

UNIFORM LAW REVIEW

REVUE DE DROIT UNIFORME

NS – Vol. XVII

2012

An Overview of Contract Farming: Legal Issues and Challenges

Caterina PULTRONE

Offprint / Tiré à part

An Overview of Contract Farming: Legal Issues and Challenges

Caterina Pultrone *

I. – INTRODUCTION AND SCOPE

Contract farming has recently risen to prominence in the development literature because of the potential benefits that may result from sound contractual practices in agricultural production. As a mechanism to coordinate linkages between farmers and agribusiness,¹ contract farming may improve farmers' access to national and international markets and help to increase income in remote rural areas. Likewise, from the perspective of agribusiness companies working in production, processing and marketing of farm products, contract farming may ensure a steady supply of agricultural products compliant with the agreed quality requirements, as well as a reduction of administrative costs. The potential advantages that come from sound contractual practices may be fostered by an adequate legal framework that supports the parties in the correct implementation of contracts.

A large number of different arrangements have been characterized as *contract farming* in the social science and economics literature.² In this

* Consultant, FAO Rural Infrastructure and Agro-Industries Division, with the collaboration and comments of Carlos da Silva, FAO Rural Infrastructure and Agro-Industries Division, Carmen Bullón, Bill Garthwaite and Luisa Cruz, FAO Development Law Service. This paper represents the author's contribution to the Acts of the UNIDROIT Colloquium on "Promoting Investment in Agricultural Production: Private Law Aspects", held in Rome (Italy), 8-10 November 2011. © Food and Agriculture Organization of the United Nations, 2012. The views expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Food and Agriculture Organization of the United Nations.

¹ See Carlos Arthur B. DA SILVA, *The Growing Role of Contract Farming in Agri-Food Systems Development: Drivers, Theory and Practice*, FAO (2005), 1.

² See, e.g., Carlos OYA, "Contract Farming in Sub-Saharan Africa: A Survey of Approaches, Debates and Issues", 12(1) *Journal of Agrarian Change* (2012), 1, 2 (drawing definition from C. DOLAN, "Benevolent Intent? The Development Encounter in Kenya's Horticulture Industry", 40(6) *Journal of Asian & African Studies* (2005), 411, 413); Jeremy C. JACKSON / Angela P. CHEATER, "Contract Farming in Zimbabwe: Case Studies of Sugar, Tea and Cotton", in: P.D. Little / M.J. Watts (Eds.), *Living under contract: contract farming and agrarian*

literature, the nature of the relationship in contract farming may take several conceptual forms, spanning a spectrum of control and involvement by the buyer³ including: a simple contract for the sale of agricultural goods, an independent contractor relationship, personal services contract, joint ventures, partnerships and employment.⁴ Each of these relationships is typically governed by a distinct body of law. Hence, unless the scope is defined precisely, a paper examining the relevant legal aspects of contract farming could potentially be very broad.

Acknowledging that different types of contract such as contracts of insurance, leasing, and credit may have an impact on the final implementation of the contract between the farmer and the buyer, these contractual relations are not part of the main scope of this study. In this paper, the focus will be more narrow and limited to *contracts for the production or sale of agricultural goods*.⁵

Other contractual relations may take place alongside the central agreement. Even though this study does not consider these contractual relations as contract farming, they deserve a reference in view of their implications for contract farming. One example is the case of financing agreements with banks or other lenders. Some contract farming agreements may include clauses governing the provision of credit by a lending institution to farmers. In this case, the contract can be tripartite or even involve a multitude of contracting parties including the farmer, one or more buyers, the bank and the government, that may initiate the contract farming project in promotion of development and poverty reduction. In some cases, banks may open individual farmers' accounts and inform farmers of their debt situation and payments to be made. The bank can also honour farmers' invoices for company delivery of inputs and provision of technical assistance. The loan provided by the bank is recovered from the sale or service committed by the

transformation in sub-Saharan Africa, (1994), 140, 141; Charles EATON / Andrew W. SHEPHERD, "Contract Farming: Partnerships for Growth", *FAO Agricultural Services Bulletin* 145 (2001), 2-3.

³ In this paper, "buyer" is used in a broad sense, including buyers in the sales of goods and services.

⁴ See, e.g., Neil D. HAMILTON, *Farmer's Legal Guide to Production Contracts* (1995), 47-51; Sukhpal SINGH, "Contracting Out Solutions: Political Economy of Contract Farming in the Indian Punjab", *World Development* 30(9) (2002), 1621, 1621; Rick WELSH, "Vertical Coordination, Producer Response, and the Locus of Control over Agricultural Production Decisions", 62(4) *Rural Sociology* (1997), 491, 495.

