



INTERNATIONAL WORKSHOP ON "IMPROVING SMALL-SCALE FARMERS' WELFARE"

Organized by
the Ministry of Foreign Affairs and the Ministry of Agriculture
of the Republic of Indonesia

Fairmont Hotel, Jakarta, 6 November 2017

Report

Event Overview	2
Opening Session: ▪ Mr Tri PURNAJAYA ▪ Mr Yanuar NUGROHO ▪ Mr Ir. Mat SYUKUR, M.S.	3
Keynote Speech: H.E. Dr. A. M. FACHIR	3
<i>Welcome Address:</i> Mr Royhan N. WAHAB	4
▪ Small Farmers in International Economic Diplomacy: Challenge and Opportunity Dr Bayu KRISNAMURTHI	4
▪ UNIDROIT's Contribution to the Harmonization of Laws and its Work Related to Agriculture Prof. Anna VENEZIANO	5
▪ The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming Ms Frédérique MESTRE	5
▪ Financial Access for smallholder farmers Mr Ronald HARTMAN	6
▪ FAO's Role in Small-Scale Farmers Development Mr Mark SMULDERS	6
Closing remarks	7
• Annex I: Agenda	10
• Annex II: PPT Presentations	11

EVENT OVERVIEW

This report summarizes the presentations and discussions held at the International Workshop on "IMPROVING SMALL-SCALE FARMERS' WELFARE" organised by the Ministry of Foreign Affairs and the Minister of Agriculture of the Republic of Indonesia in Jakarta (Fairmont Hotel) on 6 November 2017.

The Workshop had two main aims: 1: to provide information on and to disseminate the contents of the *UNIDROIT/FAO/IFAD Legal Guide on Contract Farming*; 2: to illustrate the dimension of contract farming and its potential benefits under the particular perspective of small-scale farmers.

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),¹ the Food and Agriculture Organization of the United Nations (FAO)² and the International Fund for Agricultural Development (IFAD)³ 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.

Participants: The Conference was primarily addressed to farmer organisations' representatives, civil society participants interested in business models linking farmers to the market, as well as legal and economical academics, as well as government officials. Altogether, nearly 70 people participated in the Workshop.

Speakers: Speakers, moderators and panellists included high-ranking representatives from the sponsoring Ministries, a distinguished expert in agricultural economics and representatives from UNIDROIT as well as from FAO and IFAD.

The Agenda of the Workshop is reproduced in Annex 1.

¹ The International Institute for the Unification of Private Law (UNIDROIT) is an intergovernmental organisation based in Rome, Italy, specialising in the harmonisation and modernisation of private law rules at the global level, through international treaties and soft law instruments. In the area of contract law, UNIDROIT has prepared in particular the UNIDROIT Principles of International Commercial Contracts, 2016 (<www.unidroit.org>)

² FAO and IFAD co-authored the Guide together with UNIDROIT.

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/aqs/contract-farming/index-cf/en>

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. In addition, it provided funding to FAO (recipient of the grants) for the holding of regional consultations during the drafting of the Guide, and for the preparation of implementation tools after the Guide was adopted.

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)*.

OPENING SESSION

Mr Tri PURNAJAYA (*Acting Director-General for Multilateral Cooperation, Ministry of Foreign Affairs of the Republic of Indonesia*) extended a warm welcome to the organizers, ministers, ambassadors, speakers and participants. He expressed the belief that there is a causal link between the growth of food and poverty. As the population continues to grow, there is more demand for food stock. However, small-scale farmers in developing countries have not benefited from the global process. People tend to shift from rural areas to big cities to earn more income instead of continuing their farming activity. There is currently a lack of interest for small-scale farmers to continue what they do. The declining commodity prices was also presented as one of the key factors that contribute to this condition. He thanked UNIDROIT, FAO, IFAD, and attendees for coming to the event and expressed hope for fruitful discussions on these issues.

Mr Yanuar NUGROHO (*Deputy Chief of Staff for Analysis and Oversight of Strategic Issues on Social, Cultural, and Ecological Affairs, Executive Office of the President, Republic of Indonesia*) began his intervention with a question "to what extent are food and agriculture key in humanity's survival?". He proposed the need to understand this within a bigger picture, with five fundamental keys to help us comprehend more about food and agriculture. When focusing on the agenda of the day, which is farmer's welfare, there are significant effects to be achieved. He proceeded in stating that an in-depth conversation on how to improve small-scale farmer's welfare was necessary. Indonesia's consumption largely relies on vegetables, yet unfortunately farmers are currently producing less, in a general background of food loss, lack of infrastructure, poor management, food waste, etc. That is why he recommended to take a broader view, not only on the farmers but also regarding the whole context. He also stated that the President himself was concerned about the agrarian sector in the country, and that the agrarian reform act was being considered by the President. The missing investment in status quo is the management of modern agriculture. The President is currently running the project entitled Germas (*Gerakan Masyarakat Hidup Sehat*) the movement to enhance people's nutrition gain. (See Mr Yanuar NUGROHO's ppt intervention reproduced in Annex 2)

Mr Ir. Mat SYUKUR, M.S. (*Special Advisor to the Minister of Agriculture on International Trade*) extended his warm welcome to the ministers, ambassadors and participants in the Workshop. He regretted that the Secretary-General could not attend the session in person, however he expressed the hope that this event could be an opportunity to share sessions on how to develop the nation. He emphasized that contract farming is of crucial importance for the country. Indonesia has a close cooperation with UNIDROIT, FAO and IFAD, the organisations which have recently published a legal guide on contract farming. Indonesia has also issued Law No. 19/2013 on the protection and empowerment of farmers. One of the main concerns is the utilization of land, farming mechanism, improvement on the farmers market, small-scale farmers, etc. He welcomed the UNIDROIT representatives who would subsequently present contract farming and the legal guide, which he hoped could be implemented in Indonesia in the future.

KEYNOTE SPEECH

H.E. Dr. A. M. FACHIR (*Vice Minister for Foreign Affairs of the Republic of Indonesia*) began his speech by greeting all of the guests. He especially thanked the farmers attending the event, and stated that the Workshop was directed primarily to them. He thanked UNIDROIT, FAO and IFAD representatives for sharing their knowledge today. The first purpose of this Workshop was to grasp as much information as possible from other countries, especially the practice in international organizations. The second purpose of this Workshop is to contribute to world stability and to create fairness and justice for all people in Indonesia – as required by the Constitution. From this workshop, it was hoped that Indonesia could gain added value for farmers and learn from other countries by sharing experiences.

WELCOME ADDRESS

Mr Royhan N. WAHAB (*First Secretary, Embassy of the Republic of Indonesia in Italy*) welcomed all participants, especially FAO, UNIDROIT and IFAD's representatives who were willing to share their expertise in contract farming. He continued by stating that Indonesia has multilateral diplomatic relationships with UNIDROIT, FAO, and IFAD. Today, Professor Anna Veneziano and Ms Frédérique Mestre will share their expertise on contract farming, particularly on how to improve small-scale farmers' welfare. As was known to the audience, the standard of living of Indonesian farmers was still below expectations. Therefore, he hoped that this is not the last opportunity to meet and discuss on this matter, rather the beginning of more meetings to come. Lastly, he would like to thank the organizing committee for the hard work in conducting this event.

INDONESIA SMALL FARMERS IN INTERNATIONAL ECONOMIC DIPLOMACY: CHALLENGE AND OPPORTUNITY" - DR BAYU KRISNAMURTHI

Dr Bayu KRISNAMURTHI (*Chair, Founder of ISA Initiative, Associate Professor at Department of Agribusiness, Bogor Agricultural University; Former Vice Minister of Trade, and former Vice Minister of Agriculture, Republic of Indonesia*) presented "Indonesia Small Farmers in International Economic Diplomacy: Challenge and Opportunity" (See Dr Bayu KRISNAMURTHI's ppt intervention reproduced in Annex 2). He believed that the title of the workshop pointed to three essential components linked to the workshop. First, international cooperation. Second, small-scale farmer's welfare. Third, private law, which is the focus of UNIDROIT. Private law means contracts and agreements. He refers to WTO's dispute settlement mechanism, which relates to the agreements made by the member states. In WTO's dispute settlement process, there are 225 cases related with agriculture or agricultural products. Nearly all international trade transactions have a contract basis. Regarding the US, although the contribution of agriculture to US GDP is less than 2%, the US Government is one of the countries most involved in WTP's agricultural disputes. For Indonesia, good and clear agreements and settlement mechanisms are very important because they will impact on small-scale farmers. Trade is a source of growth and wealth for farmers, however there are a number of critical issues including technical, trade-unfairness and discriminatory issues. Contract law should be used to ensure that there is no discriminatory issue within the trade. Agricultural international economic diplomacy is not only about trade. Within the international cooperation, guidance is needed to ensure that the interests of all parties are duly protected. International and domestic synchronization is of a political nature. The experts from UNIDROIT were therefore welcome to explain the complexity of regulation, and how private law can protect both the producer and the purchaser of the product. He concluded by stressing that Internet has also an important role to promote products and to expand the market. In addition to that, he believes that farmer's direct involvement in diplomacy is important.

Questions from participants:

- How to improve the skills of small-scale farmers in understanding the laws?
- It is hard for farmers to compete with the big corporation. Farmers have no knowledge about price fluctuations on the market. How to deal with this issue? How to address it in a contract?
- How to guarantee contract compliance? In practice, there is a lot of breaches of contract and since there is imbalance of power, the aggrieved party cannot do anything about it.
- How to help farmers to become international traders, like for example in Thailand? Farmers and farmer organizations need to acquire more skills with contracting.

UNIDROIT'S CONTRIBUTION TO THE HARMONIZATION OF LAWS AND ITS WORK RELATED TO AGRICULTURE - PROF. ANNA VENEZIANO

Professor Anna VENEZIANO (*Secretary-General a.i. UNIDROIT*) presented "UNIDROIT's contribution to the harmonization of laws and its work related to agriculture" (see *Prof. Anna Veneziano's ppt presentation reproduced in Annex 1*). She expressed her gratitude to the Indonesian Government for organizing this important event. She explained that UNIDROIT is an independent intergovernmental organization that aims to develop modern standards for commercial and private law, through possibly internationally harmonized solutions. Indonesia joined the organization as a member State in 2009 and since then Indonesia's participation within UNIDROIT has been remarkable, and Indonesian experts have been actively involved in recent study and working groups. UNIDROIT has worked in the agricultural area under different perspectives: after the preparation of the Legal Guide on Contract Farming, work is currently underway for the preparation of legal guidance on agricultural land investment contracts, and an instrument for the financing of agricultural equipment (the "MAC Protocol to the Cape Town Convention") will soon be adopted. Future work is contemplated on other topics, such as title to land, the structure of agricultural enterprises, and financing of agriculture.

