", in collaboration with FAO and IFAD, under the auspices of the Ministry of Foreign Affairs and International Cooperation of Italy.

Indonesia values the joint effort made by UNIDROIT-FAO-IFAD, with the involvements of many experts, academicians, and consultants, on the Legal Guide on Contract Farming, and views that this non-binding document is a very important tool, to assist the achievement of international goals, in general, and to assist the increase of agricultural and other related products in countries, particularly, in Indonesia.

Food security and sustainable development is a very important issue which touches upon various basic human needs. Indonesia puts great interests to assure the achievement of food security and sustainable development.

Due to the globalization and many other further developments, Indonesia has started to conduct Agrarian Reform since 2001. The process still continues to take place. This has been of importance to the process of restructuring the rights, ownership, and utilization of lands with an objective of *inter alia*, to increase food and energy security of the communities.

The involvement of Professor Paripurna Sugarda [from Indonesia], during the collaboration event by UNIDROIT-FAO-IFAD which took place in Bangkok in September 2014, in my opinion, has given positive contribution to the process of finalizing the Legal Guide on Contract Farming, especially in taking note of the uniqueness of farming and farmers in Indonesia. Sociologically, customary law and the practice of cooperative system in the traditional communities play an important role in the agriculture production in Indonesia.

Good faith and fair dealing, as well as trust is considered the main components to the success of the traditional agricultural business in Indonesia. The Legal Guide, has indeed accommodated these concerns in which I believe not just for the benefit of Indonesia, but also for many other countries.

The Legal Guide is relatively still a new document. Many efforts should be done, especially to disseminate this information to various stakeholders in Indonesia. On my part, I have the honour to convey that Indonesia is fully committed to further promote and disseminate on its importance of the Legal Guide to various policy and regulation makers, business people, farmers and/or smallholder farmers, as well as many other stakeholders in the country.

On this occasion, I would like to once again, on behalf of the Indonesian Government congratulate UNIDROIT on its 90<sup>th</sup> anniversary of its establishment.

I thank you.

[Royhan N. Wahab]

## Philippine Intervention at the UNIDROIT Conference on Contract Farming, 27 April 2016

The Philippine government extends its gratitude to the FAO, IFAD and UNIDROIT in their tremendous efforts at crafting the Legal Guide to Contract Farming and at enhancing our understanding of its use and implications. The Philippine government utilizes the Legal Guide in framing the issues and setting the benchmarks on contract growing arrangements entered into by smallholder farmers, including those that are family farmers. The Legal Guide also helps in assessing the regulatory environment governing contracts between the parties.

In particular, the Voluntary Guidelines, the RAI Principles, and the Legal Guide informed the regulations being crafted on agribusiness investments with smallholder farmers who are property rights owners of lands emanating from the agrarian reform program. In the past, the regulations on agri-venture contracts are approved without the clear understanding and consent of individual property rights owners. Moreover, the farmers enter into contracts having only their land and labor as leverage. In this regulatory regime, the smallholders do not have much leverage in the various arrangements such as land lease, joint venture, and contract farming.

As it stands, the Administrative Order will have three major parts (chapters):

1. One delineating the general principles to which the rules are based on. These are mainly culled from the Philippine Constitution and the Comprehensive Agrarian Reform Law, as well as the VGGT and the RAI.
2. Another providing the procedures for investors and agrarian reform beneficiaries to negotiate and enter into agribusiness venture arrangements (AVAs).
3. The third stipulating dispute resolution mechanisms. Under this portion, mediation and conciliation processes are given premium, making it mandatory before proceeding to arbitration or institutional adjudication.

The intervention of the government with respect to the negotiation and execution process is two-pronged:

- a. On the one hand, the government will serve as an advocate of the beneficiaries by strengthening their bargaining position through the provision of capacity building, coaching or mentoring services on business development services, market-oriented agricultural extension services and legal services, and the provision of relevant data on feasibility studies, industry analyses, crop data, and annual reports of potential partners and other pertinent information to aid the ARB-Owners in decision-making. The Department of Agrarian Reform (DAR) will also orient the beneficiaries of other government and private sector services which are available to them.
- b. On the other hand, the government will act as an observer of the proceedings in order to ensure that the beneficiaries consent in the execution of the AVA is given freely, without force or duress.

During the said proceedings, the government will **not** be the one to negotiate for the beneficiaries, nor will it unnecessarily stifle the gamut of possible agreements that may be undertaken by the two parties. Mandatory provisions in AVAs under the Administrative Order will be very limited. These includes, among others: (i) required factors to be considered in setting the consideration of the contract; (ii) the need to have a renegotiation period before the end of the term; and (iii) the prohibition of an automatic extension of the AVA.

It could be seen that the Administrative Order puts premium on the following mechanisms:

1. ***Stability of land tenure*** – The government enhances the farmers’ security of land tenure including the subdivision of collective land titles. In this way, there will be clarity on the contracting parties based on clear delineation of the land. In turn, the investors will have a clear idea of the actual principals and the agents, in the negotiation of the contract.
2. ***Strengthened farmers’ organizations*** – The government eases the mechanisms for doing business with smallholder farmers. It simplifies the registration of farmers’ organizations and their formalization through taxation. The government may also provide starter programs that will allow farmers to experience working together in a synchronized production. These starter programs could be in the form of equipment dispersal or subsidy programs with clear exit mechanisms.
3. ***Synchronized government intervention and investments*** – The government spends for strategic and non-distorting public goods so that the farmers improve their own investments in agriculture. In so doing, the investors do not have to spend for these public goods like local roads and irrigation, provision of agricultural extension services, and capacity building of farmers.
4. ***Access to credit*** – Financial services through banks and other formal financial providers are made available for smallholder farmers and investors. In this way, the investors do not have to shoulder the cost of buying inputs, undertaking land preparation and other expenses.
5. ***Reduced information asymmetry and nebulosity of policy environment*** – The rules are clearer: smallholder farmers and agrarian reform beneficiaries are land-owners who decide on whether he/she will enter into agri-ventures. In the future, the Philippine government foresees the creation of a Registry of Contracts and very soon, there will be available credit information (due to the passage and implementation of the Credit Information System Act). Access to viable information improves the generation of individual farmers’ free and informed consent. It will also help investors in deciding on key investment decisions.
6. ***Market linkage*** – For investors, talking with numerous people could be burdensome. The government could link both the investors and smallholder farmers and shoulder the cost of the “getting to know you” phase. However, while the government undertakes market linking, it must be noted that ultimately, the decision to engage in a partnership with an investor, rests with the smallholder farmers. What is shouldered by the government is only the initial barrier to entering the partnership.

Finally, the Philippine government thanks the FAO and the IFAD for their assistance. IFAD and the Philippine government just signed two projects that aim to improve the income of smallholder farmers and fisherfolks (i.e. CONVERGE and FishCORAL Projects). These projects will contribute to the achievement of inclusive growth particularly in rural, agricultural areas.

FAO has been particularly helpful to the Philippine government, particularly to the Department of Agrarian Reform, in studying the state of agribusiness venture arrangements involving agrarian reform beneficiaries and other smallholder farmers. FAO engaged a study team to review the various agribusiness arrangements. The team recently concluded their data gathering and presentation of their preliminary findings. The initial results of their study and the thoughts of the team members informed the crafting of the new Administrative Order on agribusiness arrangements and enhanced the government’s confidence on the reform areas that are needed.

Thank you.

## **ANNEXES – Presentations and Papers**

Annex I/A – Mr Jose Angelo Estrella Faria, Secretary General, UNIDROIT

Annex I/B – Ms Stefania Rosini, First Counsellor, Service for Legal Affairs, Ministry of Foreign Affairs and International Cooperation

Annex I/C – Mr Idès de Willebois, Director, West and Central Africa Division, IFAD

Annex I/D – Mr Jesper Karlsson, International Consultant, Trade and Markets Division, FAO

Annex I/E – Ms Marlo Rankin, Agribusiness Economist, Agricultural Development Economics division, FAO

Annex I/F – Mr Charles Ogang, President, Uganda National Farmers Federation

Annex I/G – Ms Gaetana Petriccione, Council for Agricultural Research and Economics (CREA), Italy

Annex I/H – Mr Giel Ton, Senior Researcher, LEI Wageningen University and Research Centre Nijmegen, the Netherlands

Annex I/I – Professor Fabrizio Cafaggi, Italian School of National Administration, University of Trento (on leave), Italy

Annex I/J – Ms Eva Galvez Nogales, Agribusiness Economist, Agricultural Development Economics division, FAO

Annex I/K – The Community of Practice on Legal Aspects of Contract Farming

## OPENING REMARKS

José Angelo Estrella Faria \*

Ladies and Gentlemen,  
Dear colleagues,

Welcome to this joint International Conference on **Creating a favourable legal environment for Contract Farming**, which UNIDROIT is glad to host in collaboration with FAO and IFAD under the auspices of the Ministry of Foreign Affairs and International Cooperation of Italy.

Food security is one of the major challenges faced by the world today. Climate change, repeated severe famine crisis and volatility of agricultural commodity prices have made public and private actors both at international and national levels keenly aware of the urgent need to put in place concerted strategies and actions to ensure sustainable agricultural development in the long term, to increase agricultural productivity, foster productive investment and improve value-chain efficiency to secure stable food supplies for the growing population of the world. Improving the conditions for agricultural production in terms of higher quality, higher yields and greater profitability, in particular for the benefit of small farmers, themselves exposed to food insecurity, has become a priority item in the international food security agenda.