⁵ In this paper, "agricultural goods" is understood in a broad sense, including agriculture, farming, wood and non-wood forestry products, fisheries and aquaculture.

farmer to the buyer. Also, governments may decide to support farmers' access to land through lease contracts of government-owned land. These contracts may additionally include support to production, ensure that farmers receive all payments due by the buyer and, in some cases, require the submission of progress reports from the buyer on contract implementation.

With this limited scope in mind, this paper will first highlight examples to show the range of forms that the legal framework governing contract farming may take (II). Section III will take a look at the underlying contracts themselves and break down the elements of typical agricultural contracts in the realm of contract farming. The section will start with a basic description and then move on to look at specific contract provisions that may help to protect the parties and also at those provisions that may create opportunities for abuse and therefore threaten the long term viability of contract farming ventures. Finally, the paper will discuss roles for governments to play in improving contract farming outcomes (IV).

II. – LEGAL FRAMEWORKS

Different countries have arrived at different definitions and conceptions of contract farming, and have chosen to regulate it in very different ways. This section will first summarize the international instruments that may be applicable to contract farming in certain scenarios. Then, it will use domestic law examples from various countries to highlight the range of sources of law that may contribute to form the legal framework applicable to contract farming in a given country.

1. International law and guidance from international organizations

The *United Nations Convention on Contracts for the International Sale of Goods* (hereinafter: CISG)⁶ provides the international legal framework for many transnational sales contracts. The CISG is essentially the background legal framework⁷ that governs the formation of contracts for the sale of movable goods and the rights and obligations of the contracting parties,⁸ when the contracting parties have places of business in different States and

⁶ *United Nations Convention on Contracts for the International Sale of Goods* (Vienna, 11 Apr. 1980), 1489 U.N.T.S. 3, entered into force 1 Jan. 1988 (hereinafter: "CISG").

⁷ See CISG, Art. 6.

⁸ CISG, Art. 4.

either the two States are treaty members, or the rules of private international law lead to the application of the law of a member State.⁹ The CISG is a gap filler and default in the sense that otherwise qualifying contracting parties are free to exclude part or all of the Convention from effect.¹⁰ Currently, there are 77 member States of the CISG, including both developing and developed countries.¹¹ Although in many instances the CISG may not directly apply to contracts in a particular contract farming venture, since its entry into force in 1988, the CISG has “exerted significant influence on an international as well as a domestic level.”¹² Even though it has been a unifying force and the CISG contains guidance on its interpretation,¹³ interpretation will naturally still vary from forum to forum.¹⁴

Another international reference document for contract farming is the UNIDROIT Principles of International Commercial Contracts (hereinafter: PICC). UNIDROIT, an independent intergovernmental organization that aims to harmonize private commercial law,¹⁵ recently adopted the 2010 (third) revised version of the PICC.¹⁶ The first edition of the PICC was published in 1994.¹⁷ Meant to reflect principles from the different legal systems around the world, the PICC is soft law and thus is not binding on parties¹⁸ unless explicitly adopted as the law of a given contract. Applying to every kind of international commercial contract, the PICC may come into play with respect to agricultural contracting in several ways including, by influencing domestic

⁹ CISG, Art. 1.

¹⁰ See CISG, Art. 6.

¹¹ United Nations Treaty Collection, *Status of Treaties*, available at <<http://treaties.un.org/pages/ParticipationStatus.aspx>> (last accessed 17 Feb. 2012).

¹² See Ingeborg SCHWENZER / Pascal HACHEM, “The CISG – Successes and Pitfalls”, 57 *American Journal of Comparative Law* (2009), 457, 461.

¹³ See CISG, Art. 7.

¹⁴ See, e.g., Pace Law School Institute of International Commercial Law, *CISG Database Country Case Schedule*, available at <<http://www.cisg.law.pace.edu/cisg/text/caselit.html>> (last accessed 17 Feb. 2012).

¹⁵ UNIDROIT, *UNIDROIT: An Overview*, available at <<http://www.unidroit.org/dynasite.cfm?dsamid=103284>> (last accessed 17 Feb. 2012).

¹⁶ See UNIDROIT, *Principles of International Commercial Contracts*, available at <<http://www.unidroit.org/english/principles/contracts/main.htm>> (last 17 accessed Feb. 2012).