THE UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING: WHAT IS CONTRACT FARMING? THE GOVERNMENT'S ROLE IN CONTRACT FARMING - Ms FREDERIQUE MESTRE

Ms Frederique MESTRE (*Senior Legal Officer UNIDROIT*) thanked the organisers of the Workshop and the participants in the audience for being here (see *Ms Frederique Mestre's ppt presentation reproduced in Annex 2*). She introduced the Legal Guide on Contract Farming (LGCF) by stating that UNIDROIT, FAO and IFAD had come together and cooperated to frame a guidance instrument to promote good practices in contract farming operations under a practical and legal perspective. The Legal Guide is a two-hundred-paged book, which explains how to make contract farming sustainable and successful for farmers and all stakeholders.

Contract farming is about linking farmers and the market. Contract farming is based on an agreement made before production, which reflects the obligations of the farmer and the buyer, and sets a price or a price mechanism. One typical feature of contract farming is that the buyer – most often an agribusiness company – supports the production in different ways – by providing inputs such as seeds, often on credit terms, or technology. The types of farmers vary, from advanced and commercially oriented farmers, to medium family farmers but there are also marginalized and poor farmers. The practices are also vary, depending on the commodity, competitive position and the implemented model. Contract farming may offer opportunities of economic and social development, however there are risks in contract farming as well, essentially deriving from imbalance in economic power of the parties.

Questions from participants:

- There is nowhere to consult about contract farming problem, particularly on the legal perspective. Especially they do not have funding to hire lawyers.
- Is there any regulation in any countries that requires parties to use contract for their transaction?
- Who is responsible to educate the farmers? Is it the Ministry of agriculture?

Ms Frederique MESTRE went on with a presentation on "The Government's Role in Contract Farming". Sometime the Government may act as a buyer, however contract farming is essentially a private law relationship. The Government has an important role to play to support the development of contract farming operations, on a fair basis. It can encourage the private sector to engage in contractual relationships with farmers, accompanied by empowerment of farmers. There are a number of policy

actions that the Government may develop to make farmers less dependent on the buyer and increase their bargaining power. Possible initiatives to enhance fair relationship would include: promoting a platform on the local level for certain commodities, screening and/or reviewing contracts, developing model agreements, promoting dispute resolution mechanisms. Certain Governments have adopted dedicated rules for contract farming relationships, either as a special contract type or within commodity specific regulation, or as part of economic and social regulations.

FINANCIAL ACCESS FOR SMALLHOLDER FARMERS - Mr RONALD HARTMAN

Mr Ronald HARTMAN (*Country Director, IFAD*) presented "Financial Access for smallholder farmers". He greeted everyone and expressed his appreciation for participating in the Workshop. Indonesia is currently at an interesting stage. Most of the food Indonesians consume comes from small-scale farmers, and in order to grow enough food for a growing population, farmers need to be able to develop as well. Access to finance is a facilitating factor to enable longer investment in agriculture. In Indonesia, the majority of farmers are excluded from financial services, for example to buy fertilizer and to expand lands. On the other hand, parties are often reluctant to engage in contract farming: on the farmers' side, there is a fear of entering into contracts with private sector investors, in particular due to low literacy and lack of education. On the private sector's side, there is a perception of high risk unless certain guarantees or an enabling legal framework are in place. This Workshop hopefully will help understand better how contract farming may support farmers' welfare.

FAO'S ROLE IN SMALL-SCALE FARMERS DEVELOPMENT - Mr MARK SMULDERS

Mr Mark SMULDERS (*Country Director, FAO*) presented "FAO's Role in Small-Scale Farmers Development". He greeted everyone and briefly explained FAO's mandate. He delivered three questions to the participants: 1. What is the small-scale farmers' perspective on key issues affecting their welfare? 2. What is the farmers' socio economic reality? 3. What are small-scale farmers' opportunities?

Answers from participants:

- The most important thing for farmers is of course income. Better income, better life. Unfortunately the business is not profitable.
- They want better marketing. They know how to farm, but they do not know how to market their product.

He emphasized the crucial role of the Government to support small farmers. A priority objective is to increase productivity. Contract farming and agricultural finance are two key instruments that can be used. Also importantly, access to education, knowledge and innovation must be improved, especially to bridge the gap between small and commercial farmers.

Comments / questions from participants:

- For farmers, an alternative option to farming is probably to engage in a side job to increase their welfare
- Government should oblige parties to use contracts when engaging in business
- Would it be possible for BULOG to buy products other than rice?
- Large portions of land are occupied by big farming companies. This may imply that contract farming may not be relevant anymore because there is no land left.
- What are FAO and IFAD's role? How about Ministry of Foreign Affairs role? Because every international treaties concluded will bring impacts to the local government as well.

- On prices and competition trends: Chinese consumers changed consumption from tapioca to corn. Thus, Thailand cannot sell tapioca products to China any longer, and now markets it at a very cheap price in Indonesia, causing cassava's price to drop drastically in Indonesia.

Comments and replies:

- *Ms Frédérique MESTRE*: to promote fair contract farming relationships, key concepts are transparency, accountability, compliance of obligations and cooperation between the parties. Parties should be aware that agreements have a legal value, whether they are written or not. Written agreements provide clarity and certainty. The Legal Guide aims to promote these values, and can be used by the parties as a guidance to draft their agreement. On the other hand, the contract takes place in a broader economic and regulatory environment, where competition trends and related regulations are an important factor.
- *Mr Ronald HARTMAN*: public policy actions are needed to accompany the transformation of agriculture, to support farmers to invest in production rather than moving to the big cities. Important aspects include enhancing policies and legal framework to strengthen farmers' organizations, to provide targeted investments and subsidies, especially toward incentives for young farmers. IFAD has an important role to invest and generate knowledge to support farmers.
- *Mr Mark SMULDERS*: it is important for the Government to promote profitable farming, based on social equity and fair contracting. Contract farming may indeed produce economic social development, and Government should encourage good practices. FAO's capacity building and training programs may help regulators and parties in this regard.
- *Mr Tri PURNAJAYA*: the Ministry of Foreign Affairs is not primarily competent regarding farmers' condition in Indonesia. However, today's Workshop which focuses on a multilateral instrument can be seen as a supportive initiative toward increasing farmers' welfare.

CLOSING REMARKS

Mr Tri PURNAJAYA (*Acting Director-General for Multilateral Cooperation, Ministry of Foreign Affairs of the Republic of Indonesia*) expressed the belief that the discussion had been fruitful and thanks for the information delivered by the guest speakers. He thanked every single one of the speakers and participants who had actively participated in the event. He stated that the workshop had provided useful insights on contract farming and on the Legal Guide. It is of crucial importance to warrant farmers' protection. Therefore, the information provided needed to be analysed further through more extensive consultations in order to fully understand how it can support the welfare of farmers in Indonesia.

* * * *



PROGRAM
INTERNATIONAL WORKSHOP
“IMPROVING SMALL-SCALE FARMERS’ WELFARE”
Fairmont Hotel, Jakarta, 6 November 2017

09.30 – 10.00

Registration

OPENING SESSION

Mr. Tri PURNAJAYA

Acting Director-General for Multilateral Cooperation, Ministry of Foreign Affairs of the Republic of Indonesia

Dr. Yanuar NUGROHO

Deputy II, Presidential Staff Office

Dr. Ir. Mat Syukur, M.S

Special Advisor to the Minister of Agriculture on International Trade

09.30 – 10.00

KEYNOTE SPEECH:

H.E. Dr. A. M. FACHIR

Vice Minister for Foreign Affairs of the Republic of Indonesia

10.00 – 10.10

Introduction of UNIDROIT, FAO, and IFAD by Representative of Indonesian Embassy in Rome

10.10 – 12.30

FIRST SESSION:

1. *Indonesia Small Farmers in International Economic Diplomacy Challenge and Opportunity*

Dr. Bayu KRISNAMURTHI, *former Vice-Minister of Agriculture and Vice-Minister of Trade*

2. *Legal Guide on Contract Farming (LGCF)*

Professor Anna VENEZIANO,
Secretary-General a.i. UNIDROIT

12.30 – 14.00

Lunch Break

14.00 – 17.00

SECOND SESSION:

3. *Continued – LGCF*

Dr. Frédérique MESTRE, *Senior Legal Officer UNIDROIT*

4. *Financial Access for small-holder farmers*

Ronald HARTMAN, *Country Director IFAD*

5. *FAO’s Role in Small-scale Farmers Development*

Mark SMULDERS, *FAO Representative*

17.00 – 17.30

Closing



EXECUTIVE OFFICE OF THE PRESIDENT
REPUBLIC OF INDONESIA

Improving small-scale farmers' welfare Between national commitment to global concern

Yanuar Nugroho

Deputy Chief of Staff for Analysis and Oversight of Strategic Issues on Social, Cultural, and Ecological Affairs,
Executive Office of the President, Republic of Indonesia

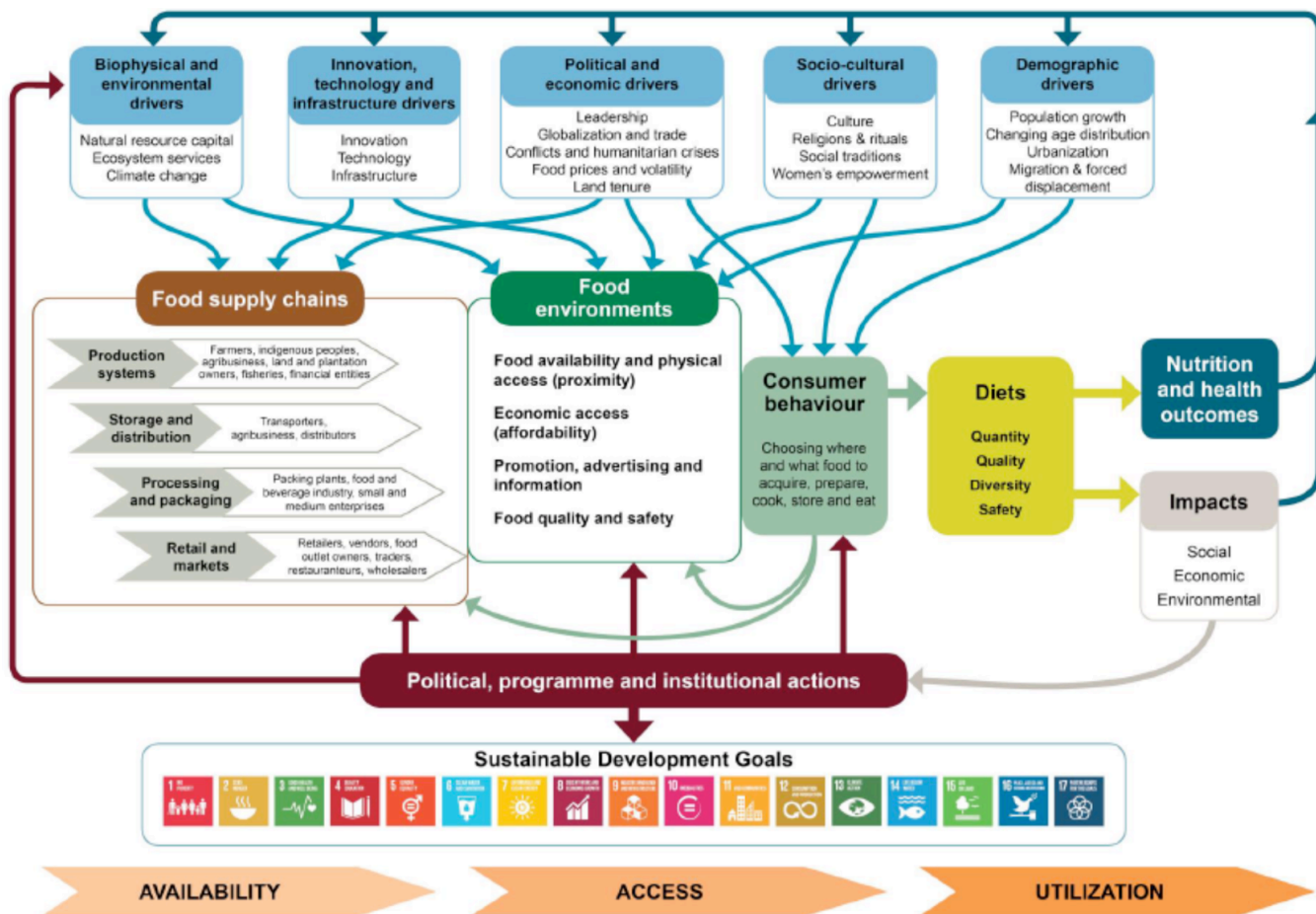
yanuar.nugroho@ksp.go.id; @yanuarnugroho