Latest estimates by FAO predict that the world will have to nearly double food production within the next decades to feed its population. Achieving that objective will require vast amount of resources, but also adequate policies to channel investment towards agriculture and food production.

Can lawyers do anything to help make sustainable investment in agriculture more attractive? One does not think instinctively of law when thinking of food security, let alone private law.

Yet we at UNIDROIT believe that an adequate legal framework for investment in agricultural production has a role to play in ensuring that sufficient capital is directed to the “real economy” of producing enough food to feed the world. Of course, private law only has a supporting role in addressing the world’s needs in terms of food security. And yet, it would be regrettable if inadequate private law frameworks – meaning property, banking, corporate and contract law – would block capital flows to agriculture and jeopardise the food security objectives set by the international community.

In November 2011, UNIDROIT organised a colloquium on *“Promoting Investment in Agricultural Production: Private Law Aspects”* to which over 30 high-level experts including from various IGOs discussed legal issues related to investment in agricultural land, commercial agriculture for small farmers and capital mobilisation and equipment finance for agricultural production. Contract farming emerged as a topic in which UNIDROIT could make a useful contribution to the policy guidelines and operational activities of both FAO and IFAD through its particular mandate and expertise in the formulation of uniform rules in the area of private law and the comparative law method it applies in its work.

---

\* UNIDROIT Secretary General

The joint initiative to formulate international guidance on contract farming was intended to serve various useful purposes: as a “good practice” reference during the negotiation and drafting of contracts, including standard contracts or collective agreements between producers and buyer companies; as guidance for law makers and public authorities setting policies for contract farming, in particular in considering the adoption of a specific legal régime for such contracts; as additional tool for IGOs and bilateral cooperation agencies as well as NGOs participating in programs to support contract farming in developing countries

The challenges are various: how to ensure increased productivity that is both environmentally and socially sustainable? How to expand the agricultural frontier without displacing small farmers? How to guarantee small farmers’ income and urban population food security? How to bring small farmers’ crops to the food market?

The response to the growing food demand in large urban centres has often been an increase in agricultural production through extensive monoculture. This, however, has often caused environmental degradation and in many countries has worked to the detriment of small farmers not capable of competing with large-scale rural enterprises. Pope Francis has summarised this dilemma in his encyclical letter *Laudato si*:

*“Economies of scale, especially in the agricultural sector, end up forcing smallholders to sell their land or to abandon their traditional crops. Their attempts to move to other, more diversified, means of production prove fruitless because of the difficulty of linkage with regional and global markets, or because the infrastructure for sales and transport is geared to larger businesses. Civil authorities have the right and duty to adopt clear and firm measures in support of small producers and differentiated production.”(para. 129)*

Contract farming has become a widely used supply chain governance model to link agricultural producers and the increasingly global and integrated markets for food and agricultural commodities. Contract farming has been promoted as an alternative to large-scale land acquisitions that is capable of increasing agricultural productivity, while improving the livelihoods of the rural poor and may play a role in preventing rural exodus. These and other potential economic and social benefits explain the interest of many domestic policymakers and international organizations in promoting sustainable contract farming models as part of their efforts to achieve food security.

Some countries have adopted specific legislative and regulatory provisions on certain aspects of contract farming. Yet in most countries, the general legal framework in place may not provide the basis for commercially sound, fair and legally enforceable contracts that ensure mutual benefits to the parties and promote agricultural productivity.

The Legal Guide was prepared by a Working Group composed of contract law experts from different legal systems, representatives of FAO, IFAD and the World Farmers’ Organisation, assisted by practicing lawyers and other experts including representatives from both producer organisations and agribusiness. The UNIDROIT Governing Council adopted the Guide at its 94<sup>th</sup> session, on 6 May 2015.

The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming is primarily addressed to the parties to a contract farming relationship, i.e. producers and contractors. It provides advice and guidance on the entire relationship, from negotiation to conclusion, including performance and possible breach or termination of the contract. The Guide provides a description of common contract terms and a discussion of legal issues and critical problems that may arise under various practical situations, illustrating how they may be treated under different legal systems. In so doing, the Guide aims to promote a better understanding of the legal implications of contract terms and practices. It intends to promote more stable and balanced relationships and to assist parties in designing and

implementing sound contracts, thereby generally contributing to building a conducive environment for contract farming.

The Guide does not advocate Contract farming as a panacea for all problems of agricultural production. Moreover, the drafters of the Guide were aware of the need to protect the interests of the producer, as the weaker party to the contract, as well as the need to bear in mind the impact of growing contract farming and the overall structure of the agricultural sector. The Guide notes the risk involved in making farmers overly dependent on large agribusiness corporations and notes that best contractual practices would protect the local food supply availability by leaving a portion of the producer's land for subsistence production. This practice could limit the negative impact of monoculture and guarantee direct access to food when high prices affect local markets

Food security, as we all know, is not only a burning issue, but also a very complex one. It involves a number of sensitive policies related to funding, foreign investment, national sovereignty, use of natural resources, environment protection, the rights of farmers and indigenous populations.

Increasing food production also relies on an adequate legal framework to attract new investment. Inefficient allocation of rights or enforcement mechanisms increase commercial risks and transaction costs. They can discourage investment and hinder sustainable development. Adequate private law solutions are part of the equation to creating an enabling environment.

By promoting smallholder farmers' access to markets, contract farming, if properly structure and implemented, contributes to increased productivity. As a consequence, contract farming may also contribute to better income for smallholders, to the creation of new jobs and to overall rural employment stability.

The Guide does not intend to promote one form of contract over others, but its authors hope that the Guide may serve as key reference material for parties to assess their rights and obligations under the contract and the options available to them during contract negotiations and performance, so as to help them maximise their benefit and better their position in the supply chain. Likewise, the Guide does not interfere with mandatory domestic rules; nor does it intend to provide a model for, or encourage the adoption of, special legislation. Nevertheless, here, too, the authors of the Legal Guide hope that by identifying problems and highlighting possible workable and fair solutions, the guide could also provide useful information for policymakers considering the adoption of regulatory or legislative provisions dealing directly or indirectly with agricultural production contracts. The Guide could be recognised as a reference for good practice by reflecting a minimum internationally accepted standard of fairness and transparency in contract farming.

Thirteen speakers and moderators with vast experience and knowledge about economic, social, policy and legal aspects of contract farming have agreed to join us in today's conference. I look forward to what promises to be an extremely informative discussion and thank them and the audience for their presence.

Thank you.

**OPENING ADDRESS**

**Min. Plen. Stefania Rosini \***

Mr. Secretary General, dear guests,

- I am pleased to participate in this conference in representation of the Italian Ministry for Foreign Affairs and International Cooperation. First of all, I wish to thank UNIDROIT for the extensive organisation of events in the framework of the 90<sup>th</sup> anniversary of the Institute, and I also wish to extend my warm greetings to all the participants in this event.
- Indeed, UNIDROIT celebrates this year its 90th Anniversary through a range of stocktaking activities that testify its dynamism and its capacity to adapt to the challenges of the international community.
- In line with its foundational goal of providing a harmonised private legal framework for the enhancement of economic relations among States, UNIDROIT has proven to be responsive to the international agenda at the utmost level. As a matter of fact, 2015 marked the beginning of a renewed phase in the life of the United Nations, with the convention of the Sustainable Development Summit, held from the 25th to the 27th of September, and the adoption of the 2030 Agenda for Sustainable Development - a new ambitious and universal agenda that should constitute the working programme toward the principal goal, poverty eradication.
- The approval of the Sustainable Development Goals highlights the centrality of the notion of sustainable development - defined in the Brundtland Report in 1987 as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". In order to implement this concept, that has risen to the status of overarching principle for the embodiment of the objective of public policies integrating economic development and environmental protection, the General Assembly of the United Nations has identified 17 "Sustainable Development Goals" and 169 targets that integrate the three dimensions to be upheld, namely the economic, social and environmental aspects of development.
- Among these statements, Goal 16 deserves a particular mention insofar as it establishes an institutional and legal ambition that was in the background until now. States and stakeholders are now invited to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". This legal aspect of sustainable development – as an enabling factor for implementing the notion – is crucial for those who are interested in integrating the law into this comprehensive framework.

---

\* Min. Plen., Deputy Head of the Legal Department, Ministry of Foreign Affairs and International Cooperation of Italy

- UNIDROIT has been capable of “seizing the moment” through the elaboration of the Legal Guide on Contract Farming, a very significant contribution in the year marking the adoption of the 2030 Agenda. Inspired by the previous publication “UNIDROIT Principles of International Commercial Contracts”, which aimed at harmonising international commercial contracts law, the Legal Guide was a common endeavour with FAO and IFAD, and incorporated crucial ideas such as the RAI principles (i. e. principles for Responsible Investments in Agriculture and Food Systems) approved in 2014 by the Committee on World Food Security.
- Since the 2030 Agenda encompasses also agricultural aspects – with Goal 2, on the promotion of sustainable agriculture to achieve food security – the work undertaken by UNIDROIT, FAO and IFAD is certainly valuable insofar as it represents a testimony of the ability of multilateral organisations to engage in multidisciplinary tasks (here, the blend of expertise in agriculture and law) with a solid theoretical background.
- Indeed, the added value in the legal profile of the analysis in the Legal Guide consists in providing the context for a much broader effort: to present guiding principles for public governance in the field of sustainable agricultural development, and to facilitate the elaboration of terms of reference by bilateral, multilateral or non-governmental development agencies with programmes in contract farming in the developing world.
- As a representative of the host country of EXPO 2015, it is evident for me to highlight the relevance of practical tools for enhancing the implementation of the development agenda in the field of agriculture.
- Hence, today’s conference is an occasion for stressing again the commitment to support UNIDROIT. The cooperation between Italy and the Institute is long-standing and I confirm again the belief in the global outreach of private international law and in the relevance of creating the right legal environment as a strategic policy choice.