¹⁷ See *idem*.

¹⁸ See M.J. BONELL, “Unification of Law by Non-Legislative Means: The UNIDROIT Draft Principles for International Commercial Contracts”, 40 *American Journal of Comparative Law* (1992), 617, 617-18.

laws, by application as general principles of international law, or if expressly chosen to govern a specific contract.¹⁹ Although not usually part of enforceable law, the PICC, like the CISG, has been influential in and forms part of the international legal framework and common conception of contracts.

It is crucial to restate that the two international documents mentioned above directly apply only in certain scenarios. The CISG will apply only when parties to a sales contract are both based in CISG member countries or the rules of private international law lead to the application of the law of a CISG member. The PICC could apply to not just sales contracts, but will only directly apply if expressly chosen by the parties. However, both documents have exerted influence on the content of national laws and on the content of private contracts themselves. In addition to these two documents at the international level, international organizations may also provide international guidance focused on contract farming. FAO is one such international organization that serves an important role by providing guidance on contract farming practices through advice for integrating good practices for responsible contract farming operations.²⁰

2. Domestic legal frameworks

Different countries have approached the regulation of contract farming practices in different ways depending on many factors, including domestic legal traditions and the time period in which legislation was drafted. Thus, within domestic legal orders, the norms governing contract farming may be found, for example, in civil codes, agrarian codes, general contract legislation, specific agricultural contract legislation and sector- or product-specific legislation. These sources of governing law vary in how specifically tailored they are to focus on contract farming. A civil code, generally the most broad, will typically have provisions covering many other topics in addition to provisions relevant for contract farming. Although more specific, an agrarian

¹⁹ See PICC, Preamble (2010); see also Sarah LAKE, "An Empirical Study of the UNIDROIT Principles – International and British Responses", 2011 *Unif. L. Rev. / Rev. dr. unif.* (2011), 669; and Alejandro M. GARRO, "The Gap-Filling Role of the UNIDROIT Principles in International Sales Law: Some Comments on the Interplay Between the Principles and the CISG", 69 *Tulane Law Review* (1994-95), 1149.

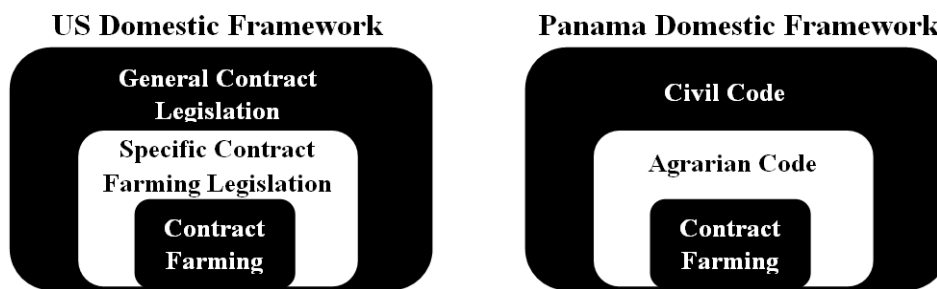
²⁰ A FAO guideline on good practices for responsible contract farming operations will be soon made available on the FAO Contract Farming Resource Centre website at <<http://www.fao.org/ag/ags/contract-farming/en/>>.

code will still contain many other general agricultural provisions not relevant for the core legal issues of contract farming. Similarly, general contract legislation will contain many other provisions not relevant for contract farming. At the most specific end of the spectrum, some countries have adopted legislation that narrowly focuses on contract farming practices or even solely on some subset of contract farming practices.

Furthermore, depending on the country, these different sources for domestic rules governing contract farming may combine to form different hierarchies of relevant norms which must be considered.

Figure 1 below illustrates in a simplified manner how these different norms may interact in two countries with very different legal systems: the United States and Panama. In the US, contract farming is potentially regulated by specific regulation that targets a narrow subset of contract farming practices, but the broader general contract legislation still applies.²¹ Similarly, in Panama, specific provisions on contract farming in the agrarian code must be viewed within the broader, more general provisions on contracts in the civil code.²²

Figure 1: Simplified diagram illustrating the domestic legal frameworks governing contract farming in the United States and Panama



²¹ For an example of US-specific legislation, See federal *Packers and Stockyards Act*, 7 U.S.C. §§181-229 (1921); for general contract legislation, see the state-enacted version of the Uniform Commercial Code, Art. 2.