© Jakarta, 6 November 2017

TO WHAT EXTENT ARE FOOD AND AGRICULTURE KEY IN HUMANITY'S SURVIVAL?



WHY FOOD SYSTEMS (HLPE, 2017) AS A PERSPECTIVE?



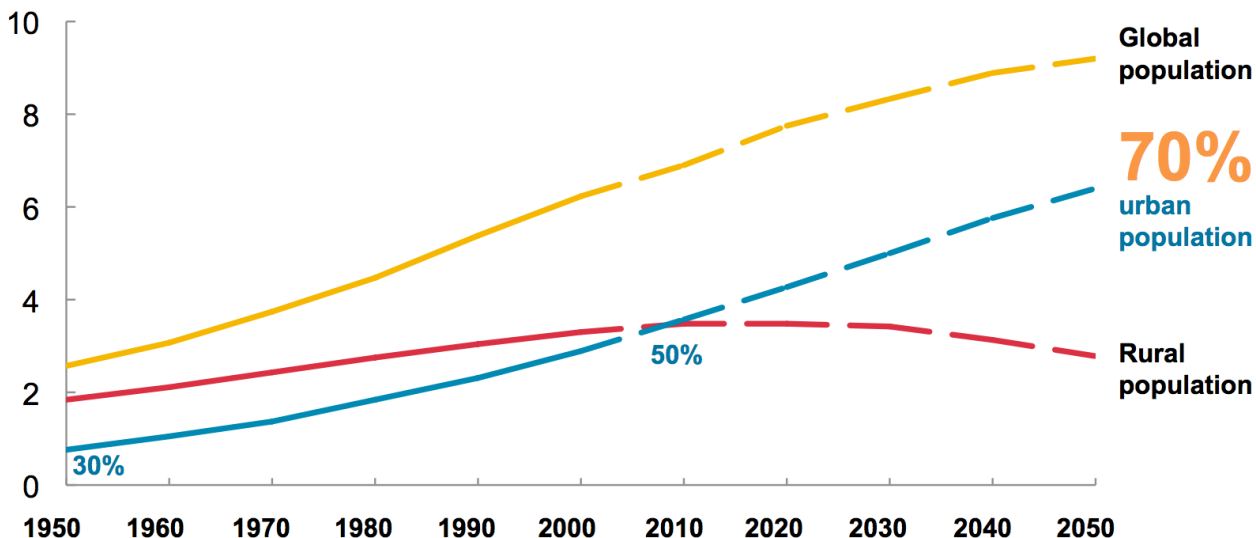
FUTURE TRAJECTORY OF THE PLANET?

global urban population

54% today → 70% in 2050

80% of global GDP In cities today

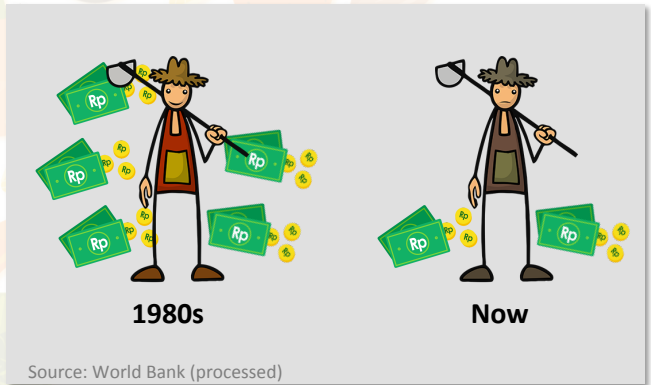
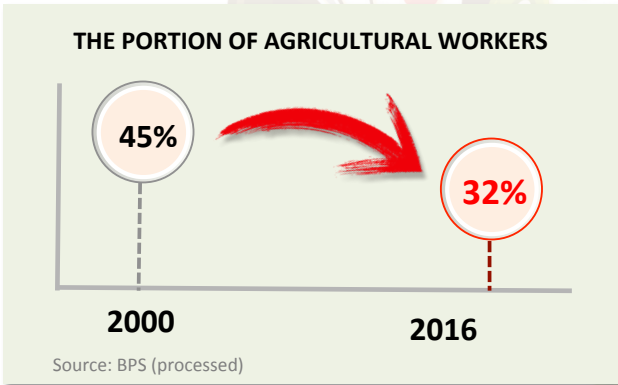
Billion People



Sources: (1) Population curves: LSE Cities and Oxford Economics based on United Nations World Urbanization Prospects, 2007 Revision and Oxford Economics City 750 database. See Floater, G., Rode, P., Robert, A., Kennedy, C., Hoornweg, D., Slavcheva, R. and Godfrey, N., 2014 (forthcoming). Cities and the New Climate Economy: the transformative role of global urban growth. New Climate Economy contributing paper. LSE Cities, London School of Economics and Political Science. (2) GDP split estimate from Grubler et al 2007 cited in GEA 2012.



Food, Agriculture, Policy and Business Process: WHERE IS THE MONEY



Thank you

Yanuar Nugroho

Deputy Chief of Staff for Analysis and Oversight of Strategic Issues on Social, Cultural, and Ecological Affairs,
Executive Office of the President, Republic of Indonesia

yanuar.nugroho@ksp.go.id; @yanuarnugroho

© Jakarta, 6 November 2017

Small Farmers in International Economic Diplomacy

Bayu Krisnamurthi

Chair, Founder of ISA Initiative

Associate Professor at Department of Agribusiness, Bogor Agricultural University

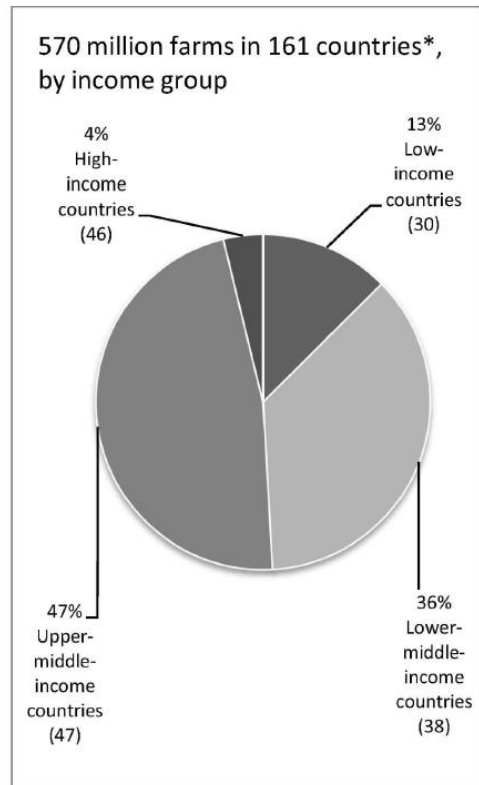
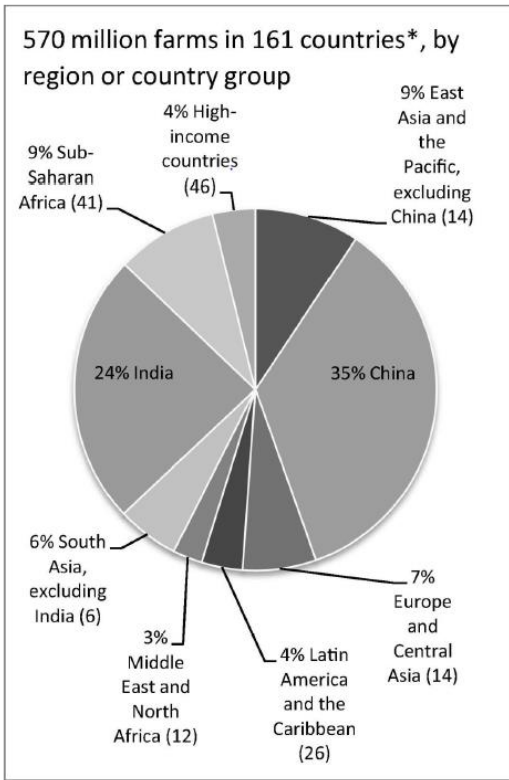
Former Vice Minister of Trade, Republic of Indonesia

Agriculture and WTO

Dispute Settlement Processes in WTO:

- 225 cases related with agriculture or agriculture product
- 27% of total cases in DSB
- 114 countries involve, 69% of WTO member (164 countries)

Value of food and agriculture in world trade: 18%



INDONESIA (2011-2016): commodity with international trade issues

	% export/ production	% import/ consumption	% small farmers production/ total production
Rice	0,01	0,01	100%
Soybean	0	48%	100%
Corn	0,03	29%	95%
Sugar	0	52%	41%
Palm Oil	71%	7%	45%
Rubber	87%	5%	82%

Agriculture (Trade):

- **Economical**
- **Socio-cultural**
- **Political**

Countries with:

- **High/low
small-farmers
share in
production/
employment/
population**
- **High/low
income**

Agricultural Trade Issues: “more than just right or wrong”

1. Trade is source of growth and wealth for farmers

2. Technicality issues

3. Trade-unfairness issues:

- Size and scale, technology
- Subsidy and trade support
- Discriminatory issues

4. New protectionism:

- Food safety issues
- Green protectionism
- Human right protectionism
- “My country first”, “export yes-import no”

Agricultural international economic diplomacy is NOT only about trade:

