



Food and Agriculture
Organization of the
United Nations

LEGAL OFFICE

UNIDROIT International Summer School

Legal Guide on Contract Farming

Carmen Bullon

22/06/2023



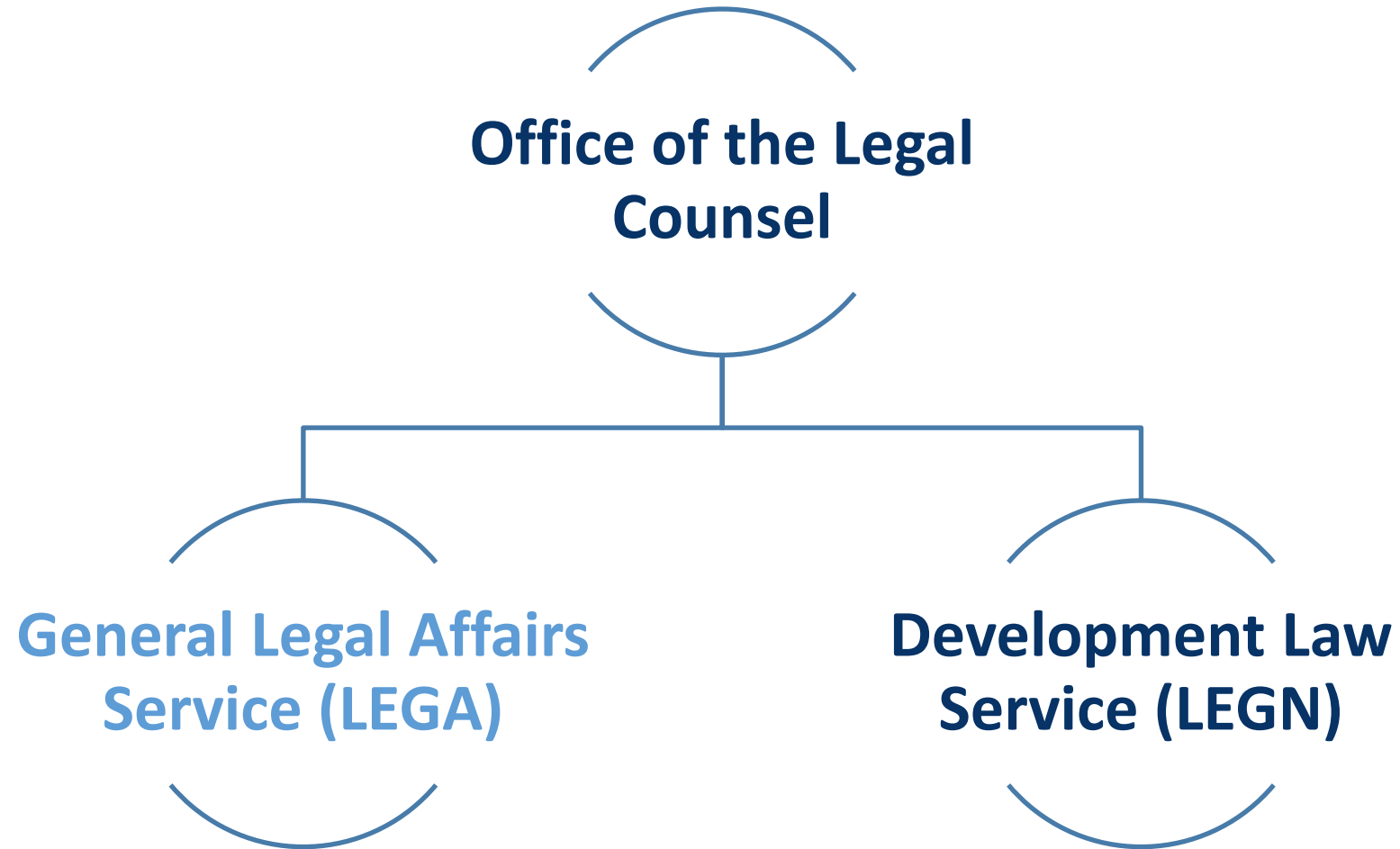


Content

- Introduction to LEGN
- What is contract farming?
- The Legal Guide on Contract Farming
- Some examples from the field



What is LEGN?