## Investing in Agriculture – Why has IFAD taken the chance?

Ides de Willebois \*

Agriculture is a major employer and driver of economic growth. It is also the sector on which global food security and nutrition chiefly depend.

However, looking ahead, agriculture will require profound changes to survive harsher environmental conditions and demographic and market transformations.

IFAD believes that smallholder agriculture will be at the centre of these profound changes. Today, small family farms feed up to 80 per cent of the population in Asia and sub-Saharan Africa, manage a large share of the natural resources and ecosystems, and support the livelihoods of up to 2.5 billion people. Further, one must always remember that population growth rate is equal to the growth rate in the demand for nutritional food. As Sub-Saharan Africa's Population doubles in the coming 31 years, so also will the market demand for food double.

Although there will be a variety of development pathways within and around agriculture, in many parts of the world smallholder agriculture can contribute far more than it currently does to growth and job creation, the environmental, the climate change agenda, food security and nutrition. New market opportunities, growing demand and higher prices for agricultural commodities may well drive a revival of the sector.

However, appropriate policies and investments are needed to balance growth in productivity, sustainability and profitability, to leverage the role of the business sector through effective partnerships, and to enable farmers and their buyers to engage in markets on fair terms.

Much of what farmers need to respond to increasing demand for food and other agricultural products and services requires private investments, which depend on the decisions made by millions of private operators, starting with farmers themselves. However, it is vital that there is an enabling institutional and policy environment that defines and protects the entitlements of all operators in the sector, sets incentives and safeguards for responsible investments, ensures provision of public goods, fosters trust based market relationships and promotes good governance.

Medium and large agribusiness processors, exporters and input suppliers are capable of integrating into value chains that include smallholder producers. In fact, the economic incentives for them to work in this space are enormous. Their participation broadens markets; lowers risks to all players; encourages increases in traded volumes through enhanced production and productivity; and effectively underpins a future where equitable employment is matched with relatively low consumer prices for food commodities. This, in short, is the minimization of poverty.

Despite all of these potential benefits and evidence that this is all achievable, the lack of trust-based relationships creates a paralyzing perception of risk that, in many cases renders this hopeful outcome impossible. Enforceable contracts, themselves, are not the answer to this problem—they are the indicator that the problem is in the process of being resolved. Enforceable contracts reflect trust-based relationships between buyers and sellers that are the foundation for realizing higher

---

\* Director, West and Central Africa Division, IFAD

volumes of trade and investment; and for including more sophisticated businesses in smallholder value chains to increase input supply and output demand. In summary, enforceable contracts foster along the ideal behaviour of market players.

The key entry point for a policy agenda is creating the conditions for the development of investment capacity of smallholder farmers. In this way they can respond to incentives related to growing demand and higher prices. The good news is that addressing these constraints is increasingly seen as a sound investment by many public and private actors. Many governments have given high priority to food security and nutrition in their policies and public investments in recent years. Moreover, many business operators are engaging with farmers and co-investing in their asset base, capacity, organization and access to finance. In this way they contribute to address some key constraints that farmers face as suppliers in modern food supply chains.

The challenge for policymakers and development actors, such as ourselves, is to facilitate, support and govern these processes to ensure positive development impact.

Some general lessons can be drawn from the experience of countries such as China, Brazil, Ghana and Viet Nam, whose economies have grown and that have reduced poverty and hunger through agriculture. This experience shows the importance of an enabling environment for investment, with, inter alia, stable property rights, adequate infrastructure, competitive transport markets, good governance and rule of law, contract enforcement, transparency and trade policies that do not tax the sector.

There is overall consensus on the need for the public sector to create an enabling environment for private investment through stable and well-functioning institutions, e.g. for land tenure systems, property rights, contracts, market regulations and trade.

Finally, international collaboration in setting standards for responsible and sustainable investment is a key area for smallholder agriculture and its role in global food security and nutrition. In this regard, IFAD's work in unison with FAO and UNIDROIT is essential to create fair and transparent economies where smallholders can enter into contract farming schemes confidently. The development of the Legal Guide on Contract Farming provides us with the necessary tool to engage governments through our projects, ensuring that fair and equitable processes are fostered within contract farming schemes, that will result in a culture of cooperation among market actors based on actors' mutual interests and supported by a solid legal framework with, where needed, enforceable penalties.

IFAD sees responsible private-sector engagement as an essential element to optimize opportunities in rural areas. IFAD invests through partnerships with private sector players while simultaneously strengthening small and medium-sized enterprises necessary to underpin thriving rural economies, such as agroprocessing, marketing and financial services.

We are confident that by continuing to build on the already strong relationships build with other organizations and partners many of whom are present here today, we can contribute together to better and more effective investments in agriculture.

## INVESTING IN AGRICULTURE RESPONSIBLY

**Jesper Karlsson \***

- Investment in agriculture is among the most effective ways to eradicate hunger and poverty and achieve sustainable development. Much more agricultural investment is needed, not least in South Asia and sub-Saharan Africa, where food insecurity is most prevalent and investment stagnated for many decades.
- The domestic private sector, notably farmers, account for the bulk of agricultural investment in developing countries. Public investment from national budgets or official development assistance are necessary complements. Foreign direct investment can play an important role too, by contributing to for example higher productivity, employment generation, technology transfer and access to capital and markets.
- Despite increased strategic and commercial interest in agriculture during recent years, the shares of Official Development Assistance and Foreign Direct Investment going to agriculture are still low at approximately 7 percent and less than 5 percent respectively.
- Moreover, not all kinds of investments are equally desirable. In the aftermath of the food price hikes of 2007-08, a rush to acquire agricultural land and associated resources occurred too quickly, and sometimes without due consideration for risks, including displacement of smallholder farmers, environmental damage and conflicts with negative consequences for local populations, governments as well as investors themselves.
- Calls were therefore made for development of international normative frameworks that would both tackle the risks, and promote and trigger much needed, and better, agricultural investment.
- A number of guidance instruments that represent an emerging consensus on what broadly speaking constitutes responsible agricultural investment have now emerged. After intensive multi-stakeholder negotiations, the Committee on World Food Security (CFS) endorsed the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) were in 2012 and the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI) in 2014.
- Empirical evidence on what works and what does not work have also been generated during the last several years. For local communities, research suggests that the biggest perceived risk of corporate agricultural investment is the loss of land and associated natural resources. The generation of employment and livelihood opportunities is often the most sought after benefit of corporate agricultural investment for local communities.
- Voluntary instruments promote business models that involve local farmers and small businesses as equal partners, respect tenure rights and build on intensive consultations. In general, business models that leaves family farms in control of the land they use can generate

---

\* International Consultant, Trade and Markets Division, FAO

more employment and livelihood opportunities per unit area than what mega land deals and enclave projects can. Contract farming can be a viable modality for organizing such business models. Contract farming may also be beneficial for investors since they can secure sustainable supply of raw material while avoiding complex and often contentious transfers of rights over large tracts of land.

- That being said, contract farming can of course also carry significant risks for all stakeholders involved. Subsequent speakers will talk more in detail about such risks, and how a legal approach can help to address them and ensure that benefits are maximized.
- While investors have a key role to play in ensuring that investments are responsible, good governance in the target countries of investment is crucial for positive outcomes and reduction of risks.
- Source governments of foreign investment, for example in OECD countries or emerging economies, can also have a positive influence by regulating and stimulating outward investment by companies registered in their territory or jurisdiction, and ensuring that their investment contributes to sustainable development.
- Governments of both source and host countries of investment are increasingly aware of what is at stake. Efforts are therefore being made to improve governance, employ effective pre-screening of investment and ensure that investment align with sustainable development objectives and the needs and interests of local populations. In the absence of strong institutional frameworks at the national level, innovative contractual design and operational modalities of agricultural investments can also go a long way in strengthen business relationships based on reciprocity and trust and ensure that investment contributes to generation of shared benefits. .
- Based on overarching values such as human rights, broadly endorsed voluntary instruments related to agricultural investment can help governments to achieve such objectives. Voluntary instruments can also be used as frameworks for CSR and due diligence strategies of private companies and by civil society in their advocacy and capacity development work.
- These instruments are most meaningful if they are operationalized on the ground. FAO is currently working with governments, the private sector and civil society to translate the CFS-RAI Principles into action. The OECD and FAO have also developed Guidance for Responsible Agricultural Supply Chains to help enterprises observe existing standards of responsible business conduct. The Inter-Agency Working Group (IWAG), consisting of FAO, IFAD, UNCTAD and the World Bank carries out field work to infuse principles and good practices into agribusinesses and ensure generation of shared value between them, surrounding communities and the economy as a whole. The latest IAWG programme consists of participatory research with management, workers, out-growers and other stakeholders involved in a number of early stage agribusinesses in Africa.
- The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming forms an important piece of the puzzle by providing concrete guidance on how to ensure that contract farming arrangements are designed and implemented in ways that benefits all.