- **International investment in agriculture:**
 - land-grabbing (?), global-food-security
 - “trade follow investment” policy
- **International cooperation: G-to-G, Pr-to-Pr, Pr-to-Peop, Peop-to-Peop**
- **Technological issues: GMO, IPR, standard-measurement-SOP-certification**
- **Agriculture and other activities: tourism (food & restaurant), health (ex: zoonosis, AMR), etc**

Food for thought:

- **International and DOMESTIC synchronization: its political**
- **Complexity of regulation: WTO, countries**
- **E-global-market-place**
- **“Internet of everything” and internet diplomacy**
- **Diplomacy for the “Millennium Generation”**
- **Farmers direct involvement in diplomacy: “Farmers Ambassadors”**

THANK YOU



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

International Workshop
“Improving Small-Scale Farmers’ Welfare”
Fairmont Hotel, Jakarta 6-7 November 2017

**UNIDROIT’s contribution
to the harmonisation of laws
and its work related to agriculture**

Professor Anna Veneziano
Secretary General a.i., UNIDROIT



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Basic Facts about UNIDROIT

- **Independent Intergovernmental Organisation**
- **Set up in 1926 as an auxiliary organ of the League of Nation**
- **Re-established in 1940 on the basis of a multilateral treaty**
- **Currently 63 member States**
 - **Africa and Middle East** 9
 - **Americas** 13
 - **Asia & Pacific** 7
 - **Europe** 34

UNIDROIT



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Egypt, Nigeria, South Africa and Tunisia

Africa

Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Cuba, Mexico, Nicaragua, Paraguay, the United States of America, Uruguay and Venezuela

The Americas

Australia, China, India, **Indonesia**, the Islamic Republic of Iran, Iraq, Japan, Pakistan, the Republic of Korea and Saudi Arabia

The Asia Pacific region

Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, the Holy See, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom

Europe



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

UNIDROIT Mandate

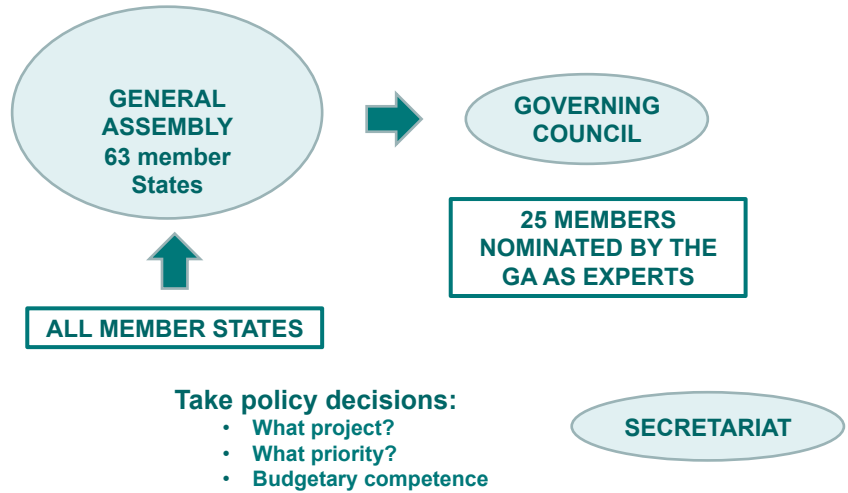
Statutory objective

“to examine ways of harmonising and coordinating the private law of States, and to prepare gradually for the adoption by the various States of uniform rules of private law.”

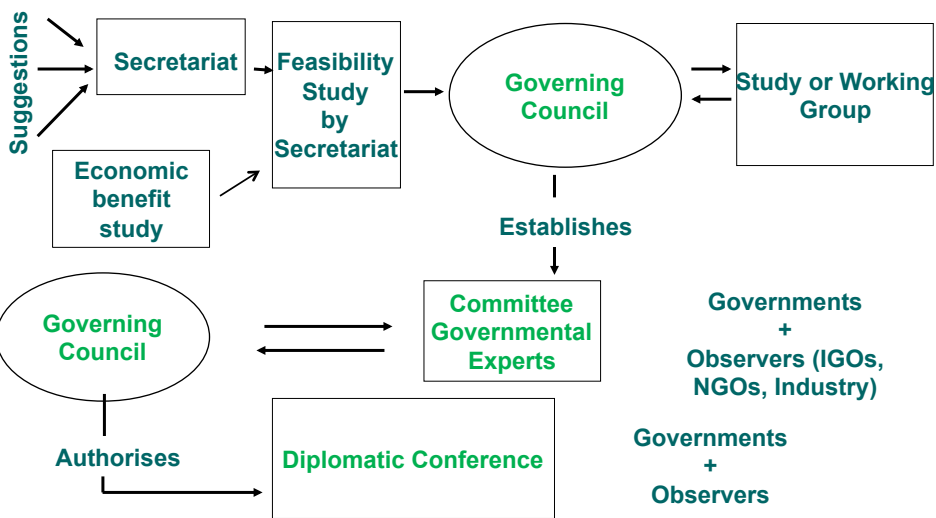
Today

development of modern standards for commercial law, and **where possible and necessary**, internationally harmonised solutions

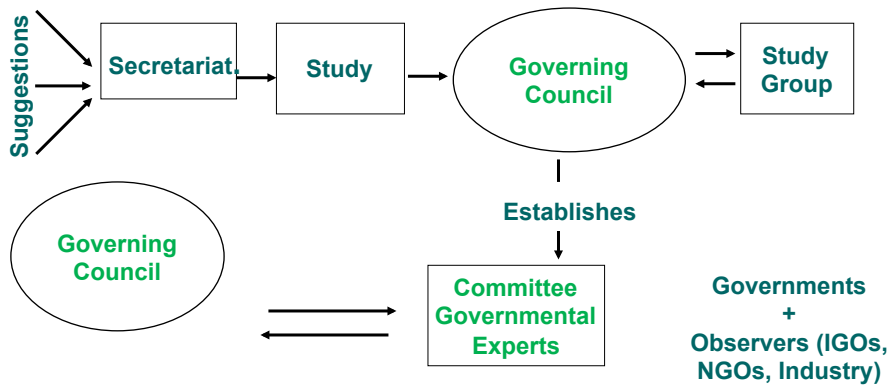
UNIDROIT: Governance



UNIDROIT Working Methods: Preparation of Conventions



UNIDROIT Working Methods: Preparation of soft law instruments



RECENT TRENDS IN HARMONISATION EFFORTS AND LESSONS LEARNED

Trend towards the development of **SOFT LAW** methods of harmonisation (legislative, contractual and legal guides, principles)

- Such instruments are easier to adopt than treaties and leave room for regional and national adaptations
- Importance of involvement of **stakeholders** from the start of a project to ensure its usefulness and economic and social value of the legal regime
- Importance of involvement of beneficiaries and stakeholders in the **implementation** of an instrument
- importance of **cooperation** with other international organisations (IGO's and NGO's)



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

UNIDROIT's main achievements (1)

In the course of its long history, UNIDROIT has developed approximately 30 instruments on a variety of international private law and commercial law fields

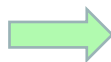
A) Conventions prepared by UNIDROIT and adopted by other governmental Organisations:

- UN Convention on the international sale of goods (CISG)
- UN Convention on the Contract for the International Carriage of Goods by Road (CMR)

B) Conventions and other instruments adopted by UNIDROIT

UNIDROIT's main achievements (2)

INTERNATIONAL
COMMERCIAL
CONTRACTS

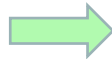


**UNIDROIT Principles of
International Commercial
Contracts
(1994; 2004; 2010; 2016)**

- Soft law rules to be used by parties to draft their contract or as applicable law
- Have been also used by arbitrators and judges in solving international contract disputes
- Based on extensive comparative law studies carried out over many decades by eminent experts in this field
- Translated in all major world languages
- Cover the most important areas of contract law and the law of obligations
- Contain solutions generally accepted by various legal systems and/or most suited to the special needs of international trade

UNIDROIT's main achievements (2)

INTERNATIONAL FINANCIAL DEVICES



- **UNIDROIT Convention on International Financial Leasing (Ottawa, 1988)**
- **UNIDROIT Model Law on Leasing (2008)**
- **UNIDROIT Convention on International Factoring (Ottawa, 1988)**
- **CAPE TOWN Convention on International Interests in Mobile Equipment (2001), with Aircraft (2001) Rail (2007) and Space (2012) Protocols**
- **Draft Protocol on Mining, Agricultural and Construction Equipment (MAC Protocol)**

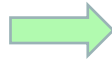
UNIDROIT's main achievements (3)

CAPITAL MARKETS PRIVATE LAW REGULATION



- **GENEVA Convention on Substantive Rules for Intermediated Securities (2009)**
- **UNIDROIT Principles on the Netting of Financial Instruments (2013)**
- **UNIDROIT Legal Guide on Intermediated Securities (2017)**

INTERNATIONAL PROTECTION OF CULTURAL PROPERTY



- **UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)**
- **UNESCO-UNIDROIT Model Legislative Provisions on State ownership of undiscovered cultural objects (2011)**

TRANSNATIONAL CIVIL PROCEDURE



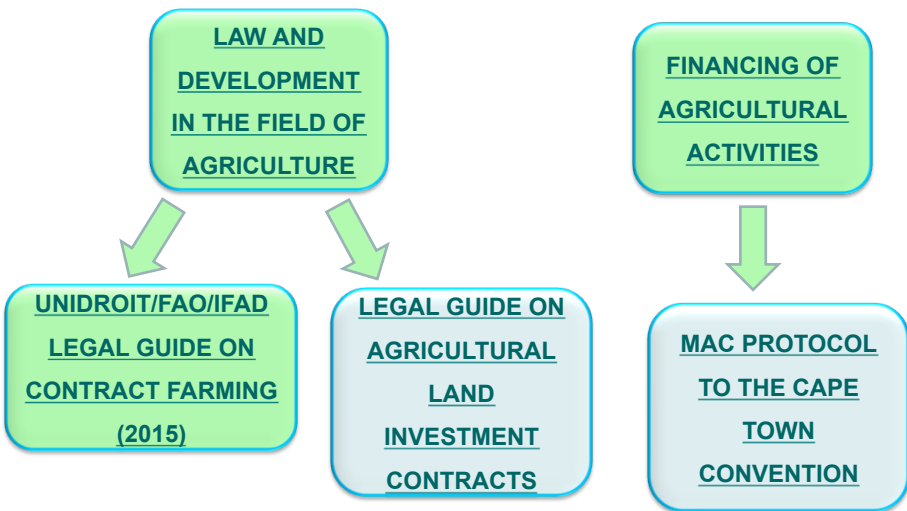
- **ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)**
- **Draft ELI/UNIDROIT Rules on European Civil Procedure**