LEGN – A Unique Asset



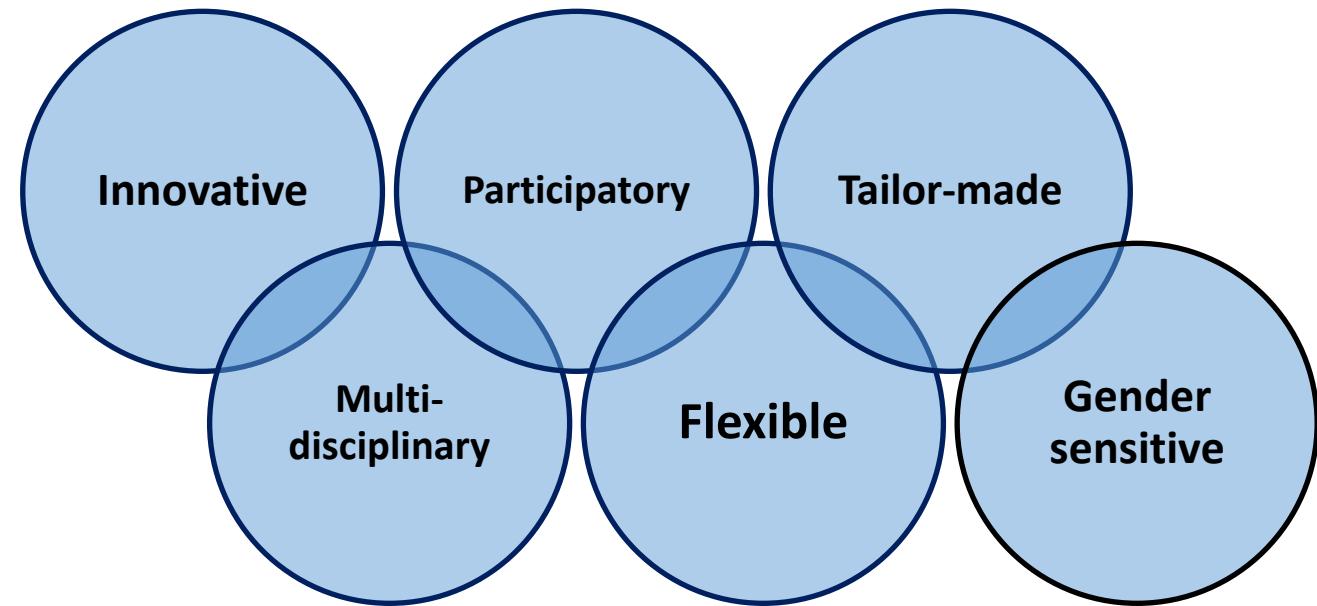
Support to Members to
strengthen legislation



Capacity development



Legal information, databases,
research & studies





What is Contract Farming?



What is contract farming?



At the heart of contract farming (CF) lies an **agreement** between farmers (producers) and buyers (contractors).



Both agree **in advance** on the terms and conditions for the **production and marketing** of farm products.

These commonly include:



price to be paid to the farmer



the quantity and quality of the product demanded by the buyer



the date for delivery to buyers



how the production will be carried out



whether inputs such as seeds, fertilizers and technical advice will be provided by the buyer.