²² *Código Agrario de la República de Panamá*, Title 2, promulgated by Ley No. 55 of 30.05.2011; *Código Civil de la República de Panamá*, Libro Cuarto (Book 4), promulgated by Ley No. 2 of 22/08/1916 (de las obligaciones en general y de los contratos – on obligations in general and contracts).

Below, this section on national legal frameworks will proceed by starting with the broadest source of domestic norms relevant for contract farming, and then will move through to more narrowly focused attempts to regulate contract farming practices. Lastly, this section will briefly touch on the role of domestic guidance and soft law. Each sub-section highlights examples from individual countries, but it should be noted that these examples were not selected as evidence of best practices, but solely to show the range of forms that the domestic legal framework governing contract farming may take.

1. *Civil codes*

In many countries whose legal systems originate from Roman and German law,²³ *civil codes* are considered a reference for contract farming, particularly code provisions related to contractual obligations and types of contract. One representative example is Argentina, whose legal system is primarily influenced by the traditional civil law systems in Italy, Spain, France, and Germany.²⁴ As such, Argentina's civil code contains many articles governing contracts generally.²⁵ Thus, in the code one may find many general provisions relevant for contract farming, such as how contracts are formed and who may contract;²⁶ what may be the object of contracts;²⁷ the form contracts may take;²⁸ and when contracts are opposable to third parties.²⁹ The Argentine civil code contains further provisions pertaining to sales contracts in particular, including requirements for formation of a sales contract;³⁰ what may be sold;³¹ who may enter into sales contracts;³² default rules for how price is determined;³³

²³ See, e.g., John H. MERRYMAN, *The Civil Law Tradition* (1985), 26-33.

²⁴ N.Y.U. School of Law (*Journal of International Law & Politics*), *Guide to Foreign and International Legal Citations* 1 (2006); see also U. OTTAWA, *Juriglobe: Civil Law Systems and Mixed Systems with a Civil Law Tradition*, available at <<http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-civil.php>>.

²⁵ See *Código Civil*, Libro 2, Sección Tercera (Civil Code, Book 2, Section 3, on obligations arising from contracts), promulgated by Ley 340 of 25.09.1869.

²⁶ Arts. 1.137-1.166, *Cod. Civ.*

²⁷ Arts. 1.167-1.179, *Cod. Civ.*

²⁸ Arts. 1.180-1.189, *Cod. Civ.*

²⁹ Arts. 1.161, 1.162, 1.199, *Cod. Civ.*

³⁰ Arts. 1.323-1.326, *Cod. Civ.*

³¹ Arts. 1.327-1.348, *Cod. Civ.*

³² Arts. 1.357-1.362, *Cod. Civ.*

³³ Arts. 1.349-1.356, *Cod. Civ.*

default contract provisions;³⁴ and obligations of the buyer and seller, and contract breach and associated remedies.³⁵ As mentioned previously, civil codes will likely form a crucial backdrop necessary for understanding the domestic legal framework governing contract farming (in civil law systems), even in cases where more-specific legislation exists.

2. Agrarian/rural codes

Contract farming may also be regulated under agrarian law, which in some countries is compiled in agrarian codes. This is the case in France, with its *Rural and Fishery Code (Code rural et de la pêche maritime)*. The Rural and Fishery Code covers many diverse subjects relating to agriculture and fisheries, and is broken down into a first part with compiled legislation, and a second part with corresponding compiled regulations. The legislative part of the Code contains general provisions governing agricultural sales contracts³⁶ and vertical integration contracts.³⁷ The Code's compiled regulations are more specific depending on the product that is the object of the contract.³⁸ Thus, the Code establishes the elements that certain agricultural contracts should indicate, including specification of the product, mutual obligations of the parties, contract duration and conditions for its renewal.³⁹ It also contains other provisions that agricultural contracts should include, such as the force majeure clause, arbitration procedures to settle disputes and provisions on compensation for damages in case of non-performance.⁴⁰

Another example of compiled agrarian law is the Agrarian Code of the Republic of Panama (*Código Agrario de la República de Panamá*).⁴¹ Of relevance for contract farming, the Agrarian Code contains general provisions

³⁴ Arts. 1.363-1.407, *Cod. Civ.*

³⁵ See Arts. 1.408-1.433, *Cod. Civ.*

³⁶ See *Code rural et de la pêche maritime (CRPM)*, Arts. L631-1 – L631-26.

³⁷ See CRPM, Arts. L326-1 – L326-10.