Contract Farming: An Introduction

UNIDROIT April 27<sup>th</sup>, 2016

Marlo Rankin, Agribusiness Economist  
Agricultural Development Economics Division  
(ESA)



➤ **What?**

- “Agriculture production carried out according to an agreement between farmers and a buyer which places conditions on the production and /or marketing of the commodity”

➤ **Who?**

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




## Contract Farming: basic concepts

➤ **How?**

- Formal and informal agreements
  - Market specifications
  - Resource provision (inputs, finance)
  - Production management (technical assistance)



## Contract Farming: basic concepts

➤ **Why?**

**Dramatic changes**

- The industrialization of agriculture
- The rise of supermarkets
- New technologies
- New consumers

**Supply chain management**

- Better coordination
- Lower costs, ensure quality
- Control market & food safety risks



### The pros and cons of contract farming

Benefits for farmers	Benefits for firms
<ul style="list-style-type: none"><li>♦ access to inputs, services &amp; credit</li><li>♦ production and management skills enhanced</li><li>♦ market secured</li><li>♦ income stabilized</li></ul>	<ul style="list-style-type: none"><li>♦ regularity of supply</li><li>♦ conformity to product quality and safety standards</li><li>♦ access to land is facilitated</li><li>♦ reduced input and labour costs per unit</li></ul>





### The pros and cons of contract farming

Challenges for farmers	Challenges for firms
<ul style="list-style-type: none"><li>♦ loss of flexibility to capitalize on market price spikes</li><li>♦ firms may renege on contractual terms</li><li>♦ lack of transparency in pricing</li><li>♦ risk of indebtedness</li><li>♦ environmental risks - monoculture</li></ul>	<ul style="list-style-type: none"><li>♦ high transaction costs</li><li>♦ risks of side-selling</li><li>♦ potential misuse of inputs</li><li>♦ loss of flexibility to seek alternative supply</li><li>♦ reputational risks if things go wrong</li></ul>



■ Balance seems to favor positive aspects





For more information

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

The screenshot shows a Windows Internet Explorer browser window displaying the FAO Contract Farming Resource Centre website. The browser's address bar shows the URL [http://www.fao.org/ag/ags/contract-farming/index\\_cofc.html](http://www.fao.org/ag/ags/contract-farming/index_cofc.html). The website header features the FAO logo and the text "Food and Agriculture Organization of the United Nations". The main heading is "Contract Farming Resource Centre". Below this, a "Home" section contains a paragraph explaining the center's purpose: "This 'Contract Farming Resource Centre' has been established to offer a 'one-stop' site, where information on contract farming is freely made available. Interest in contract farming as a mechanism to coordinate linkages between farmers and agribusiness firms has grown recently, in view of the international trends towards tighter alignment in agri-food supply chains. FAO has been responding to the growing demand for information and technical support on planning and implementing contract farming operations. The contents are organized into four sections: the Library, the Toolkit, the Frequently Asked Questions (FAQ) and the list of Links." A "News" section below this mentions "New contents to the 'Contract Farming Resource Centre'" dated "15.09.2011" and lists countries: Cambodia, India, France, The Netherlands, UK, USA, South Africa, Cameroon, Thailand, Madagascar, Zimbabwe, Ghana, Kenya, Zambia, Vietnam and Mozambique. A "Contract Farming Flyer" section is also visible, with a link to "Download the Contract Farming Resource Centre flyer (.pdf)". The browser's taskbar at the bottom shows the Start button, several open tabs, and the system tray with the time "09:00 a.m." and a small FAO logo.

## CONTRACT FARMING: UGANDA EXPERIENCE

Charles Ogang\*

### 1. Definition of Contract Farming:

Contract farming is agricultural production carried out according to an agreement between a buyer and farmers who may be in form of an association or a cooperative. The agreement establishes conditions for the production and marketing of the farm product or products. Typically the farmer or groups of farmers agree to provide agreed quantities of a specific agricultural product. The product should meet the quality standards of the buyer and be supplied at the time determined by the buyer. In turn the buyer commits to purchase the product at an agreed price.

In some cases the buyer also commits to support production of the product for example, through the supply of farm inputs, land preparation, transport of the product and provision of technical advice (FAO definition).

Thus the two parties involved in contract farming work according to an agreement which establishes conditions for the buyer and the farmers to fulfil. The arrangements are often varied, loose and unfortunately, at times flouted by either party.

*It is important to note that court aided enforcement of the contract based relationship is unlikely to ever render trust among the two parties.*

### 2. Types of contract farming in Uganda:

- Nucleus farm/company and farmers' group/association e.g. sugar companies, Kinyara and Kakira; tea companies e.g. Mpanga Tea Company and Kaweri Coffee Estate. The company tends to have an upper hand as a sole buyer.
- A processing company and farmers' groups/cooperatives e.g. Dairy Processing factory and Tobacco company. Farmers produce the commodity and supply to the processing company. The company tends to have an upper hand.
- Exporter and farmers' groups e.g. a horticulture exporting company – fruits and vegetables e.g. Hortexa. The agreement is often loose and farmers do side-selling whenever they get better prices elsewhere.

### 3. The Uganda Experience: Company and Out growers

This contract farming involves Kinyara Sugar Company Ltd. with a nucleus farm and an association of sugarcane out-growers. The Project is located in Masindi district in mid-western Uganda.

Contract Farming and out growers Schemes this is typically perennial, while some people use the term synonymously, there is a difference: An out growers scheme is a particular contract farming model. Typical characteristics are high degree of service provision on the side of the buyer in exchange of land and labours provided by the smallholder.

---

\* President, Uganda National Farmers Federation.

It is acknowledged that this contribution draws upon an article by Ms Augustine Mwendya, of Uganda National Farmers Federation, "An Experience with Contract Farming in Uganda's Sugar Industry", in Lorenzo Cotula and Rebecca Leonard (Eds), *Alternatives to land acquisitions: Agricultural investment and collaborative business models*, 2010, at 33-41.

The crop that brings together the sugar company and the out-grower farmers is sugar cane which is produced by the farmers and bought by the company for milling into cane sugar. The out-growers supply approximately 100,000 metric tonnes of sugar cane to the company annually and payment for the cane is regularly made.

### **3.1 How the Business Started**

When Kinyara Sugar factory was started by Government of Uganda in the 1970s there were no sugar cane out-growers. This made the factory operate under capacity as the available land allocated to the company was inadequate to produce enough cane to feed the factory. A few farmers in the vicinity of the factory saw an opportunity to diversify their household incomes and hence started growing sugarcane and selling it to the factory.

When the company realised the potential that existed with the farmers, it started to mobilise and sensitize more farmers to take up sugarcane growing since a ready market was available. Many farmers embraced the idea and took up sugarcane growing.

For some time, farmers produced the cane individually and even marketed it as individuals. Thus, there was no specific arrangement to guide the growing and selling of the cane to the company. This frustrated majority of the farmers who complained of underpayment while others threatened to stop the business altogether.

This state of affairs prompted some of the sugarcane growers to initiate the formation of an Association to bring all the growers together. Kinyara Sugarcane Growers Ltd. was consequently formed in 2005 with the main objective to facilitate negotiations with the Kinyara Sugar Company management so as to ensure mutual benefit among the two parties. Other objectives included:

- To promote co-operation between the company and the sugarcane growers
- To provide a forum for exchange of information and ideas between sugarcane growers and the company management
- To provide advisory services to sugarcane growers
- To support, promote, and facilitate member participation in ownership of the sugar mills to further economic benefits.

After the formation of the out-growers Association, the Executive Board sought audience with the Company management, which was easily granted and several meetings were held to work out the modalities that were to promote co-operation between the two parties for mutual benefits.

### **3.2 Operation of the Contract**

The contract is between Kinyara Sugar Company and Kinyara Sugarcane Growers Ltd. The company signs contracts with the out-growers whereby the company undertakes to support the farmers in the production activities like land clearing and preparation, provision of planting materials and transportation of the cane to the factory. The out-growers, on the other hand, undertake to sell all the cane produced to the company which pays the farmer after recovering its costs incurred in supporting the production process.

Before the out-growers formed themselves into an Association, the contracts used to be made in favour of the company and farmers were virtually not benefiting at all. But these days the Executive Board of the out-growers engages the company management to come up with mutually beneficial contracts.

Thus, this model was chosen to ensure that the out-growers are paid reasonably well for the cane in relationship to the sugarcane out turn.

### **3.3 Ownership of the Business**

The processing facilities are owned by the company and so is the transport for the cane. In circumstances where the company transport charges for the cane are high, the out growers are free to organise their own transport. The land on which the sugarcane is grown is owned by the farmers, and it is at their discretion to determine the acreage to put to the crop.

### **3.4 Promoting the voice of the farmers**

Before the formation of the Out-growers Association, when each farmer acted individually, the major key business decisions were being made by the sugar company. The farmers, therefore, had to act according to the directives of the company management.

Following the formation of the Out-growers Association, the farmers were empowered and they now influence the business decisions. The Executive of the Out-growers hold regular meetings with the company management to discuss issues such as area of sugarcane to be planted, arrangements for tractor hire services and the charges, price for the cane and payment schedules as well as provision of planting materials and fertilizers.