The Legal Guide on Contract Farming

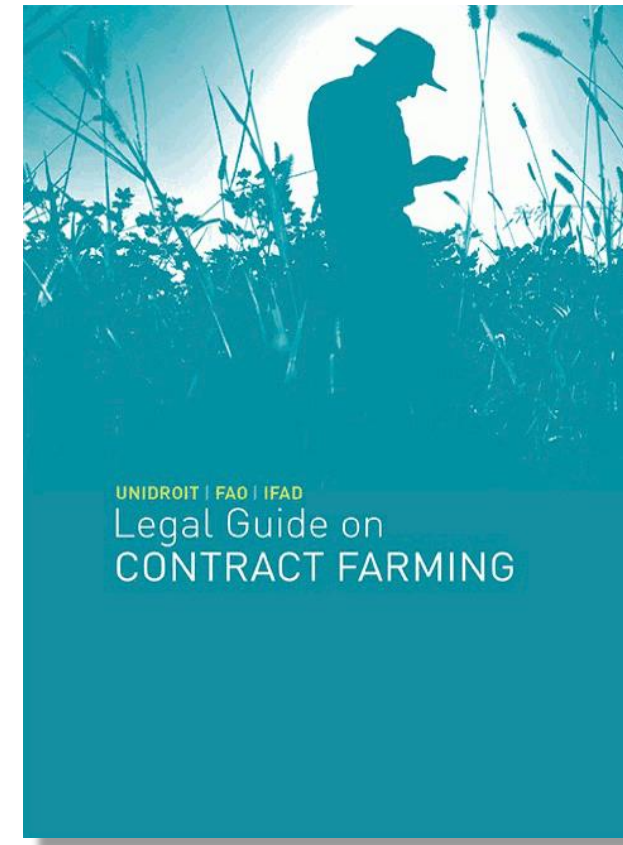


Road to Legal Guide on Contract Farming

Working
Group
established
in 2012

Four
regional
consultations
in 2014

Adoption of
the Guide in
2015





Key content of the Legal Guide

1. Regulatory framework
2. Contract
 - i. Parties, formation and form;
 - ii. Obligations of the parties
 - iii. Excuses for non-performance
 - iv. Remedies for breach
 - v. Duration, renewal, and termination
 - vi. Dispute resolution



1. Regulatory frameworks for contract farming

Benefits of regulatory frameworks



Recognize and protect
people's rights



Provide legal security



Facilitate
enforcement



Solve disputes

Laws are harder to change than policies and are thus likely to survive longer!

Regulatory framework for CF: options

Specific



Non-Specific



Specific CF Laws

Can regulate all use of contract farming

Common features:



Written contracts



Minimum content



Dispute resolution





Non-specific CF Laws

Non-specific CF relevant legislation can be found in:

- Civil codes and general contract laws;
- Agricultural laws and codes;
- Supply chain legislation;
- Commodity-specific legislation;
- Or any combination of these.





Wider regulatory framework

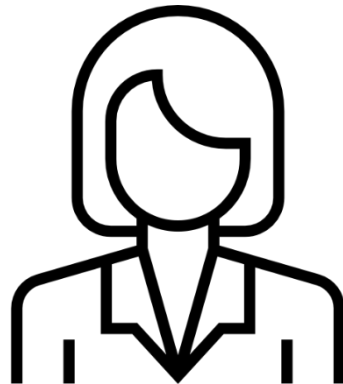
Laws relevant for CF



Soft-law instruments



Self- and co-regulation





Laws relevant to contract farming



- Human rights;
- Competition laws;
- Input legislation;
- Intellectual property rights legislation;
- Quality standards;
- Food safety;
- Land tenure;
- Environmental rules...

Soft law instruments



Soft law may also be relevant: Codes of conduct, good practices, etc.

Ex: UNIDROIT/FAO/IFAD Legal Guide on Contract Farming

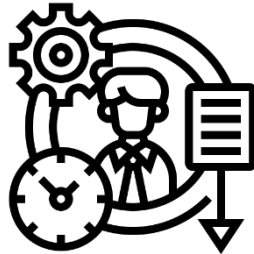
FAO Guiding principles for responsible CF operations

- Common purpose
- Adherence to a legal framework
- Contract clarity
- Transparency
- Prevention of unfair practices
- Open dialogue
- Dispute settlement mechanisms
- Force majeure and contractual flexibility