³⁸ For provisions on milk contracts, fruit and vegetable contracts, and vertical integration contracts, see CRPM, Arts. R631-11 – R631-14; CRPM, Arts. R326-1 – R326-10; CRPM, Arts. R631-7 – R631-10.

³⁹ See CRPM, Arts. R631-11 – R631-14; CRPM, Arts. R326-1 – R326-10; CRPM, Arts. R631-7 – R631-10.

⁴⁰ See CRPM, Arts. R631-11 – R631-14; CRPM, Arts. R326-1 – R326-10; CRPM, Arts. R631-7 – R631-10.

⁴¹ *Código Agrario de la República de Panamá*, promulgated by Ley No. 55 of 23.05.2011, published in the *Gaceta Oficial Digital* No. 26795-A of 30.05.2011.

governing all agricultural contracts,⁴² and specific provisions further regulating agricultural sales / marketing contracts⁴³ and vertical integration contracts where the buyer provides technical services to the farmer.⁴⁴ Thus, under the general provisions, all agricultural contracts may not contain abusive clauses⁴⁵ and must contain at least: identification of the parties, description of the object of the contract, duration, manner of payment, date of execution and the signature of the parties.⁴⁶ Specific provisions on sales/marketing contracts and vertical integration contracts add further requirements for mandatory contract provisions. So, in the case of vertical integration contracts, the contract must also include the scope of technical assistance to be provided by the buyer.⁴⁷ However, it should be noted that the Agrarian Code of Panama and the Rural and Fisheries Code of France are not meant to be comprehensive with respect to issues that may arise with contracts; therefore, in these two countries, the civil code is still an important part of the legal framework to consider.

3. General contract legislation

Other countries have enacted general legislation regulating all contracts. This is the case in India. Under the Indian Constitution, both the union (national) government and the states may concurrently regulate contracts.⁴⁸ At the national level, contracts are generally governed by a legislative remnant from the era of British rule, the *Indian Contract Act* of 1872.⁴⁹ The Indian Contract Act has remained largely unaltered since 1872,⁵⁰ and continues in force under the more recent Indian Constitution due to a provision in the latter that extends the validity of pre-existing laws.⁵¹ The Indian Contract Act contains many general provisions relevant for contract farming, such as the formation, validity and effects of contracts; the obligations of the parties; and the

42 See Arts. 41-49, *Cod. Agr.*

43 See Arts. 139-45, *Cod. Agr.*

44 See Arts. 134-38, *Cod. Agr.*

45 See Art. 46, *Cod. Agr.*

46 See Art. 49, *Cod. Agr.*

47 See Art. 135(2), *Cod. Agr.*

48 See *India Constitution* (1950) Schedule VII, List III(7).

49 Nilma Bhadbhade, *CONTRACT LAW IN INDIA* 45 (2010).

50 *Id.*

51 See *India Constitution* (1950), Art. 372(I).

consequences of contract breach.⁵² It should be noted that while the Indian Contract Act provides the background legal framework,⁵³ contracts for the sale of goods are further and more specifically regulated by the *Sale of Goods Act* of 1930.⁵⁴ Similar to UCC Article 2 (discussed in the following paragraph), the *Sale of Goods Act* contains extensive provisions on the creation and performance of contracts for the sale of goods, where the definition of goods includes growing and future crops.⁵⁵ Furthermore, various states in India have enacted specific legislation focused on contract farming, to be discussed in the following subsection.⁵⁶

As a slight variation on the Indian framework, general sales contract law in the United States is governed primarily *at the state level*, though unified nationally by the influence of a widely adopted model law. In the US, contracts for the sale of moveable property⁵⁷ must be viewed within the general legal framework of the *Uniform Commercial Code* (UCC).⁵⁸ The UCC is a very influential model code developed and modified over several decades by two private organizations of scholars and practitioners: the Uniform Law

⁵² See generally, *Indian Contract Act* (1872); see also Frederick POLLOCK / Dinshah F. MULLA, *The Indian Contract Act, with a Commentary, Critical and Explanatory* (1909), available at <<http://www.archive.org/details/indiancontractac00polliala>>.

⁵³ S. 3, *Sale of Goods Act* (1930) (stating that the Indian Contract Act of 1872 still applies to contracts for the sale of goods).

⁵⁴ See *Government of India Business Knowledge Resource Online, Contract Law*, available at <http://business.gov.in/manage_business/contract_law.php>.