***Thus, the Company management these days treats the cane growers as equal partners in business.***

### **3.5 Operational arrangement of the contract**

Production of the cane is shared between the parties in that the company provides the tractors to prepare the gardens of the Out growers and also provides the planting materials plus the transport. The farmers look after the crop till it matures and it is harvested. After harvest, the company provides the transport for the sugar cane from the Out growers' gardens to the factory. Thus the farmers cannot fail to deliver or market their produce and the company cannot fail to get the cane as it is the sole buyer of the commodity in the district.

### **3.6 Rewards (Sharing of economic costs and Benefits)**

The sugar company assists the Out-growers to meet the initial costs of growing the crop by clearing the land and providing the planting materials and fertilizers. Under the Contract, the Out growers have to supply the cane, but they also negotiate the price.

The financing arrangement is such that the company recovers the expenses (credit) extended to the farmers when they sell the cane. As a result, the farmers complain that the net margin from the first crop is very small. They only get reasonable profits from the first and second ratoon crops. They may therefore have to negotiate with the company to stagger the recovery of the credit over the 3 crops.

### **3.7 Strengths and Weaknesses**

#### **Strengths**

- Farmers get support from the company to produce the sugarcane
- They have an assured market
- They can negotiate the prices
- They can access the market using the transport provided by the company
- They are sure of payment for their cane
- There is a forum for discussing issues pertaining to the business

**Weaknesses**

- Lack of any alternative market
- The company can inflate the charges for the tractor services, the planting materials and transport
- The company cannot compel the farmers to put more land to sugarcane even if it may be working under capacity.

**4. Impacts, Enabling and Constraining Factors**

Masindi district sugarcane growers are now strong and speak with one voice as an Association. Their success has prompted the other Out-growers in Mukono and Busoga regions also to form Associations. This culminated into the formation of a National Sugarcane Out-growers Association known as Uganda National Association of Sugarcane Growers Ltd. This national association is now capable of lobbying for sugarcane prices, fair cane production and supply contracts for all cane growers, terms of payment, co-generation, ethanol and financing of farm development.

Some of the enabling factors included the government policy which allows for free association and hence the sugarcane growers could form the Association. Land ownership which allows the farmer to decide on how to use the land. Also easy accessibility to land whereby farmers can rent land for growing the crop. The national Association is being supported by AGICORD/IVA.

The main constraining factor is lack of a legal framework that promotes a fair or better inclusive sugarcane growers/milling company relationship whereby the Out-growers need not be confrontational in order to get what is due to them.

The Sugar Policy in the formulation process should therefore address most of the pitfalls.

***The role of Uganda National Farmers Federation (UNFF)***

- Uganda National Farmers Federation is spearheading the efforts to lobby government to formulate a national sugar policy.
- Uganda National Farmers Federation encourages farmers to form /join association of out growers as a legitimate body.
- UNFFE can offer capacity building for members who are in groups to be able negotiate and have better understanding of the contracts.
- UNFFE can help group of farmers who need legal support to access them.

**5. Key Lessons Learned**

- The success of a contract farming business model highly depends on the level of organisation of the farmers
- Easy access to land greatly contributes to the success of Contract Farming
- Support to the Contract farmers in form of credit facilities strengthens the relationship between the farmers and the company
- Involvement of the farmers in the decision making process promotes smooth running of the business
- Regular meetings between the parties create harmony
- Contract Farming ensures market access by smallholder farmers.

## ITALIAN EXPERIENCES IN CONTRACT FARMING

Gaetana Petriccione <sup>1</sup>

### Introduction

Production and marketing contracts have been used in agriculture for a long time, particularly for perishable products delivered to the processing industry, such as fruit and vegetables.

Contracts offer several advantages to farmers through:

- a reduction of risks arising from fluctuations in commodity prices and yields;
- an assured market outlet for products, especially delivered in markets with few buyers and, consequently, a better return on investments in physical capital and time assured to farmers;
- prices tied more closely to product attributes and, then, higher returns provided to farmers who adopt quality attributes.

On the other hand, contracts can also increase certain types of risks for farmers as they are tied to a sole buyer, whatever its economic choices may be.

Contracts can also lead to improvements in supply chain efficiency through transaction cost reduction, above all as a response to the remarkable transformation process that has involved agro-food chains. These changes, consisting in consolidation (increasing concentration in processing and retailing), new patterns of consumption (food quality and safety concerns), and technological changes, have stimulated changes also in organizational scheme towards greater degrees of vertical control by the downstream subjects.

The result of this process is an increased use in recent years of contracts in agriculture, characterized by a wide variety of arrangements that can differ a lot both among agricultural sectors and among single products within a same sector.

### Italian experiences: durum wheat chain

Italian durum wheat chain is characterized by very different situations and in most cases the available *contractual instruments* provided to regulate and organize the relationships along the supply chain are not used. Where contracts are used this is *by the Italian pasta companies, mainly for production of high quality pasta* ("100% Italian durum wheat" or with Geographical Indications), to ensure the provision of national or local durum wheat with specific quality characteristics. This because the quality of pasta strictly depends on the characteristics of the durum wheat utilized. Moreover the use of planting contracts allows the Italian pasta companies to manage the risks involved in the high quality durum wheat supply chain.

Most contracts are bilateral, between single farmers and downstream operators (traders or mill/pasta industries). There is one *collective contract*, which is for "Grano duro di alta qualità in Emilia-Romagna", a regional project. This involves a *framework contract* between Barilla Company, farmers' associations and a seeds company. It involves vertical integration starting from plant-breeding companies, through farmers' organizations, offering farmers specific premiums in order to improve the quality and safety of the durum wheat grown close to Barilla mills, creating value along the supply chain.

*CREA has carried out a study on contractual relationships in durum wheat chain.* One of the main issues to emerge was *the limited use of written contracts between durum wheat farms and downstream operators.* In most cases the farmers did not want to be tied to one buyer and indicated a lack of trust in such contracts. They prefer to sell their product to a local buyer, with whom they have a long-standing and solid relationship of trust. This is despite the fact that the evidence shows that contracted farmers are better off as a result of the contracts.

---

<sup>1</sup> Senior Researcher, Council for Agricultural Research and Economics (CREA), Italy

### **Italian experiences: processing tomato chain**

In the case of Italian processing tomato the experience on contractual arrangements could be considered the best example for improving and counterbalancing the relationships between actors along the chain. However, this experience concerns only a specific production area: the “Northern processing tomato District”.

It’s interesting to know that the Italian processing tomato, although cultivated in almost all regions, shows a high concentration degree at the territorial level. There are essentially two areas growing processing tomato, accounting for more than 80% of production. The northern basin is represented by the provinces of Emilia-Romagna, Lombardia, Piemonte and Veneto, and the southern basin is mainly made up of Puglia, Campania and Basilicata. The two areas show different features as regards farm structures, production and supply chain organisation, and the functioning of contractual relationships.

The northern basin is characterized by larger farms and higher mechanization. In the South we find mostly smaller farms. Another important difference concerns the processing: the northern area is characterized by the presence of large co-operatives that do their own processing. In the South there are many private companies, most of which are small. These differences could be explained by the fact that the Northern provinces boast a long tradition in production and processing. This has led to the setting up of the “processing tomato District”, or cluster, which has more recently been turned into a “regional Interbranch Organization”.

Relations between the actors in the Northern District are regulated within a *framework contract*, drawn up by the representative branches of producer organizations, co-operatives and processing industries. This contract provides the preparation of *standard contracts*, reference point for the *bilateral contracts* signed by the participants.

### **Italian experiences: milk product chain**

Italian milk chain highlights a problematic situation, given by a not appropriate organization. The supply chain is characterized by fragmented contractual relationships: regional or local contracts, with occasional and uncoordinated characters.

Moreover, contractual relationships in Italian milk chain show another peculiar aspect: professional organizations (labor unions), instead of producer organizations, represent milk producers at the negotiating tables. For farmers this constitutes a contractual weakness toward downstream subjects, because professional organizations do not hold (concentrate) product, so they are not the right subjects in contractual arrangements. The contract signed in Lombardia region (between Lactalis industry and representative agricultural organizations) to define minimum price for raw milk is an important reference point for milk contracts in other regions.

### **Italian collective contract model**

This model guarantees:

- Economic benefits (less income risks, higher returns, ensured product provision);
- Social benefits (territory, local production);
- Environmental benefits (green practice development).

In other words, collective contract can overcome problems tied to contractual imbalance associated with unequal bargaining power and promoting sustainable and market-based relationships between actors along supply chain.

\* \* \* \*

## CONTRACT FARMING: DOES IT WORK? about the systematic review

### FOR WHOM DOES IT WORK? An outline

Giel Ton \*

#### DOES IT WORK? about the systematic review

- We defined contract farming as
  - *"a contractual arrangements for a **fixed term** between a farmer and a firm,*
  - *agreed verbally or in writing **before production begins,***
  - *which **provides material or financial resources** to the farmer*
  - *and **specifies one or more product or process requirements,***
  - *for agricultural production **on land owned or controlled** by the farmer,*
  - *which **gives the firm legal title** to (most of) the crop"*
- We exclude certification-only studies because another systematic review is in progress to do a similar analysis as we did (Carlos Oya et al.)
- We reviewed the academic literature that assessed the effects of contract farming, comparing contract farmers and otherwise similar non-contract farmers.
  - 8,500 hits – 637 relevant – 195 effectiveness – 75 credible – 25 high quality studies
- Of course, reviewing journal articles is not a fool proof method. We could detect that the studies are upwardly flawed due to different biases that are inherent to the area of research. There is a tendency for writers to report on successes but not on failures":
  - Publication bias: reviewing the significance levels (p-values), we show that almost only significant effects are published and non-significant effects – no significant results – are not published
  - Success bias: studies are evaluating contract schemes that already had functioned for several years. Thus, not involving 'failed attempts'.
  - Accountability bias: studies tend to look for poverty effects in contract farming arrangements where donor funds are invested, and not on 'normal contracts' where this income effects plays a less dominant role
- The content of the arrangements differs quite a lot, also because the crops or economic activities differ a lot.
- These 26 studies find, overall strong positive effects. The average effect on the treated is around 47%, which implies that farmers generally earn 47% more when they are part of a contract farming arrangements.
- This might also indicate that, to be attractive, a contract farming arrangement will need to have a similar effect to be preferred above the spot market!