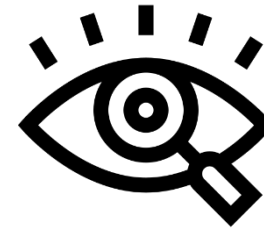


Self- and co-regulation



Cost-effective and flexible

BUT



Needs support and oversight



Codes of
practice



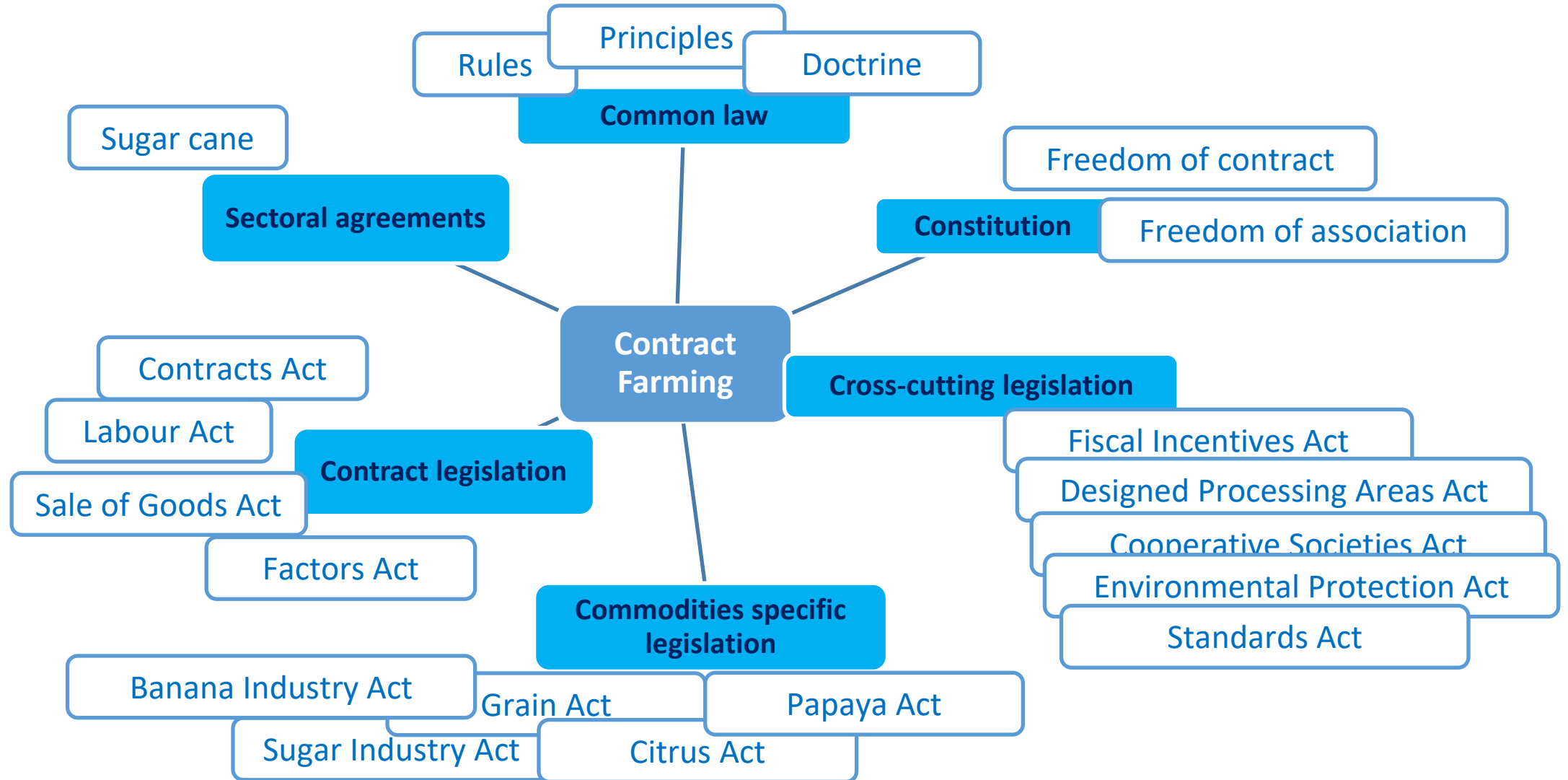
Standard
agreements



Guidance
documents



Example of a legal framework - Belize





Which type of regulatory framework works best for CF?

There is **no universal need for specific legislation** on CF and there is **no one regulatory approach** to CF that can be recommended as best for all countries.

Countries should look for their best regulatory option in consideration of their legal framework, stakeholders' interests, system and policy priorities.

Such regulatory option should be developed following participatory process!