⁵⁵ See, e.g., S. 2(6), 2(7), *Sale of Goods Act* (1930) (defining *future goods* and *goods*).

⁵⁶ See APMC, *Addendum on Contract Farming Agreement and Its Model Specifications*, Art. 6, available at <<http://agmarknet.nic.in/amrscheme/modelact.htm#Addendum>> (stating that the legal framework created by the Indian Contract Act still governs these specially regulated agricultural sales contracts).

⁵⁷ For a discussion of agricultural sales and the Uniform Commercial Code in the US state of Pennsylvania, see Christie HAYES, "Selected Topics in Agricultural Contract Law", at 29, *The Agricultural Law Resource and Reference Center at The Dickinson School of Law of the Pennsylvania State University*, available at <http://law.psu.edu/_file/aglaw/Ag_Contracts_Final.pdf> (2003). For a very helpful discussion of the UCC in the context of agriculture in general, see National Agricultural Law Center, *Commercial Transactions – An Overview*, available at <<http://www.nationalaglawcenter.org/assets/overviews/commercial.html>>. See also the information compiled at <<http://www.nationalaglawcenter.org/readingrooms/commercial/>>.

⁵⁸ *Uniform Commercial Code*, online version available at <<http://www.law.cornell.edu/ucc/>>.

Commission and the American Law Institute.⁵⁹ The UCC is comprehensive and unifies many aspects of contracts and commercial law. It contains provisions on sales, leases, negotiable instruments, documents of title, and secured transactions.⁶⁰ The UCC does not cover non-sales contracts such as personal services contracts or employment contracts.⁶¹ Every state within the US has adopted at least some part or version of the UCC; it should be noted, however, that the enacted version often differs from state to state because of modifications by individual states or the enactment of different versions.⁶² UCC Article 2 governs the sale of goods, where the definition of goods includes future goods, the unborn young of animals, and growing crops.⁶³ Article 2 contains many default rules for sales contracts, including contract formation, obligations of the parties, contract performance, breach, excused performance, and remedies upon breach.⁶⁴ Much as is the case in India, the UCC forms the backdrop for specific legislation regulating contract farming (see *Figure 1* above).

4. *Specific contract farming legislation*

Against the backdrop of their broad legal frameworks for contracts, various countries have chosen to enact legislation that narrowly focuses on contract farming. Spain is one such case. In 2000, Spain enacted legislation which defines the principles that regulate contractual relations between agricultural producers, buyers and processors.⁶⁵ The objective of the law is to regulate commercial transactions, to promote the stability of markets and to improve transparency of transactions and market competition.⁶⁶ The law establishes

⁵⁹ See *Uniform Commercial Code*, J. Michael Goodson Law Library (Duke University) Research Guides, available at <<http://www.law.duke.edu/lib/researchguides/pdf/ucc.pdf>> (2011).

⁶⁰ See U.C.C. Arts. 2, 2A, 3, 7, and 9.

⁶¹ U.C.C. 2-102; see also HAMILTON, *supra* note 4, 20.

⁶² See, e.g., Uniform Law Commission, *UCC Article 1 Enactment Status Map*, available at <[http://www.nccusl.org/Act.aspx?title=UCC%20Article%201,%20General%20Provisions%20\(2001\)](http://www.nccusl.org/Act.aspx?title=UCC%20Article%201,%20General%20Provisions%20(2001))> (2012); for a breakdown of where to find the enacted version of the UCC in each state, see Cornell Law School Legal Information Institute, <<http://www.law.cornell.edu/uniform/ucc.html>> (last accessed 19 Feb. 2012).

⁶³ U.C.C. 2-102, 2-103(1)(k).

⁶⁴ See generally, U.C.C. Art. 2.

⁶⁵ See Ley (L.) 2/2000 (7 Jan.), *Reguladora de los Contratos Tipo de Productos Agroalimentarios*, 8 BOE 881 (2000).