---

\* Senior Researcher, LEI Wageningen University and Research Centre Nijmegen, The Netherlands.

**FOR WHOM DOES IT WORK? General reflections -----**

- Firms offer the contract. So it is interesting to know what type of farmer tends to accept the offer, and why.
- Most of these studies do not reflect in depth on the social status of these contract farmers in relation to the regions' average smallholder population.
- Overall contract farmers are less poor, better-off farmers. These farmers can take the risk, make the investments and comply with the technological requirements.
- This is especially relevant for vegetables and other perishable products – meat, eggs, fresh fruits.
- Contract farming in less-perishable products – e.g. cereals, coffee, cocoa - tend to be more inclusive of poorer strata. It is easier to manage collective marketing when time is less an issue and, therefore, quality risks are less challenging for the farmer group.
- Where poorer strata of smallholders are included, in many cases these are supported by development NGO's in order not to leave them out. And this might well be a temporal effect, e.g. in vegetable production in Kenya there is a tendency of concentration into somewhat larger landholdings.

**GOOD PRACTICES. Based on “contract farming checklist” for firms**

[See the full brief by Giel Ton & Jennie van der Mheen LEI Wageningen UR “Contract Farming Checklist – a tool for reflection on critical issues in contract farming arrangements in developing countries”](#)

- Contract farming is often disappointing for firms. In 2008, we interviewed several Dutch farmers that started with contract farming in Africa. This showed that trust enhancing mechanisms are needed to secure loyalty by firm and farmer.
- The contractual arrangement needs farmer groups/contract governance that are able to resolve disputes and contradictions between the contractor, the farmer and the group
  - Especially in vegetable production you need relatively small groups that coordinate intensively. It is best to organise these specialised farmer groups separately within a larger cooperative or association that helps to negotiate the contract conditions.
  - It is important that smallholders self-select and are committed:
  - Ideally, the group has demonstrated management capacities before it goes into contract farming. So for NGOs: create experiences that ‘put pressure’ on the organisation – not necessarily related to the contracted crop - in order to create these internal capacities to reduce/contain pressure when it arises in a future contract relation: manage a seed fund; credit and savings clubs; farmer field schools; etc.

- Key for smallholder inclusion: the contract farming must be a business case for the firm and for the farmer: better than the traditional way – managing multiple livelihood strategies.
  - Some other 'good practices' for firms that want to have a successful contract farming arrangement:
    - Offer multiple benefits except the contracted crop, linked to the continuation of the contract. E.g. offer transport to schools, health insurance, etc.
    - Don't manage cash-credit as a contractor but source this out to financial institutions: credit will favour side-selling. E.g. create access to credit institutions based on the contract; make them eligible for credit when they show the contract.
    - Define prices in a transparent way – linked to a reference price and with a public available conversion table to get the local procurement prices.
    - And include a levy/item for extension/certification costs provided by the firm, even when it is subsidised, in order to scale up later without changing the rules and conditions,
    - Provide a market for second grade in order not to spoil the local market
    - Use third parties (village authorities? HCDA? Cooperative?) as witnesses to co-sign the contract, in order to make them a responsible/ instrumental in conflict resolution.
-

# Contract Farming in global markets

Prof. Fabrizio Cafaggi  
SNA/EUI

UNIDROIT - Contract Farming Conference 27 april 2016

## Summary of the presentation

- Premise
- Challenges
- Choices
- Lessons

## Premise / 1

Not only an exchange of goods but also service provisions

The multiple functions of contracts in global supply chains:

Farming contracts as tools for

- 1) the governance of the first part of supply chains
- 2) Promoting access to credit
- 3) Facilitating transfer of technology and know how
- 4) Promoting economic, social and environmental development

Addressing conflicts between different constituencies (farmers, traders, environmental organizations, final consumers, indigenous communities)

## Premise / 2

Objectives of contract design: inducing cooperation, promoting risk sharing and risk mitigation along supply chains

Taking into account the increasing relevance of processes (agricultural processes and product safety, environmental protection, working conditions, indigenous community).

Design remedies that favour ex post-breach cooperation

Coordinating with certification regimes and international standards

## Challenges

- A global guide for local production systems
- A guide that can work for both domestic and global markets, for smallholders and big producers
- Adapting the guide to different commodities, markets, institutional and legal contexts.
- Addressing a contract to a population with various degrees of literacy and legal competences
- Dispute resolution and enforcement: how to integrate conflict resolution into contract design?

## Contract Farming: Economic Notion

“form of supply chain governance adopted by firms to secure access to agricultural products, raw materials and supplies meeting desired quality, quantity, location and timing specifications. Contracting is an intermediate mode of coordination, whereby the conditions of exchange are specifically set among transaction partners by some form of legally enforceable, binding agreement. The specifications can be more or less detailed, covering provisions regarding production technology, price discovery, risk sharing and other product and transaction attributes”.

(C.A. da Silva, *The Growing Role of Contract Farming in Agri-food Systems Development: Drivers, Theory and Practice*. (Rome: Agricultural Management, Marketing and Finance Service, FAO, 2005).

## Contract Farming: Legal Notion

“modality of agricultural production based on an agreement between a producer and another party – typically an agribusiness company. Under this agreement [...] the producer undertakes to produce and deliver agricultural commodities in accordance with the contractor’s specifications. The contractor, in turn, undertakes to acquire the product for a price and generally has some degree of involvement in production activities through, for example, the supply of inputs and provision of technical advice.”

*(UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, Rome, 2015).*

## Choices / 1

- Preserving stability and long term investments in contract farming
- Price determination according to different global and local practices
- Enabling transfer of knowledge and know how from contractors to producers
- Emphasizing the importance of process obligations and adjusting the remedies for breach of contract accordingly
- Addressing opportunism: side selling
- Broadening the function and scope of remedies to ensure compliance with obligations related to both product and process. In particular corrective actions and internal management systems

## Choices / 2

- Capturing the effects of non performance beyond the individual contracts: from contracts to contractual relationships
- Remedies for default as instruments to preserve the contractual relationship even in case of default; cooperation before and after breach. Corrective actions, right to cure, duty to mitigate
- Contracts not only as the expression of private autonomy but also as instruments of development
- Acknowledging the role of intermediaries in the drafting and in the implementing process of contract performances
- Distinguishing between old and new intermediaries (farmers and trade associations, certification owners, NGOs)

## Lessons

- New functions of agricultural and commercial contracts
- The implementation of international contracts requires a complex architecture
- A different perspective of the relationship between contract design and dispute resolution mechanisms
- Contracting for rural development. Is contract farming so specific ?
- The implementation process. A global guide for local context. How should the guide be adapted to the different local needs? Adaptation to local contexts and to global markets requires different instruments from conventional ones. The crucial role of farmer associations and NGOs
- Translation of then guide will not be sufficient. Simplification and continuous engagement of the farmers' communities. The use of apps to reach out illiterate farmers. The structure of contract templates differentiated for commodities and supply chains



# FAO's implementation plan

Eva Gálvez, [Eva.GalvezNogales@fao.org](mailto:Eva.GalvezNogales@fao.org)  
27<sup>th</sup> April 2016

[www.fao.org](http://www.fao.org)




## What are we doing about contract farming?

### The Legal Guide ...

- Inter-organizational cooperation
- Dissemination and awareness raising through a series of accompanying documents
- Training and field support

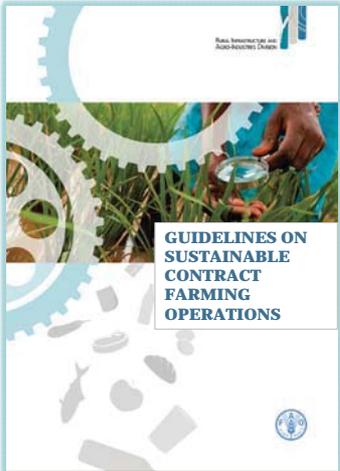
Available in English, French and Spanish






## Accompanying documents

- Guidelines on sustainable CF operations:
  - 30 page summary of the LG accessible to a general readership of farmers, extension agents, cooperatives and farmer organizations, small agribusinesses and government regulators and policy-makers
  - Available in English, French and Spanish



## Policy briefs

- 2 policy briefs targeting different audiences:
  - farmers
  - regulators
- Key messages in accessible language, highlighting key messages
- 10 pages
- 3 languages