UNIDROIT's work in the field of agriculture

- Idea for UNIDROIT to work in the area of agricultural development originated in 2009 with a memorandum presented to the Governing Council on “Private Law and Economic and Social Development”
- An important step was the Colloquium in Rome in 2011 on “Promoting Investment in Agricultural Production: Private Law Aspects”, where the synergy with the multilateral organisations working for agricultural development was explored (FAO; IFAD)
- possible future work:
 - Title to land
 - Legal structure of agricultural enterprises
 - Contract farming
 - Financing of agriculture
- Highlighting the **KEY ROLE OF CONTRACTS** in agriculture to create a balanced investment relationship , but also
- Underlying the importance of the **REGULATORY FRAMEWORK**

UNIDROIT's work in the field of agriculture



Facilitating Financing in Agriculture: the MAC Protocol to the Cape Town Convention

BASICS OF THE CAPE TOWN CONVENTION TREATY SYSTEM:

- Starting point: growing global need for financing (including private capital) in the construction, acquisition and use of high value mobile equipment
- Solution: uniform legal regime created to facilitate asset-based financing and leasing of certain types of high value equipment
- It offers creditors and debtors the option to create and register internationally an autonomous “international interest” enforceable in contracting States
- this results in the removal of legal obstacles to cross-border use and enforcement of asset-based financing devices, but also
- it generally improves predictability and lowers the cost of credit

MORE CERTAINTY: LESS RISKS, LOWER COSTS

Facilitating Financing in Agriculture: the MAC Protocol to the Cape Town Convention

TWO-TIER SYTEM:

MAIN CONVENTION AND SECTOR SPECIFIC PROTOCOLS

- MAIN CONVENTION (2001): general legal regime applicable to all sectors
- AIRCRAFT PROTOCOL (2001), entered into force 2006: airframes, aircraft engines, helicopters
- RAIL PROTOCOL 2007): railway rolling stock
- SPACE PROTOCOL (2012): satellites and their components
- *Draft “MAC” Protocol on Mining, Agricultural and Construction Equipment (2014-date)* → SAME REGIME APPLIED TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT



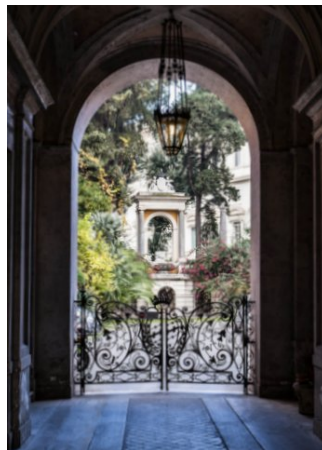
INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

AGRICULTURAL LAND INVESTMENT CONTRACTS

- Growing international awareness on the need to provide guidance for responsible governance of tenure of land, with a view to improving food security and equitable access to land
- Project in cooperation with FAO and other organisations
- Focus is on **investment contracts in agriculture involving land**: e.g. investor leases land for investment purposes or enables acquisition
- The legal guidance would assist in evaluating the applicable private legal framework, the identification of gaps in that framework and the understanding of customary systems and rules
- Consistent with general principles such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles)



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE



Thank you for your attention!
For more information please visit:
www.unidroit.info

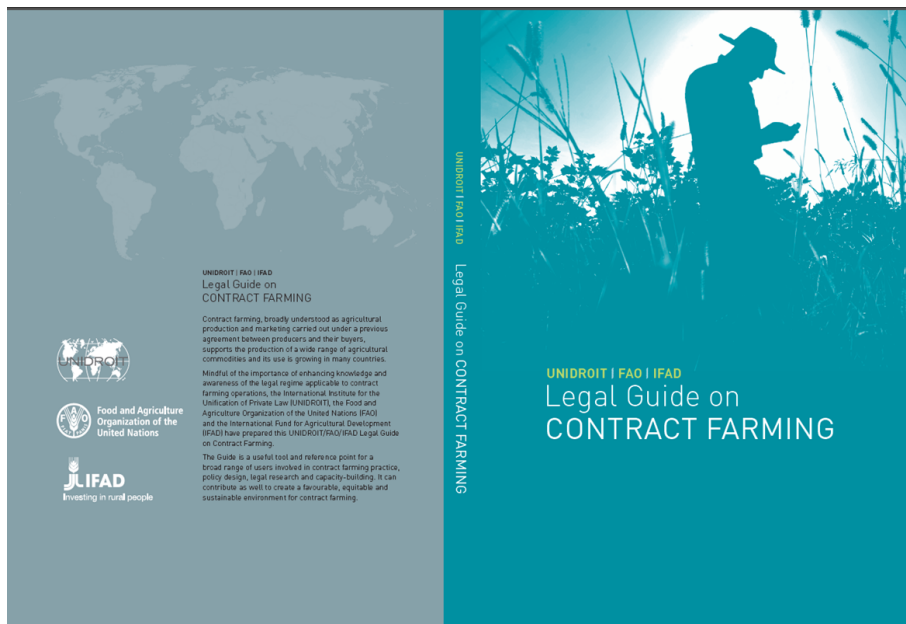


INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**International Workshop
“Improving Small-Scale Farmers’ Welfare”
Fairmont Hotel, Jakarta 6-7 November 2017**

The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming

**Frederique Mestre
Senior Legal Officer UNIDROIT**



A Collaborative Preparation Process



- Based on the partners' mandate
- The Working Group: legal expertise and practical knowledge
- including farmers and agribusiness representatives
- Four sessions 2013-2014 and consultations with stakeholders in Africa, Asia, South America and Europe –

Bangkok – 26 September 2014 [Report on UNIDROIT website](#)

28 July 2015 : release on paper and electronic form

Contents

- 1 - The contract farming model – Potential benefits and risks for small-scale farmers**
- 2 - Government's role in Contract Farming: Maximizing Benefits and Minimizing Risks - Developing enhancing policies and a favorable legal framework**
- 3 - The regulation of the contract : a legal guidance to promote good practices for successful operations: The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming**

1 - The Contract Farming Model – Potential Benefits and Risks for Small-scale Farmers

Global Policy Objectives for Agricultural Production and the Role of Small Farms

- **Food security objectives** : a growing population with changing consumption patterns require greater amounts of food production, higher yields, subject to ever higher quality and safety standards
- **Small farms:** agriculture remains the major livelihood for large numbers of poor farmers and rural families

smallholder agriculture is the main source of the food consumed in many developing countries

The Transformation of Agriculture and the Inclusion of Small-Scale Farmers

In an age of market liberalization, globalization and expanding agribusiness, [...] small-scale farmers [...] could become marginalized as larger farms become increasingly necessary for a profitable operation.

[...] This is largely because the necessary backward and forward market linkages are rarely in place, i.e. rural farmers and small-scale entrepreneurs lack both reliable and cost-efficient inputs such as extension advice, mechanization services, seeds, fertilizers and credit, and guaranteed and profitable markets for their output.”

(Eaton & Shepherd, Contract Farming Partnerships for Growth, FAO, Rome, 2001)

Connecting Producers to the Market : Business Models for Agricultural Value Chains

Full vertical integration: *one actor owns and controls the chain from production to marketing*

- farmer-owned businesses, cooperatives
- large-scale agribusiness companies with land concession directly producing and processing

Horizontal integration: *independent actors cooperate on the basis of alliances*

- joint ventures: co-ownership of a business venture by two independent market actors, such as an agribusiness and a farmers' organisation.

Contract farming: an intermediate form of coordination

Based on an agreement prior to production:

The **buyer** agrees with the farmer on the **commodity** which he undertakes to acquire - its **quantity, quality attributes, place and time of delivery, often the production methods**

For a **price (or price formula) set in advance** (which takes the provided inputs and services into account)

The buyer generally **provides support for the production:** inputs, credit, technical assistance, monitors production etc.

Establishing more or less *integrated relationships*

Central parties are:

the buyer : - a commercial buyer: agribusiness: processor, distributor (supermarkets), exporter
- non commercial buyer: public entity, religious institution

the farmer: - individual/family farmer
- and/or a farmer organization (cooperative)
with different levels of education, skills, social context (including indigenous communities)

Other parties may be directly or indirectly involved, public entity, NGO, credit institution, certification agency

Large variety of practices

depending on the specific geographical, agronomic, economic and social context, in particular:

- The **commodity**
- The **competitive position** of farmers and buyers on the particular area
- The implemented **model**: in particular
 - *centralized*: one contractor buying from a large number of small producers – including sometimes a nucleus estate dealing with plasma farmers
 - *multipartite*: involving other partners
 - more or less *formalised*, involving an intermediary etc ...

Buyers' Key Potential Advantages

- guaranteed access and regularity of supply of the commodity
- conformity to product quality and safety standards and traceability control
- facilitated access to land
- reduced input and labour costs per unit

But also Risks

- business risks, viability of the investment
- High transaction costs, increase when dealing with small farmers
- farmers' compliance with quality requirement, proper use of inputs, delivery of the agreed commodity (side-selling), proper repayment of inputs

Key Potential Advantages for Farmers

- a secured output market and stabilized income
- facilitated access to
 - inputs
 - technology
 - enhanced production methods
 - services
 - credit and financing
- mitigated production risks
- empowerment with agronomical skills
- no interference with land right issues

Contract Farming : a value chain finance mechanism

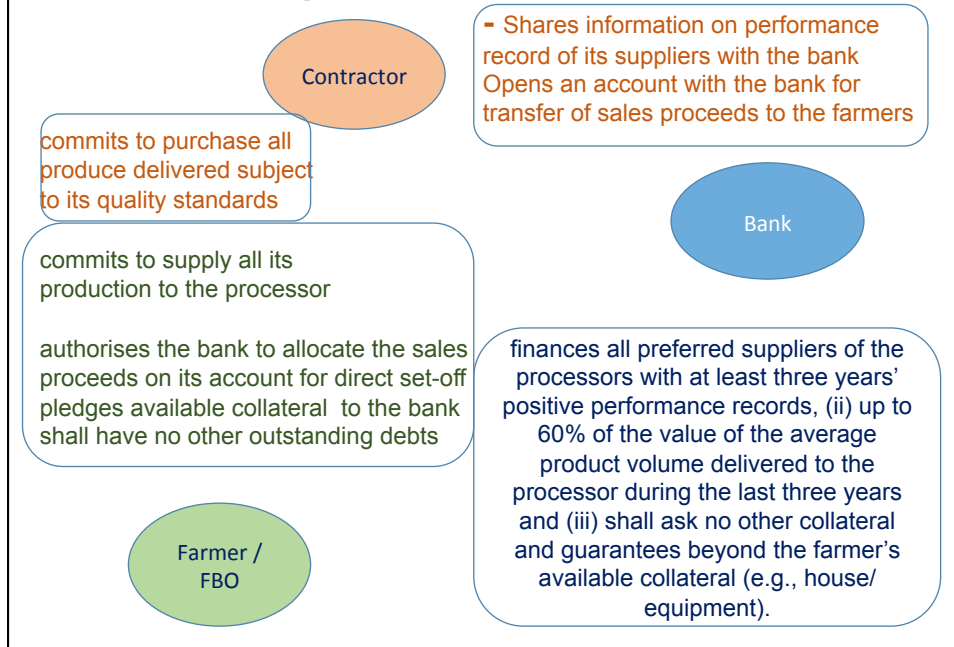
«The exchange of goods for payment along the value chain creates opportunities for extending credit and other financial services to otherwise “unbankable” populations.