⁶⁶ See L. 2/2000, *Exposición de Motivos*, para. 5 (Preamble).

samples of contracts for the marketing of agricultural products, which are agreed between the representatives of producers, buyers and processors and approved by the Ministry of Agriculture and Fisheries⁶⁷ (now the Ministry of Agriculture, Food and Environment).⁶⁸ They serve as models for sales contracts to be concluded between producers and buyers. In addition, according to the law, contracting parties must include in their contracts minimum standard clauses and submit the entered contract for the competent authority's approval.⁶⁹ The minimal standard clauses include the identification of the contracting parties, a clear specification of the product and the quantity and quality of the product to be supplied.⁷⁰ Contracts must indicate the price to be paid to producers and the conditions of payment as well as the time and place of delivery.⁷¹ Contracts must also indicate a method to settle disputes.⁷² Lastly, the law establishes a monitoring committee which plays an important role in approving and promoting the use of sample contracts.⁷³

In India, the *Agricultural Produce Marketing Act* (APMC) is a model act put forth in 2003 for the purpose of regulating the marketing of agricultural products at the state level.⁷⁴ As of 2008, 10 states had fully enacted the APMC and 9 others had partially adopted it (out of a total of 28 states).⁷⁵ Chapter VII and an addendum to the Act contain very detailed regulations on contract

⁶⁷ L. 2/2000, Arts. 1, 2.

⁶⁸ See Real Decreto (R.D.) 1887/2011, Art. 10 (30 Dec.), por el que se establece la estructura orgánica básica de los departamentos ministeriales, 315 BOE 146666 (2011); see also R.D. 1823/2011, Art. 11, of 21 Dec., por el que se reestructuran los departamentos ministeriales, 307 BOE 139961 (2011).

⁶⁹ See L. 2/2000, Art. 5.

⁷⁰ L. 2/2000, Art. 3.

⁷¹ L. 2/2000, Art. 3.

⁷² L. 2/2000, Art. 3(e).

⁷³ See L. 2/2000, Art. 4; see also Arts. 16-20, R.D. 686/2000 (12 May), por el que se aprueba el Reglamento de la Ley 2/2000 (7 Jan.), reguladora de los contratos tipo de productos agroalimentarios.

⁷⁴ India Ministry of Agriculture, *Salient Features of the Model Act on Agricultural Marketing*, available at <<http://agmarknet.nic.in/amrscheme/modelact.htm>>; see also Sukhpal SINGH, "Understanding Practice of Contract Farming in India: A Small Producer Perspective" 8, in: Ashok Gulati / P.K. Joshi / Maurice Landes (Eds.), *Contract Farming in India: a Resource Book* (2008), available at <http://www.ncap.res.in/contract_%20farming/> (last accessed 14 Feb. 2012).

⁷⁵ SINGH, *supra* note 74; U.S. Dep't. of State, *Background Note: India* (2011), available at <<http://www.state.gov/r/pa/ei/bgn/3454.htm>>.

farming. In particular, the APMC imposes duties on buyers, such as requiring that contract farming buyers register with a designated official and requiring buyers to record a copy of their contracts with the designated official.⁷⁶ Furthermore, the APMC provides a model agreement and substantive guidance for drafting contract farming agreements.⁷⁷ The parties are mostly free mutually to decide the terms and conditions of their agreement, but it may not be contrary to the provisions of the Act and must include specified mandatory minimum terms.⁷⁸

Several states in the US have recently taken a similar approach by enacting product-specific legislation on contract farming, usually for the poultry and livestock industry.⁷⁹ For a representative example, the state of Georgia has enacted limited provisions that attempt to protect poultry growers during the contract negotiation stage.⁸⁰ Poultry growers are given a mandatory three day window to review contracts before execution, and a three-day period after execution in which to reconsider and cancel.⁸¹ Growers are also given the right to market price information and a right to be present during compensation determination (bird weighing).⁸²

5. *Product-specific Acts*

A country may also choose to include measures on contract farming in product-specific legislation. Kenya is one country that has frequently taken this approach.⁸³ For example, Kenya's *Dairy Industry Act* aims to regulate the entire dairy industry, including contracts between producers and processing and trading businesses.⁸⁴ The Act establishes an oversight board, and requires

⁷⁶ See S. 38(1), 38(2), APMC (2003).

⁷⁷ See Addendum (Contents of a Model Contract Farming Agreement), APMC (2003).

⁷⁸ See *idem*.

⁷⁹ See generally, Alison PECK, *State Regulation of Production Contracts*, National Agricultural Law Center (2006), available at <http://www.nationalaglawcenter.org/assets/articles/peck_contractregulation.pdf>; see also, Neil D. HAMILTON, "State Regulation of Agricultural Production Contracts", 25 *University of Memphis Law Review* (1994-1995), 1051.

⁸⁰ See GA. CODE §§ 2-22-1 – 2-22-5 (2011); see also, PECK, *supra* note 79.

⁸¹ See GA. CODE §§ 2-22-2 (2011); see also, PECK, *supra* note 79.