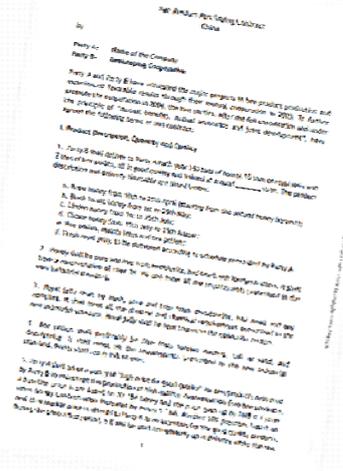
## Training programme on CF

- Training programme on planning and implementing responsible CF operations:
  - Preparation of training materials based on the legal guide, incorporating business and legal aspects
  - Validation workshops in Guatemala, Ethiopia and Viet Nam, end of 2016
  - Regional workshops (training of trainers) in Latin America, Eastern and Southern Africa and Asia-Pacific, first semester of 2017



## Contract templates for agricultural commodities

- Analysis of contract samples from all over the world
- Generic template with detailed explanatory notes and points for consideration including:
  - The need for contextualization to different legal systems
  - Legal differences associated with different types of commodities/subsectors
  - Taking into account market specifications and input resource provision
  - Other elements of legal relevance, e.g. land ownership
- 2 commodity-based contracts validated with private sector





## Analysis of legal and regulatory frameworks

- Comparative assessment of legal/regulatory frameworks for CF:
  - synthesis of country case studies, different jurisdictions and legal systems
  - Key regulatory trends internationally
  - Gaps and weaknesses in reg. frameworks & best solutions
  - Guidance for govt. looking to improve their enabling environment for CF



## The Contract Farming Resource Centre

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



The screenshot shows the website interface with a navigation menu on the left, a main content area with a 'Home' section, and a 'News' section. A 'NEW' badge is overlaid on the bottom left. The website header includes language options (english, français, español) and the FAO logo. The main content area features a banner image of farmers in a field and a 'Contract Farming Resource Centre' title. The 'Home' section contains introductory text about the center's purpose and a list of sections: Library, Toolkit, FAQ, and Links. The 'News' section features a headline about the availability of the 'UNIDROIT | FAO | IFAD Legal Guide on Contract Farming' and a download link for the PDF file (2.20 MB).

**NEW**

UNIDROIT | FAO | IFAD Legal Guide on Contract Farming

Download "UNIDROIT | FAO | IFAD Legal Guide on Contract Farming" (PDF file, 2.20 MB)

© FAO, 2016



Food and Agriculture  
Organization of the  
United Nations



---

# COMMUNITY OF PRACTICE ON LEGAL ASPECTS OF CONTRACT FARMING

<http://www.unidroit.org/community-of-practice/home>

## Co-leaders

The International Institute for the Unification of Private Law (UNIDROIT)  
The Food and Agriculture Organization of the United Nations (FAO)  
The International Fund for Agricultural Development (IFAD)

## Background

UNIDROIT, FAO, IFAD have established - within the framework of the Global Forum on Law, Justice and Development (GFLJD) - a Community of Practice to promote a favourable legal environment for contract farming operations to support agricultural development. The Global Forum on Law, Justice and Development (GFLJD) provides an innovative and dynamic framework for the exchange of law in development knowledge, connecting developing countries, think-tanks, regional and international organizations, international financial institutions, and civil society organizations with relevant research and practice.

## Objectives of the Community of Practice

The Community of Practice has the main objective of promoting a favourable legal environment for contract farming operations through knowledge sharing and dissemination, as well as projects pursued individually by the partners and members or on the basis of joint initiatives.

A dedicated internet webpage serves as a repository of information and a platform for the exchange of knowledge among partners, and the dissemination of tools and projects in furtherance of the objectives of the Community of Practice.

The Community of Practice provides an opportunity for partners and members to give visibility to their activities and build synergies with potential partners, including sponsor and financing institutions, for the development of products and projects.

# Sponsors and Members

## *Get involved!!!*

Participation in the Community of Practice is open to international and national institutions working in the field of development, legal harmonization and agriculture, as well as private and public sector groups representing both agricultural producers and buyers, and academic and research institutions or individual experts with an interest in the area.

Membership is granted on the basis of an expression of interest and proven participation in the advancement of the objectives of the Community of Practice.

## Project Members

Contributions from Project Members may be in the form of any of the following:

- a) information on ongoing projects and activities to disseminate/promote/use the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming and generally to strengthen the legal environment for contract farming, such as:
  - expert meetings, workshops, training sessions to strengthen the understanding of global, regional and country legal issues;
  - documentation consisting in studies/research and publications including translations of relevant documents into country languages for wider dissemination;
  - initiatives of legislative and regulatory domestic reform, or the preparation of instruments to be used in contract practice.
- b) development of projects for the advancement of the objectives of the Community, which are subject to available funds;
- c) contribution to the Community of Practice information platform by sharing knowledge products (e.g., studies, databases, training material, etc.), and updates in specific areas of national relevant legislation.

## Sponsors

One objective of the Community is to provide a global resource distribution platform to provide financial support to the operation of the Community of Practice, identified projects and activities developed by members.

Sponsors may contribute through a direct grant to the UNIDROIT Foundation or by contract arrangements with project Members. The terms and conditions of specific contributions will be agreed on a case-by-case basis.

*Update: 2 May 2016*

For further information please contact the Community of Practice Secretariat at [contractfarming@unidroit.org](mailto:contractfarming@unidroit.org) and visit our webpage at <http://www.unidroit.org/community-of-practice/home>

## PROGRAMME OF THE CONFERENCE

### 9.00 – 9.15 *Opening*

- Mr José Angelo Estrella Faria, UNIDROIT Secretary-General
- Min. Plen. Mr Andrea Tiriticco, Head of the Legal Department, Ministry of Foreign Affairs and International Cooperation of Italy (*excused*) – *replaced by* Ms Stefania Rosini, Head Deputy, Legal Department, Ministry of Foreign Affairs and International Cooperation of Italy

### 9.15 – 9.45 **Investing in Agriculture Responsibly through Contract Farming**

*Contextualizing contract farming against the global concerns regarding food security issues, small farmers' inclusion in value chains and policy orientations of each organization*

*Key speaker/Moderator:* Mr Idés de Willebois, Director, West and Central Africa Division, IFAD

- **Investing in Agriculture Responsibly**
  - Mr Jesper Karlsson, International Consultant, Trade and Markets Division, FAO
- **Contract Farming: an Overview**
  - Contract Farming: What is it About? Ms Marlo Rankin, Agribusiness Economist, Agricultural Development Economics Division, FAO
  - Experiences from the field – video testimonials

### 9.45 – 11.00 **Contract Farming: What is at Stake?**

*A review of experiences illustrating how to maximize benefits and minimize risks of contract farming from the perspective of economic, social and environmental development. Issues to be discussed would include the type of model that produces the best results, the crops most suitable for contract farming and the types of contract that are more relevant in different countries and circumstances*

*Moderator:* Mr Andrew Shepherd, Agribusiness Consultant

*Discussants*

- Mr Charles Ogang, President, Uganda National Farmers Federation, World Farmers' Organisation (WFO) Board Member
- Prof. Michele Pisante, Deputy Commissioner, Council for Agricultural Research and Economics (CREA) (Italy) (*excused*) – *replaced by* Ms Gaetana Petriccione, Senior Researcher, Council for Agricultural Research and Economics (CREA) (Italy)
- Mr Michael Schlup, Partnerships Coordinator Cocoa Sustainability, Barry Callebaut & General Manager, Cocoa Horizons Foundation
- Mr Giel Ton, Senior Researcher, LEI, Wageningen University and Research Centre Nijmegen, the Netherlands - *leading a 3ie-funded systematic review on contract farming with Ghent University*

### **11.30 – 12.30 A Legal Tool for Good Practices in Contract Farming Operations: the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming**

*Key speaker/Moderator: Prof. Fabrizio Cafaggi, Italian School of National Administration, University of Trento (on leave) (Italy)*

- **Policy issues and legal approach of the Legal Guide**

*Linking the economic and social dynamics of the contract farming operation with the legal dimension. How a legal approach – regulatory and contractual – can make a difference, focusing on selected issues*

- **How to use the Legal Guide? Plans for implementation**

*A presentation of the author organisations' current plans to disseminate the Legal Guide and ensuring that it brings benefits to the intended users*

*Discussants*

- Ms Eva Galvez Nogales, Agribusiness Economist, Agricultural Development Economics Division, FAO
- Ms Marlo Rankin, Agribusiness Economist, Agricultural Development Economics Division, FAO
- Ms Marieclaire Colaiacomo, Procurement Officer, East and Southern Africa Division, IFAD
- Ms Frederique Mestre, Senior Officer, UNIDROIT

*Statements by audience participants*

### **12.45 Concluding Remarks**

- Mr José Angelo Estrella Faria, UNIDROIT Secretary-General

**CREATING A FAVOURABLE LEGAL ENVIRONMENT  
FOR CONTRACT FARMING**  
**The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming**

Rome, 27 April 2016

**LIST OF PARTICIPANTS**

***SPEAKERS AND MODERATORS***

---

**Mr Andrea Tiriticco** (*excused*)  
Head of the Legal Department  
Ministry of Foreign Affairs and International  
Cooperation of Italy

*replaced by: Ms Stefania Rosini*  
Deputy Head of the Legal Department  
Ministry of Foreign Affairs and International  
Cooperation of Italy

**Mr José Angelo Estrella Faria**  
Secretary-General, International Institute  
for the Unification of Private Law (UNIDROIT)

**Mr Idés de Willebois**  
Director, West and Central Africa Division  
International Fund for Agricultural  
Development (IFAD)

**Mr Eric Jesper Karlsson**  
International Consultant, Trade and Markets  
Division, Food and Agriculture Organization  
of the United Nations (FAO)