[...] loans often take the form of direct advances by an agribusiness firm providing seeds and fertiliser as in-kind credit to smallholder farmers and/or FBOs. Loans are typically repaid by deducting subsequent payment to farmers upon product.

In an alternate arrangement, a third-party financial institution provides credit secured against either warehouse receipts or assignment of payment for future product deliverables.”

USAID (2005). In Access to Credit and Equipment Finance - Gerard J.J.M. van Empel Managing Director, RIAS B.V. and Director, Rabo Development BV (the Netherlands). In UNIDROIT Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects”, held in Rome (Italy), 8-10 November 2011.

Contract Farming : a value chain finance mechanism



BUT Potential Risks for Farmers ... include

- asymmetrical relationship in economic power, in access to information, regarding the exposure to risks if the production fails, in bargaining power etc.
- small farmers in disadvantage against commercially oriented farmers
- inability to provide collateral (or increased related risks) and potentially high dependency on the buyer regarding access to inputs, credit etc. and risks of growing indebtedness.
- risks of unfair conditions and fraudulent practices by buyer, with difficult or unavailable redress mechanisms
- shift to monoculture entails risks regarding access to subsistence crops, loss of biodiversity, environmental threats

Key Potential Global Economic and Social Advantages

- Food security objectives: early planning and better alignment between production and demand
 - enhance the stabilization of markets and limits price volatility
 - contribute to higher quality of produce
- Economic development: private sector's participation brings in large investment capacity, advanced technology, and facilitated access to export markets
- Empowerment of farmers, and supports transition from a subsistence production to a commercial/ market oriented production
- Economic and social development of rural areas

Key objectives for sustainable relationships

- Parties should aim at building sustainable and stable relationships on the long term, based on mutual compliance and trust
- To support sustainable relationships, Imbalances and asymmetry in economic and bargaining power may require corrective actions on the policy and regulatory sides
- Every situation is country and context specific

Sharing practical experiences

- **Indonesia:** [Barry Callebaut](#) – and the Sustainable Cocoa Production Program (SCPP)

Barry Callebaut works with farmer cooperatives - certification agencies and 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

Mr Michael Schlup (Partnerships Coordinator Cocoa Sustainability, Barry Callebaut & General Manager, Cocoa Horizons Foundation) in Creating A Favourable Legal Environment For Contract Farming - The UNIDROIT/FAO/IFAD legal guide on contract farming - Conference in ROME, 27 April 2016 - [Report](#)

Sharing practical experiences

- **Cambodia:** **Support to the Commercialization of Cambodian Rice Project (SCCRP)** - a project of the Supreme National Economic Council (SNEC) with an AFD Grant

[Development of an economically viable organic rice supply chain via a Contract Farming scheme in Preah Vihear province, Cambodia](#)

SCCRP - in partnership with the **Cambodian Organic Agriculture Association (COAA)** – farmer cooperatives supported by **AFD** (setting of internal control system to comply with standards) - **AMRU Rice (Cambodia) Co. Ltd** as buyer bearing certification costs (EOS/ EU and USA/NOP standards) by external evaluator (ECOCERT)

Sharing practical experiences

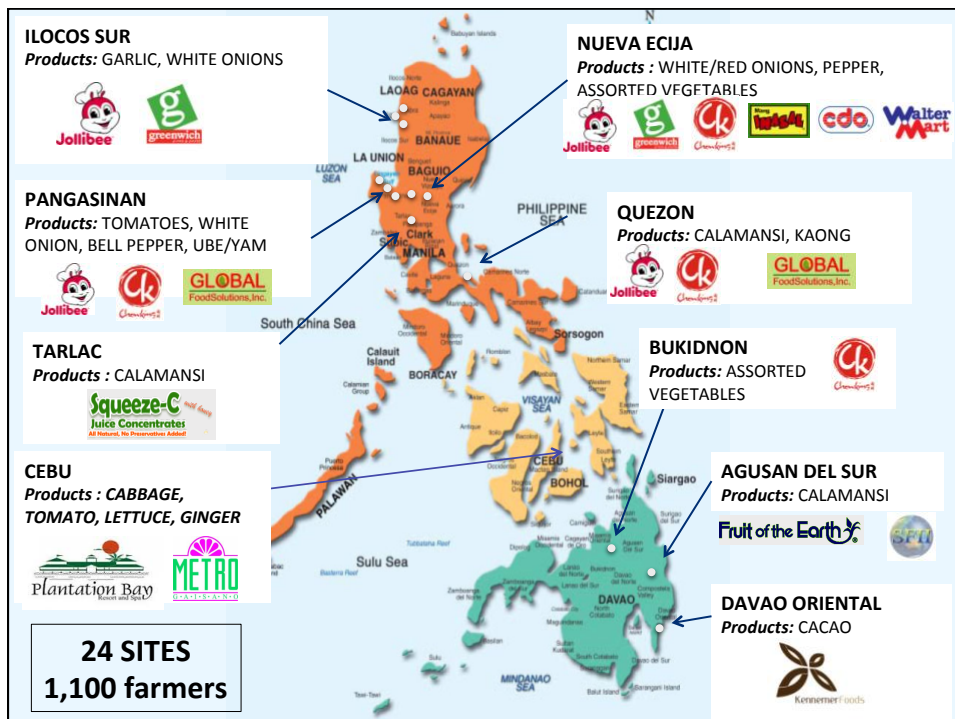
- **Philippines** : Creating Farmer Entrepreneurs: NLDC's Experience in Community-based Enterprise Development

National Livelihood Development Corporation . Government-owned Corporation that provides wholesale microcredit through Microfinance Institutions (MFIs); Provides capacity building interventions to its partner conduits and target end-borrowers;

Jollibee Group foundation: Corporate Social Arm of the Jollibee Group Corporation, the biggest local food chain company in the Philippines;

Catholic Relief Services - official international humanitarian agency of the Catholic community in the USA; Provides technical assistance

Jude A. Andrada - Head, Accounts Management and Development Group, National Livelihood Development Corporation (NLDC), Philippines in "International Workshop on "The Legal Dimension of Contract Farming - Promoting Good Contract Practices between Producers and Buyers in Contract Farming Operations in the Asian Context (Bangkok, 26 September 2014)" - [Report](#)



2 - Government's Role in Contract Farming:

Maximizing Benefits and Minimizing Risks

Developing enhancing policies and a favorable legal framework

Developing a Strategy to Support Contract Farming for Small-scale Farmers

Defining the policy objectives:

- - strengthening farmers to produce increased quantity and quality of food
- - supporting small farmers' conversion to commercial farming
- - relying on the private sector to provide access to market, improved inputs, technology, credit

Government as the Regulator of the Public Economic, Social, Technical Environment

Reviewing the public regulatory framework regarding food trade and agriculture, technical standards for inputs, competition and antitrust law, Human rights and labour law, access to natural resources etc.

Implementing supportive policies

- **Granting (tax or other) advantages to investors who integrate small-scale farmers:**
 - applying conditionalities on business licence
 - requiring financial guarantees
- **empowering farmers**, in particular by
 - improving access to inputs
 - improving access to credit and related services: credit guarantees, insurance etc.
 - providing market information
 - providing agronomic extension

Implementing supportive policies (cont.d)

- **strengthening producer organisations**
to support farmers with extension and other services, legal advice and support in negotiation and dispute resolution
- **enhancing fair relationships**
setting modalities for agribusinesses and farmer representatives to coordinate and develop rules for contracts (for ex. through model agreements), and dispute resolution mechanisms

Government's involvement in contract farming operations

acting as the buyer – through public boards or public institutions – for ex- schools

Engaging in Public-Private Partnerships

In multipartite arrangements: with private investors, farmer organizations - acting as a facilitator, co-financier, guarantor etc.

Ex: Partnership for Indonesia's Sustainable Agriculture (PISAgro) (2012) focusing on 11 crops and commodities.

Government as the regulator of contract farming relationships

- the contract between the parties is the cornerstone of the relationship "law of the parties"

Depending on each country, the contract is subject to a variety of different legal rules :

- **the general legal framework:** contract law rules, and other applicable legal sources including customary law and usages
- **dedicated rules**

Government as the regulator of contract farming relationships

dedicated rules:

- **a general contract farming act/regulation**
Ex: Cambodia - Sub-Decree No 36 on Contract Farming - 2011

- **within commodity-specific regulations**
 - Brazil: social fuel seal for soybean production, 2009
 - Zimbabwe: Grain, Oilseed and Oilseed Products - Regulations, 2013

Government as the regulator of contract farming relationships

- **in economic and social development programs:**
 - **Indonesia:** around plantations businesses above 250ha – Regulation MoA n. 98/2013 - including a standard partnership contract (Annex II)
 - **Philippines:** in agrarian reform areas - DAR Administrative Order (A.O.) 09, Series of 2006
 - **Vietnam:** for the establishment of large-field production zones - Decision 62/2013 and Circular 15/2014

The elements of dedicated rules for contract farming vary:

- **Increasing transparency and legal certainty in contract through formal requirements**
 - compulsory writing form for contracts
 - compulsory minimum contract content, including for parties to organise dispute settlement mechanisms –

- **Controlling fairness and other objectives through substantive requirements**
 - setting specific obligations or contract content
 - setting special dispute settlement mechanisms

Possible Government's role as the enforcer of dedicated rules for contract farming relationships

- **Establishing authorities, procedures (and related financial resources) to**
 - provide advice and legal support to farmers
 - screen and/or review contracts
 - register contracts
 - settle disputes

- **Developing implementation rules**
 - to monitor and oversee contract implementation
 - sanction violations

In summary:

Fairness issues – including legal security - and risk allocation in contract farming relationships depend upon:

- 1 – the drafting of the particular contract*
- 2 – with regard to the applicable rules of the legal framework*
- 3 – subject to an effective enforcement of the contract AND of the applicable rules*

3 - A Legal Guidance to Promote Good Practices for Successful Operations:

**The UNIDROIT/FAO/IFAD Legal Guide
on Contract Farming**



..... ***In summary:***

Fairness issues – including legal security - and risk allocation in contract farming relationships depend upon:

- 1 – the drafting of the particular contract***
- 2 – with regard to the applicable rules of the legal framework***
- 3 – subject to an effective enforcement of the contract AND of the applicable rules***

A legal empowerment tool with a practical and legal approach

- a soft guidance instrument relying on voluntary implementation, with a discussion of contract clauses in practice and solutions provided by the applicable law
- a general approach, to be adapted to domestic legal, economic and social environments
- Promotes good practices based on principles of fair and loyal dealings, transparency and cooperation between parties, effective and proportionate remedies, easy and fair settlement of problems arising during performance and in final dispute resolution, strengthening enforcement mechanisms through good contract drafting

A legal empowerment tool with a practical and legal approach (cont.d)