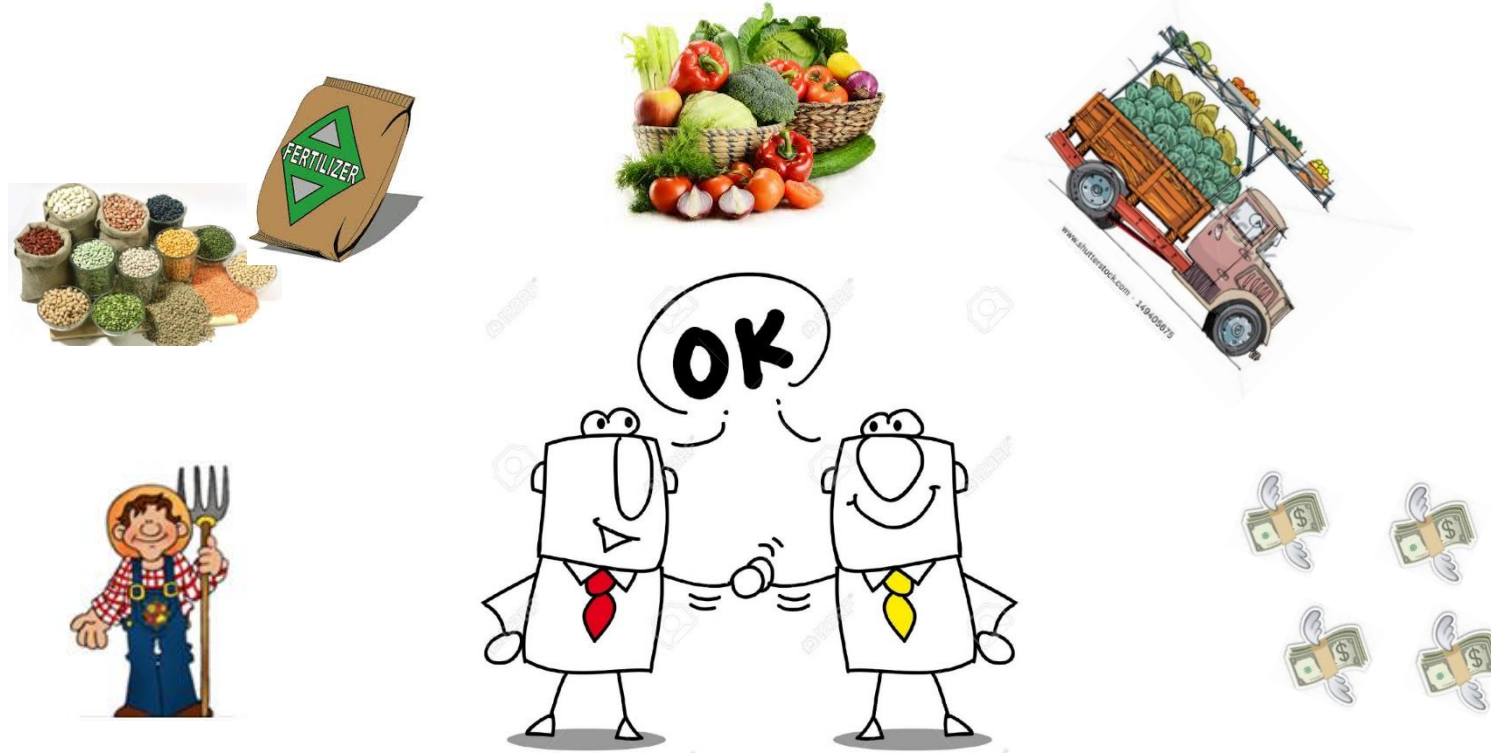




2. The contract farming agreement



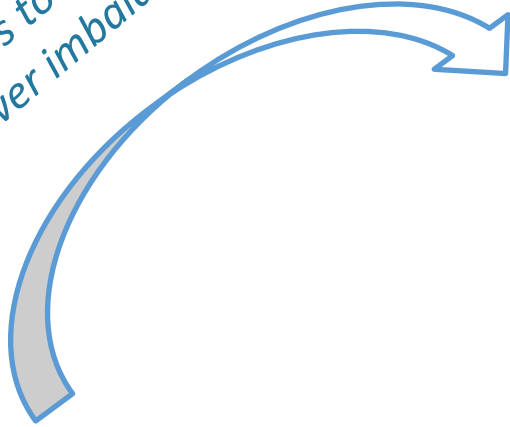
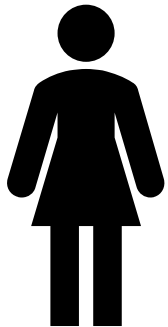
Contract farming agreement





The negotiation stage

*Support from third
parties to balance
power imbalance*



Offer



Acceptance



Contract farming agreement





Contract form

Freedom of contract!

Contracts should:

✓ Be in writing!

In cases of illiteracy, a neutral third party should read clauses and explain them as needed.

✓ Use simple language

✓ Be fair





25003_0060 ©FAO/Luis Tato



Contract content - Parties



Producer, either individually or collectively



Contractor, either a private or public entity



Possible third parties: input providers, service providers, insurers, financial institutions, certifiers...