**Ms Marlo Rankin**  
Agribusiness Economist, Agricultural  
Development Economics Division  
Food and Agriculture Organization  
of the United Nations (FAO)

**Mr Andrew Shepherd**  
Agribusiness Consultant

**Ms Marieclaire Colaiacomo**  
Procurement Officer, East and Southern Africa  
Division, Procurement Officer, East and  
Southern Africa Division

**Mr Charles Ogang**  
President, Uganda National Farmers  
Federation  
World Farmers' Organisation Board Member

**Mr Michele Pisante** (*excused*)  
Deputy Commissioner, Council for Agricultural  
Research and Economics (CREA), *Italy*

*replaced by: Ms Gaetana Petriccione*  
Senior Researcher, Council for Agricultural  
Research and Economics (CREA), *Italy*

**Mr Michael Schlup**  
Partnerships Coordinator, Cocoa  
Sustainability, Barry Callebaut  
General Manager, Cocoa Horizons  
Foundation *Switzerland*

**Mr Giel Ton**  
Senior Researcher, LEI, Wageningen  
University and Research Centre Nijmegen,  
*The Netherlands*

**Mr Fabrizio Cafaggi**  
Professor of Law, Italian School of  
National Administration  
University of Trento (on leave), *Italy*

**Ms Eva Galvez Nogales**  
Agribusiness Economist, Agricultural  
Development Economics Division  
Food and Agriculture Organization  
of the United Nations (FAO)

**Ms Frédérique Mestre**  
Senior Officer, International Institute  
for the Unification of Private Law (UNIDROIT)

## **UNIDROIT MEMBER STATES**

---

### **BRAZIL**

**Mr Vinicius Cardoso Barbosa Silva**  
Secretary  
Embassy of Brazil in Italy

### **CHILE**

**Ms Alejandra Guerra**  
Deputy Representative to FAO/IFAD/WFP  
Embassy of Chile in Italy

### **COLOMBIA**

**Mr Felipe Steiner**  
First Secretary  
Embassy of Colombia in Italy

### **CZECH REPUBLIC**

**Mr Jiri Jirsa**  
First Deputy of Minister  
Ministry of Agriculture

**Ms Veronika Vanisova**  
Jurist - Ministry of Agriculture

### **GERMANY**

**Ms Louisa Froelich**  
Advisor, German Agency for International  
Cooperation, GIZ

### **HOLY SEE**

**Mr Vincenzo Buonomo**  
Professeur de droit international  
Mission permanente du Saint-Siège  
auprès de la FAO, du FIDA et du PAM

### **HUNGARY**

**Ms Gyongyi Komlossy**  
Consul  
Embassy of Hungary in Italy

### **INDONESIA**

**Mr Royhan Nevy Wahab**  
Alternate Permanent Representative of the  
Republic of Indonesia to the Rome-based  
UN Agencies

**Mr Yusral Tahir**  
Agriculture Attaché  
Embassy of Indonesia in Italy

### **IRAN (ISLAMIC REPUBLIC OF)**

**Mr Kouros Jafari**  
Third Counsellor  
Islamic Republic of Iran in Italy

### **NIGERIA**

**Mrs Bisi Margaret Meshioye**  
Chargé d'affaires *ad interim*  
Embassy of Nigeria in Italy

**Mr Aminu Mohamed Wakili**  
Minister  
Embassy of Nigeria in Italy

### **PORTUGAL**

**Mr Pedro Magalhaes Mota**  
Senior Legal Advisor  
Directorate General for Agriculture and  
Rural Development – DGADR

### **ROMANIA**

**Mr Vlad Mustaciosu**  
Permanent Representative to  
FAO/IFAD/WFP  
Embassy of Romania in Italy

### **RUSSIAN FEDERATION**

**Mr Evgeny Egorov**  
Legal Adviser  
Trade Representation of Russia in Italy

### **SPAIN**

**Mr Antonio Lizcano Palomares**  
Counsellor for Agricultural Affairs  
Embassy of Spain in Italy

### **SWEDEN**

**Mr Fredrik Alfer**  
Minister Counsellor  
Deputy Permanent Representative of  
Sweden to FAO

### **SWITZERLAND**

**S.E. M. François Pythoud**  
Ambassadeur, Représentant permanent  
auprès de la FAO, du FIDA et du PAM

### **UNITED STATES OF AMERICA**

**Ms Daleya S. Uddin**  
Alternate Permanent Representative  
U.S. Mission to the UN Agencies

**Ms Rita Muir**  
Public Affairs section  
U.S. Mission to the UN Agencies

### **URUGUAY**

**Mr Oscar Piñeyro**  
Minister Counsellor  
Embassy of Uruguay in Italy

**UNIDROIT NON MEMBER STATES**

---

**BENIN**

**Ms Adjiri Emilienne Agossa**  
Attaché  
Ambassade du Bénin en Italie

**COTE D'IVOIRE**

**M. Kouame Kanga**  
Représentant Permanent Adjoint auprès  
de la FAO  
Ambassade de Côte d'Ivoire en Italie

**GHANA**

**H. E. Mrs Molly Anim Addo**  
Ambassador  
Embassy of the Republic of Ghana in Italy

**Ms Khadija Iddrisu**  
Minister Plenipotentiary  
Embassy of the Republic of Ghana in Italy

**CAMEROON**

**Mr Médi MOUNGUI**  
Second Counsellor  
Embassy of Cameroon in Italy

**KENYA**

**Ms Saadia Salim**  
Second Counsellor  
Embassy of Kenya in Italy

**MALAYSIA**

**Mrs Azulita Salim**  
Counsellor  
Embassy of Malaysia in Italy

**MALI**

**M. Mamadou Sogodogo**  
Deuxième Conseiller  
Ambassade du Mali en Italie

**MOROCCO**

**M. Mostafa Nahi**  
Ministre Plénipotentiaire et Représentant du  
Royaume du Maroc auprès de la FAO

**PHILIPPINES**

**Mr Lupino Lazaro Jr.**  
Agricultural Attaché  
Embassy of the Philippines in Italy

**INTERGOVERNMENTAL ORGANISATIONS – PROJECT PARTNERS**

---

**FOOD AND AGRICULTURE ORGANIZATION  
OF THE UNITED NATIONS (FAO)**

**Ms Carmen Bullon**  
Legal Officer  
Development Law Service (LEGN)

**Ms Caterina Pultrone**  
Consultant, Agricultural Development  
Economics Division (ESA)

**Mr Teemu Viniikainen**  
Consultant, Agricultural Development  
Economics Division (ESA)

**INTERNATIONAL FUND FOR AGRICULTURAL  
DEVELOPMENT (IFAD)**

**Mr Marco Camagni**  
Senior Technical Specialist

**Mr Charles Forrest**  
Senior Legal Counsel

**Ms Christa Ketting**  
Rural Markets and Agribusiness Unit

**OTHER INTERGOVERNMENTAL ORGANISATIONS**

---

**INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (IDLO)**

**Ms Elena Incisa di Camerana**  
Regional Program Manager for Latin  
America and the Caribbean

---

**INTERNATIONAL NON GOVERNMENTAL ORGANISATIONS**


---

**WORLD FARMERS' ORGANISATION (WFO)**

**Mr Paul Bodenham**  
Legal Counsel

**Ms Cristina Aroldi**  
Intern, Legal Department

**YOUNG PROFESSIONALS FOR AGRICULTURAL DEVELOPMENT – YPARD**

**Ms Virginia Maria Cravero**  
Representative for Italy

---

**NATIONAL INSTITUTIONS**


---

**LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI "GUIDO CARLI" – LUISS**

**Prof. Gustavo Ghidini**  
Director, Master in Food Law

---

**OTHER PARTICIPANTS**


---

**Mr Matteo Benozzo**  
Professor of Law  
University of Macerata, Italy

**Ms Shideh Bozorgzadeh**  
Researcher and PhD Student  
Roma Tre University

**Mr Guo Peng**  
University of New South Wales, Australia

---

**UNIDROIT**


---

**Ms Anna Veneziano**  
Deputy Secretary-General

**Ms Marina Schneider**  
Senior Officer and Treaty Depository

**Mr Neale Bergman**  
Legal Officer

**Mr Solomon Madike Ngoladi**  
UNIDROIT Fellow, Senior Supervisor,  
Enforcement Division Securities and  
Exchange Commission, Abuja

**Mr Richard Muliika**  
UNIDROIT Legal Intern on Contract Farming  
LL.M ICL, Anglia Ruskin University,  
Cambridge (UK) - (ARU), Advocate  
(Uganda)

**UNIDROIT INTERNS AND RESEARCHERS**

**Mr Sofiane Benmessaoud** (Algeria)  
PhD Candidate, Université d'Oran

**Mr Weldon W. Black Zaldivar** (Paraguay)  
Master of laws, Fordham University

**Ms Barbara De La Vega Justribo** (Spain)  
Professor, Universidad Carlos III, Madrid

**Ms Sabrina Genzow** (Germany)  
PhD Candidate, Free University, Berlin

**Ms Morgane Frapart** (France)  
Master 2, Université Panthéon-Sorbonne

**Ms Kanella Kapoutsi** (Greece)  
PhD Candidate, Eberhard Karls University,  
Tuebingen

**Mr Ben Koehler** (Germany)  
Trainee Lawyer, OLG, Frankfurt

**Ms Niranjana Menon** (India)  
LLM, University of Turin