- good practices reflect respect for the rule of law
- build upon approaches in largely accepted international instruments for international transactions – the United Nations Convention for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts
- With due regard to all specific circumstances
- in line with global policy instruments such as the Principles for Responsible Investments in Agriculture and Food Systems (CFS-RAI Principles) – Oct. 2014

Using and Implementing the Legal Guide

- **for parties** – producers and contractors
- **other stakeholders** – including extension agents and facilitators, development agencies
- **judges and mediators** and other legal actors

to build more predictable, stable and balanced relationships through fair and enforceable contracts

based on good practices and the understanding of the interplay between contract terms and the applicable legal regime

Using and Implementing the Legal Guide

- for **governments and regulators** in the assessment and formulation of public governance instruments, through a review of the applicable rules and an evaluation of their operation and enforcement

relying on the legal experts within relevant Government departments, the academy, the legal practitioners representing farmers and the private sector

Content of the Legal Guide – 1

- A general introduction to contract farming
- the legal framework: - the private law regime
 - the regulatory environment
- Parties - Formation and form of the contract
- Obligations of the parties: - risk allocation
 - product quantity and quality - production process
 - delivery - price and payment - other obligations

Content of the Legal Guide – 2

- Excuses for non-performance: *Force majeure*, change of circumstances
- Remedies for breach: - overview of remedies
 - contractor's remedies for producer's breach
 - producer's remedies for contractor's breach
- Duration of the contract, renewal and termination
- Dispute resolution: - mediation - arbitration
 - judicial dispute resolution - enforcement

An illustration of the approach of the Legal Guide:

A focus on :

- Negotiating and entering into a contract farming agreement (Chap. 2)
- Price determination (Chap. 3)
- When default in performance may be excused ? (Chap. 4)
- Addressing contract breaches (Chap. 5)

Negotiating and entering into a contract farming agreement (Chap. 2)

- Key legal conditions for a contract to be enforceable: an offer and a valid consent. Parties must have legal capacity.
- Contractors are the initiators and leaders in the relationship. They often deal on the basis of standard contracts.
- Preliminary exchanges are very important for farmers to fully understand all the terms and implications of the proposed agreement. Good practices require the contractor to make an offer in writing.

Negotiating and entering into a contract farming agreement (Chap. 2) (cont.d)

- A lack of informed consent, or acceptance reached through fraud, mistake or duress may render the contract invalid.
- it is important for the contract to be in writing with clear terms, dealing with all key aspects fo the relationship.
- Contractors often deal on the basis of standard contracts
- Third party facilitators have an important role to ensure a fair and transparent formation process, and balanced terms

Price determination (Chap. 3)

- The price – or price mechanism – is set when the contract is entered into, and is a central element in the sustainability of the relationship.
- The issues discussed in the Legal Guide include: whether the parties may freely agree on the price ? At what time ? Is it an essential term of the contract ?
- Situations where price terms may be invalidated under the applicable law: Duress and gross disparity of bargaining power, abusive practices under competition law

Price determination (Chap. 3) (cont.d)

- Mechanisms for price determination, illustrating advantages and risks – fixed prices (a set amount or based on an indicator, for ex. market price). flexible prices with scales according to quality, performance or yield – bonus and penalties
- Good practices are emphasized and include transparency regarding price mechanisms, cooperation, mutual profitability, considering mechanisms for price adjustment for long term contracts

When default in performance may be excused ? (Chap. 4)

- Certain events or circumstances may happen that make performance impossible – known as *force majeure*.
- The rules of the applicable law on force majeure (e.g. in the civil code or in a special regulation, or in leading case law) will apply when the contract is silent. The parties should be aware of their existence and how they operate.
- For the sake of clarity a contract should contain a force majeure clause. A well drafted force majeure clause should serve to mitigate the risks for the weaker party, and this in turn will benefit the sustainability of the relationship.
- If the clause, however, is unfair or inadvertently badly drafted, it may lead to harsh consequences or even serve as a hidden exclusion or limitation of liability.

When may default in performance be excused ? (Chap. 4) (cont.d 1)

- The Legal Guide analyses the basic elements parties should consider :
- The types of event to be considered in the clause - and how the risks are allocated –
 - particularly important when legislation is not regulating this issue !
- Depending on the contract terms, the implications may affect both parties:
 - e.g. a flood making the delivery by the producer impossible, with loss of the inputs provided in advance by the contractor.
- Considering also the existence of other risk mitigation mechanisms : insurance, state guarantee funds etc.

When default in performance may be excused ? (cont.d. 2)

- Consequences on the parties' performance and on their liability:
 - full exemption?
 - possible compensation by the other party ?
- How to make the clause operational: providing evidence - giving notice
- What are the consequences on the obligation and on the contract: suspension, termination, renegotiation ?
- The Guide discusses a number of options. It emphasises good practices based on the principles of transparency, fair allocation of risks, cooperation between the parties to mitigate damage, and protection of the relationship

Addressing contract breaches (Chap. 5)

- Breaches may occur on a variety of occasions – related to the various contract obligations, either caused by the contractor or by the producer
- Every legal system provide for a range of remedies, depending on the type of breach. Parties are generally entitled to choose and organise the remedies.
- The Guide describes the categories of remedies: remedies in kind (right to performance, repair, replacement and corrective actions); price reduction and monetary compensation; termination
- The Guide illustrates good practices for parties to deal with breaches. How to prevent them ? what remedies may be chosen ? What consequences on the relationship ?

Addressing contract breaches (Chap. 5) (Cont.d)

- **Good practices** are illustrated with a focus on using remedies as a correction rather than as a penalty or deterrent
- encouraging timely intervention to limit the damage
- privileging cooperative remedies (withholding performance, curing the defect, mitigating the damage), depending on the commodity (for ex. Perishable product), to preserve the purpose of the contract (for ex. Product quality, certification) and the relationship
- proportionality between remedy and breach

With attention being paid to the applicable law:

- For ex: termination of contract may be enforced without an order of a court only if expressly provided for in the contract

Key concepts promoted by the Legal Guide

- Improving fairness in contracting **Good practices** are illustrated with a focus on using remedies as a correction rather than as a penalty or deterrent
- encouraging timely intervention to limit the damage
- privileging cooperative remedies (withholding performance, curing the defect, mitigating the damage), depending on the commodity (for ex. Perishable product), to preserve the purpose of the contract (for ex. Product quality, certification) and the relationship
- proportionality between remedy and breach

With attention being paid to the applicable law:

- For ex: termination of contract may be enforced without an order of a court only if expressly provided for in the contract



Committed in promoting the Legal Guide and its implementation

- **UNIDROIT** Community of Practice on Legal Aspects of Contract Farming - <http://www.unidroit.org/community-of-practice/home>
- **FAO** Preparation of divulgation documents - Training and field support - Contract templates for agricultural commodities - Contract farming Resource Centre
<http://www.fao.org/ag/ags/contract-farming/index-cf/en>
- **IFAD** – Implementation in field programs

Thank you for your kind attention !



FAO's Role in Small-scale Farmers' Development

International Workshop on Improving Small-scale Farmers' Welfare

Jakarta, 6 November 2017

Mark Smulders
FAO Representative
in Indonesia and Timor-Leste



Food and Agriculture Organization
of the United Nations

FAO's Global Goals & Strategic Objectives

3 GLOBAL GOALS...

1. Eradicate hunger and malnutrition

2. Eliminate poverty through economics and social progress

3. Sustainable management of natural resources

5 STRATEGIC OBJECTIVES...



SO1

Help eradicate Hunger, Food insecurity and malnutrition



SO2

Make agriculture, Forestry and Fisheries more Productive and Sustainable



SO3

Reduce rural poverty



SO4

Enable inclusive and efficient food and agricultural systems



SO5

Increase the resilience of livelihoods to disasters



FAO's Role in Small-scale Farmers' Development

3 Questions (for today):

1. What is the small-scale farmers' perspective on key issues affecting their welfare?
2. What is the farmers' socio-economic reality?
3. What are small-scale farmers' opportunities?



Food and Agriculture Organization
of the United Nations

SOME FIGURES AT THE GLOBAL LEVEL

- More than **570 million** farms in the world, constituting more than **90 percent** of farms;
- Family farms occupy **50 up to 75 percent of farm land** (FAO, 2014a) and produce more than **80 percent of the world's food** in value terms (FAO, 2014a);
- These factors make family farming the predominant form of food production both in developed and developing countries;
- The vast majority of the world's farms are small or very small, and in many lower income countries farm size is becoming even smaller;
- Worldwide, **farms of less than 1 hectare** account for **72 percent of all farms** but control only **8 percent of all agricultural land** (FAO, 2014a).

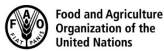
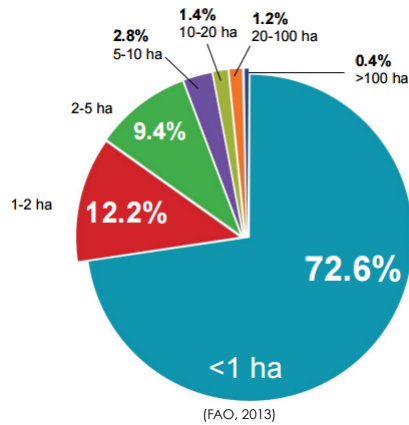


Food and Agriculture
Organization of the
United Nations

Partnerships and South-South Cooperation
Division (DPS)

THE VAST MAJORITY OF THE WORLD'S FARMS ARE SMALL OR VERY SMALL

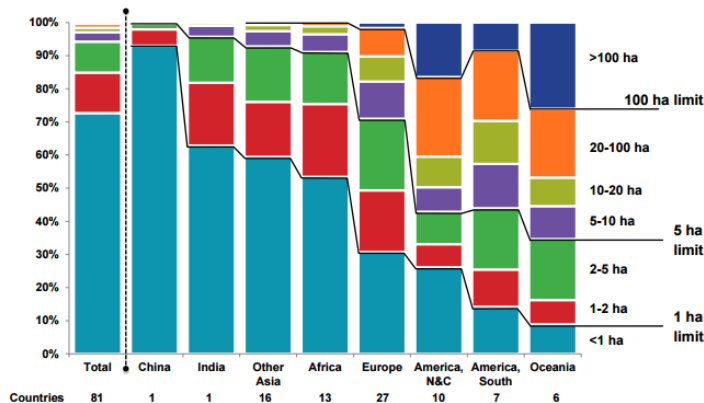
- Less than **1 ha**: **72%** of all farms - **8%** of all agricultural land
- Between **1 and 2 ha**: **12%** of all farms - **4%** of the land
- **2 to 5 ha**: **10%** of all farms – **7%** of the land.
- **More than 50 ha**: only **1%** of all farms – **65%** of the world's agricultural land.