Legal Guide focuses on the bilateral relationship between two private parties



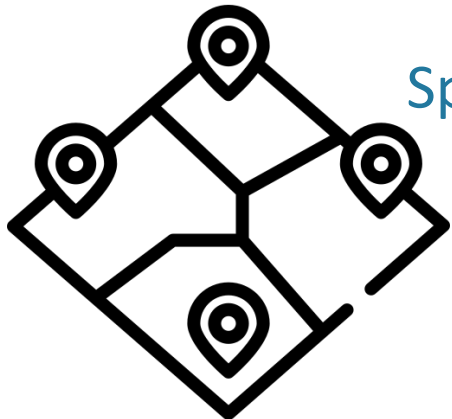
Contract content - Purpose

Ex: "The farmer commits to grow and sell all produced tomatoes to the company in exchange for payment based on the prevailing market price"



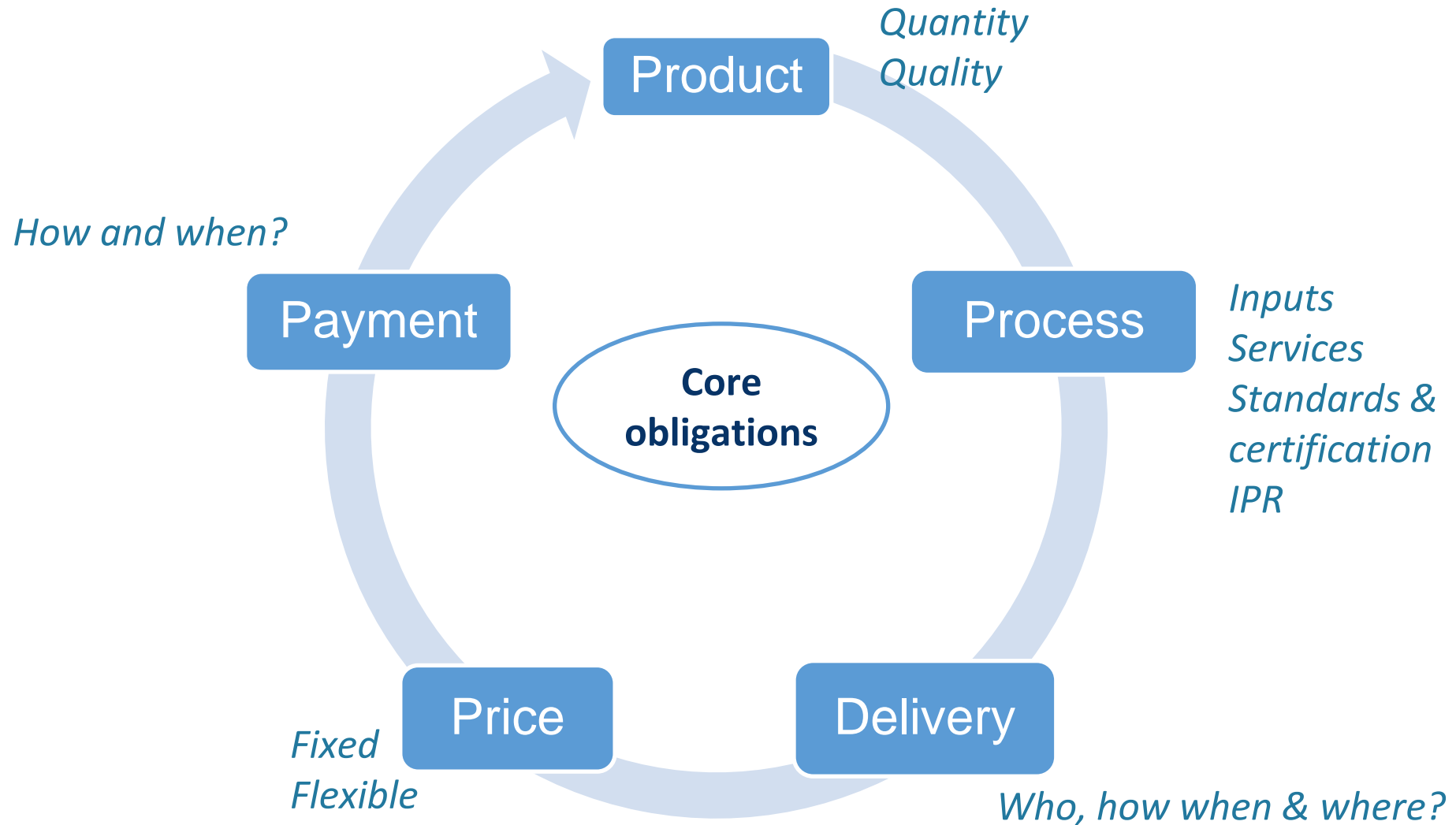
Contract content – Production site

Specifies the size and location of the agricultural production area
May determine the scope of obligations





Contract content – Core obligations



Contract content - Excuses



Force majeure or change of circumstances



As laws tend to be generic, parties are recommended to agree on specific *force majeure* or change of circumstances clause to be included in the contract!



FORCE MAJEURE

A **suspension** of the parties' obligations for the duration of the force majeure event.

The possibility to **renegotiate** the terms of the contract.

The right to **terminate** the contract immediately.

Any legal measure provided by law or by contract to protect the interest of one party against the failure of another party to perform properly.

Contract content - Remedies

First option should always be to talk things through!

In-kind

- Achieve the original result or second best alternative

Withholding performance

- Refuse to act until the breaching party has performed

Price reduction

- Price to reflect actual value



Restitution

- Return goods or money to their owner

Damages

- Alone or together with other remedies

Termination

- Last resort!



Contract content – Duration, renewal and termination



- Commodity dependent
- Long enough to make **profit**



- Renewal by express agreement
- Automatic renewal



- Same right to terminate for both parties
- Notice requirements for termination
- Clear grounds for termination



Contract content – Dispute resolution

Option 1: Communication

- Resolving difficulties through discussion and re-negotiation directly between parties.
- Help from a trusted facilitator (e.g. government extension agent, NGO, representative from local/national farmers' associations, etc.)



Contract content – Dispute resolution



Option 2: Mediation

- Parties may agree to use an independent third party to help find a solution.
- The mediator assists the parties in settling their dispute, but does not have the authority to impose a solution
- Contracts should be specific as to how mediation is to be done
- Legal systems may regulate this issue

Contract content – Dispute resolution

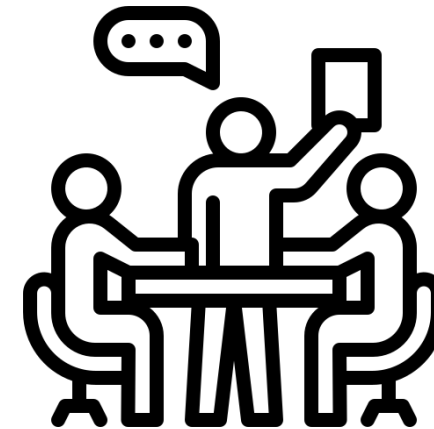
Option 3: Arbitration

- Refer dispute to a neutral third party whose decision will be binding and enforceable under the law.

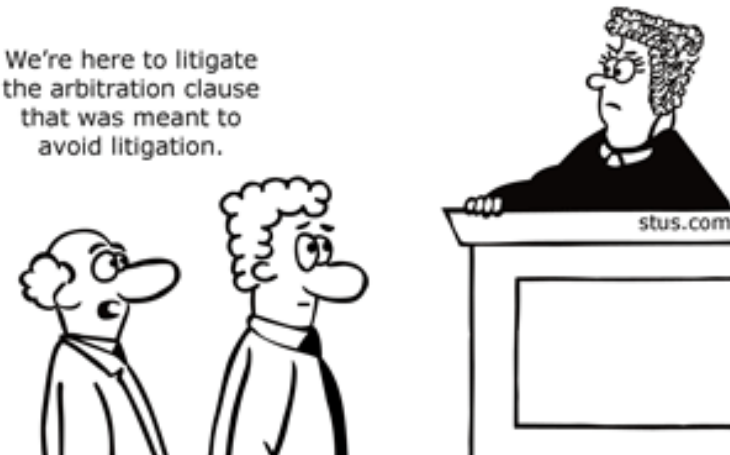
OR

Option 4: Legal action

- Costly, time-consuming, bad for the corporate image
- Only a last resource mechanism.



We're here to litigate
the arbitration clause
that was meant to
avoid litigation.