Food and Agriculture
Organization of the
United Nations

Partnerships and South-South Cooperation
Division (DPS)

REGIONAL DIVERSITY OF HOLDING SIZE PATTERNS IN THE 81- COUNTRY SUBSET OF FAO-WCA

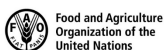


Food and Agriculture
Organization of the
United Nations

Partnerships and South-South Cooperation
Division (DPS)

FAMILY FARMING IN ASIA AND THE PACIFIC

- The region holds 60 percent of the world's population and **70 percent of the world's family farmers**;
- Family Farmers work the **85 percent of the total arable land**;
- They run 80 to 90 percent of aquaculture farms and producing 80 percent of the region's food;
- Women play a major role by contributing up to 85 percent of the work in family farms (FAO, 2015).

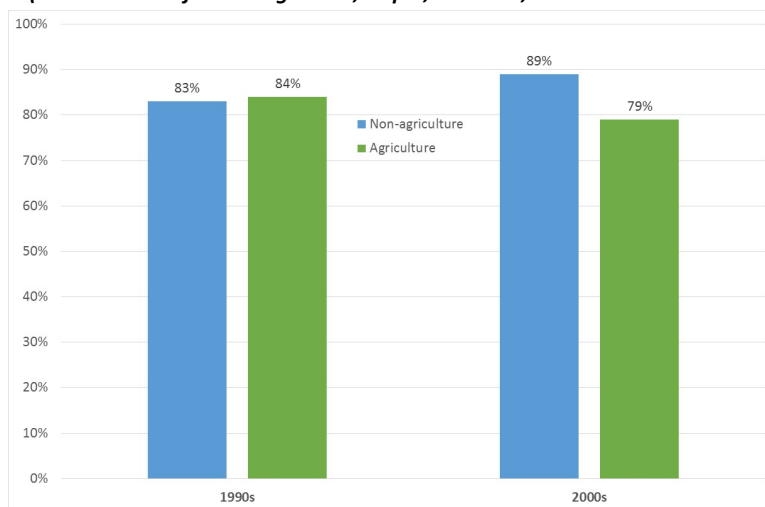


Food and Agriculture
Organization of the
United Nations

Partnerships and South-South Cooperation
Division (DPS)

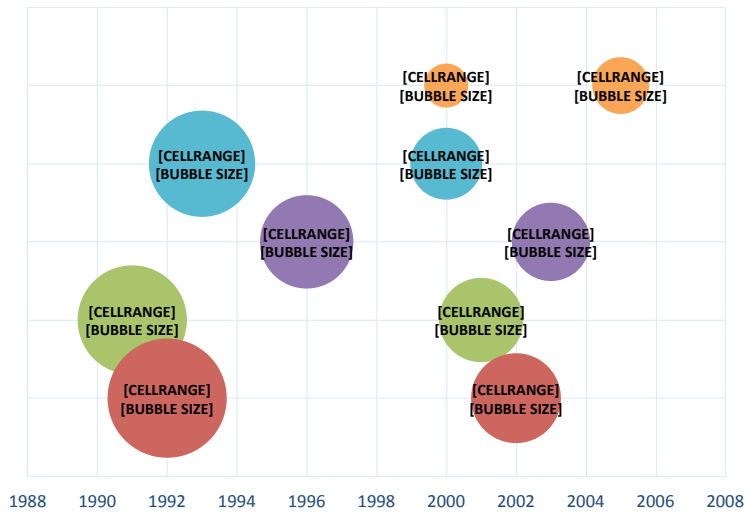
Rural non-farm income

*Percentage of rural households who earn income from agriculture and non-agriculture
(based on data from Bangladesh, Nepal, Pakistan, Indonesia and Viet Nam)*



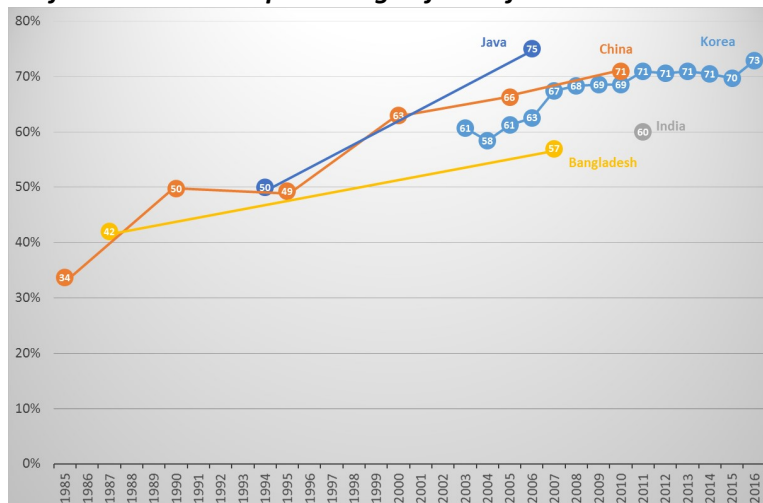
Rural non-farm income

Percentage of rural households specialized in farming



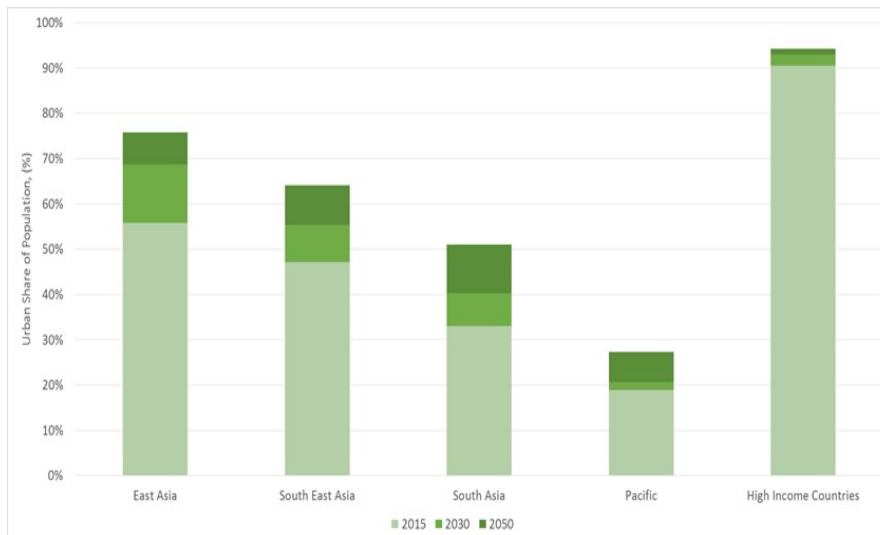
Rural non-farm income

Non-farm income as a percentage of total farm household income



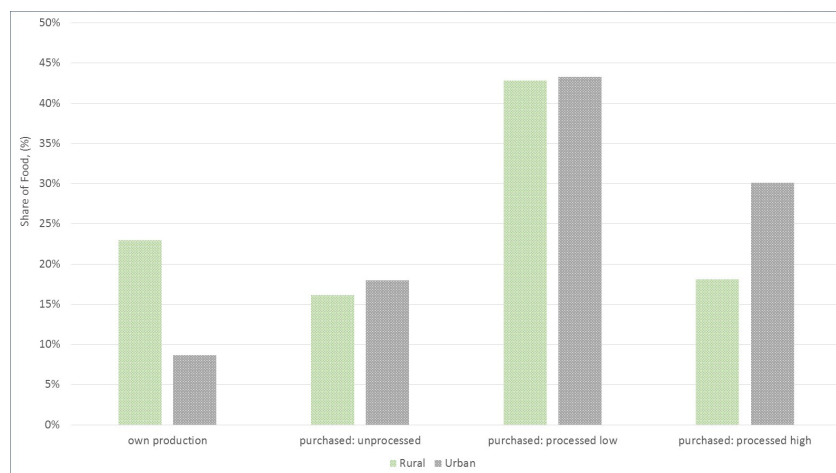
Sources: Government of Korea (2017), Huang et al (2012), Lele (2016), ...

Urbanization



Urban and rural food environments are different

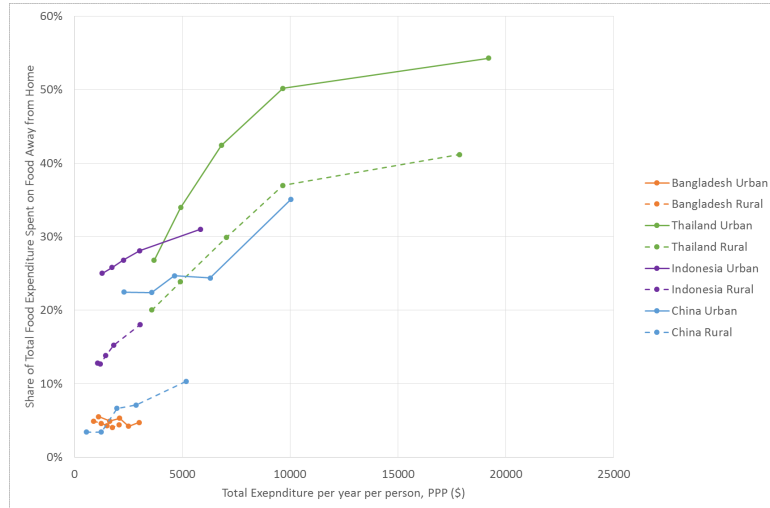
Purchasing food, especially highly processed food, is common in both urban and rural areas.



Source: Reardon et al (2015)

Urban and rural food environments are different

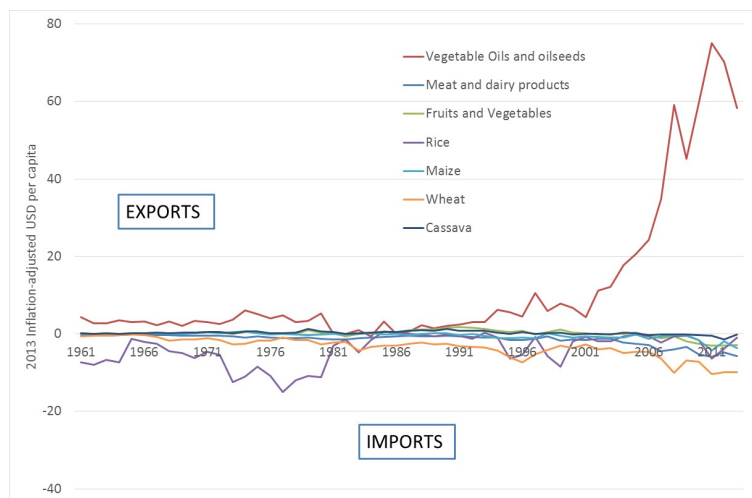
Share of Total Food Expenditures Spent on Food Prepared Away From Home



Source: Various Household Surveys

International trade

Net trade per capita, Indonesia



Source of raw data: FAO (2017)

FAO's Role in Small-scale Farmers' Development

What is the farmers' perspective
(on small-scale farmers' welfare)?

1. Increase productivity and profitability
2. Access to knowledge and information
3. Access to markets and market infrastructure



Food and Agriculture Organization
of the United Nations



Terima kasih!



Food and Agriculture Organization
of the United Nations

FAO Representation for
Indonesia and Timor-Leste