Contract content – Signature



**Signed by the farmer undertaking
the obligations!**



In the presence of witnesses

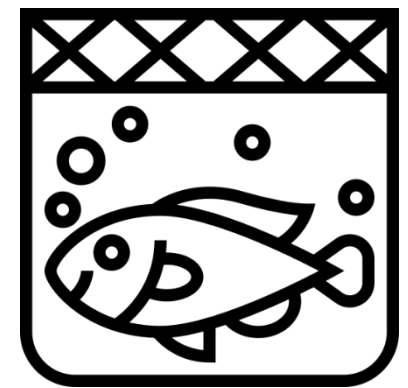
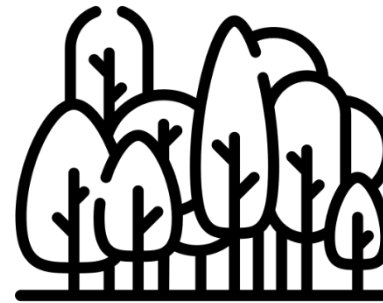
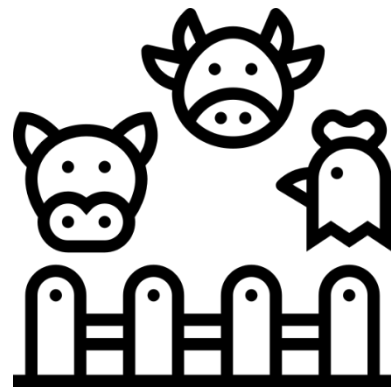
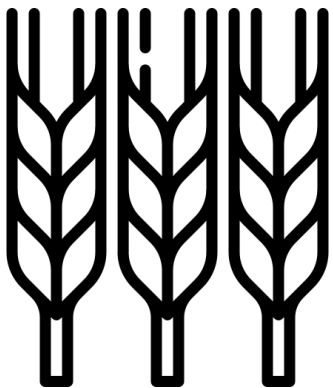


Some examples from the field



Specific CF Laws - Brazil

- Prior to 2016 Civil Code covered the use of CF
- New law adopted in 2016, process started in 1998!
 - Aimed to defend interests of farmers
- Scope to cover all agriculture





Specific CF Laws - Brazil



Contracts in writing and clear language



Rights and obligations



Pre-contract information



National discussion forums



Differentiate CF from employment





Contract farming as a credit vehicle



Provision of **working capital** by the buyer

- Directly or guaranteeing third-party provision of inputs and services



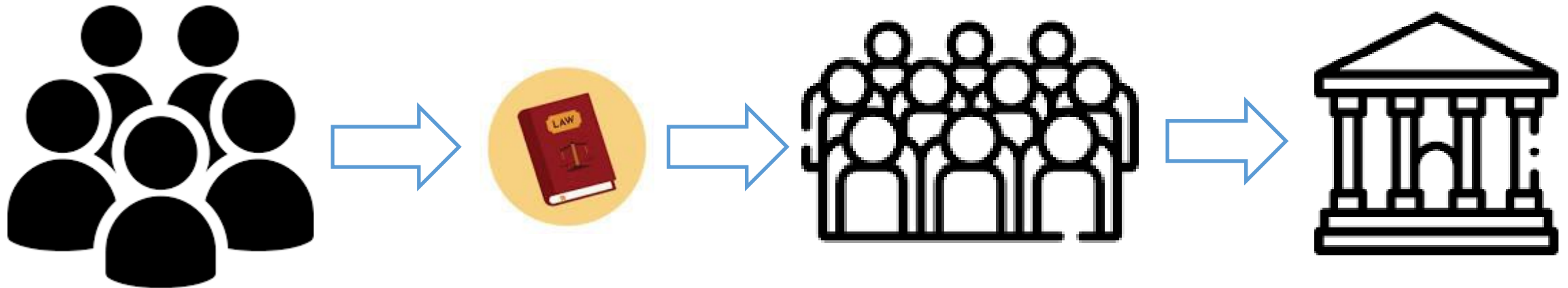
Use contract and future revenues to acquire or increase **creditworthiness** towards third-party credit providers



BUT! Provision of credit can be a source of risk and lead to **indebtedness**



Lesotho: Participatory processes for law-making





Complicated clauses



- Compulsory vs mandatory registration
- Quality determination: how and by whom



Food and Agriculture Organization
of the United Nations

Thank you for your attention
Development Law Branch (LEGN)

For further information please contact:

Carmen Bullon (Carmen.Bullon@fao.org)

LEGN-Chief@fao.org

fao.org/legal

faolex.fao.org

Contract Farming Resource Centre:

<http://www.fao.org/in-action/contract-farming/en/>