⁸² See GA. CODE §§ 2-22-3, 4 (2011); see also, PECK, *supra* note 79.

⁸³ See, e.g., *Dairy Industry Act* (1967, as amended in 2006); *Crop Production and Livestock (Cashew Nut Marketing) Rules* (1950).

⁸⁴ See Preamble, *Dairy Industry Act* (1967).

registration/licensing of dairy producers.⁸⁵ With respect to contract farming, the Agriculture Minister is given the power to promulgate regulations that prescribe “the terms and form in which contracts for the sale of milk by producers, other than producers who sell direct to consumers ... and making provision for the Board to be joined as an additional party to any such contract.”⁸⁶ The Minister is also given the power to set the price paid to producers.⁸⁷ Similarly, the *Sugar Act* gives the Minister the power to promulgate regulations on sugar marketing and contracts within the sugar industry.⁸⁸ Under the *Sugar Act*, Kenya has promulgated detailed regulations and a standardized contract for use between growers and millers.⁸⁹

6. *Soft law and guidelines*

Finally, farmers and buyers can be guided in their contractual relations by instruments of soft law approved at the national level, both by public and private organizations. These instruments include codes of conduct, best practices and guidelines on agricultural contracts. One example is the *Code of Conduct for Fresh Horticultural Produce Sales* in Kenya, which aims to serve as a guideline for drafting contracts between farmers and buyers for the sale of horticultural produce.⁹⁰ The Code of Conduct was put forward by the Horticultural Crops Development Authority (HCDA), a state corporation that was created in 1967 and charged with regulating the horticulture industry in Kenya.⁹¹ The Code of Conduct indicates clauses that agricultural contracts should include, such as the specification of product quality and quantity, production inputs to be supplied by the buyer, a schedule of prices, the conditions for delivery, contract duration and termination.⁹² The Code also suggests fair production practices with respect to the use of agro-chemicals as

85 S. 4, 31-34, *Dairy Industry Act* (1967).

86 S. 19(f), *Dairy Industry Act* (1967, as amended in 2006).

87 S. 19(b), *Dairy Industry Act* (1967, as amended in 2006).

88 See S. 29, 33, *Sugar Act* (2001).

89 See S. 6(2), Third Schedule, *Sugar (General) Regulations* (2009).

90 See Horticultural Crops Development Authority (HCDA), *Code of Conduct*, available at <http://www.hcda.or.ke/tech/full_site_map.php?p_title=Code%20of%20Conduct>.

91 HCDA, *About Us*, available at <http://www.hcda.or.ke/tech/cat_pages.php?cat_ID=1>.

92 See HCDA, *Code of Conduct*, available at <http://www.hcda.or.ke/tech/full_site_map.php?p_title=Code%20of%20Conduct>.

well as management practices for harvesting and handling agricultural products.⁹³

III. – ANALYZING THE CONTRACT IN CONTRACT FARMING

The cornerstone of contract farming is the contractual relationship between producer and buyer. This section will analyze the characteristics of typical contracts governing contract farming agreements. The section will start with a general description of contracts that commonly apply to contract farming and then look at specific contract provisions of special interest, which aim to ensure and protect the contractual balance of both parties engaged in it.

1. Identification of the contractual parties

Contract farming is typically established between farmers and a buyer. Farmers may contract as individuals or as cooperatives or associations. Often, by forming groups and collectives, individual farmers are able to increase their bargaining power. Farmers commonly provide land and human capital and, in coordination with the buyer, grow and supply the raw agricultural commodity. As it relates to the buyer, it may be an individual entrepreneur or an agribusiness company acting as a processor, a retailer or a wholesaler. In some cases, the buyer also provides technical assistance to contracted farmers, advances production inputs and arranges for transportation.⁹⁴

It is relevant to know that other parties may play an important role in facilitating the contractual agreement and obligations of farmers and the buyer. This is the case of government where it facilitates access to land or agricultural inputs to farmers or monitors the correct implementation of the contract or the financial institutions that extend credit to farmers.

2. Nature of the partnership

From a legal perspective, within contract farming farmers and buyers may enter into different types of contract traditionally governed by different bodies of law. There are cases where farmers agree to produce and sell to the buyer a designated crop or livestock in a manner set forth in the agreement and the

⁹³ See *idem*.

⁹⁴ Contract farming may also involve other contracting parties, including public entities such as Government agencies or private-public partnerships. In these cases contracts might be regulated under separate public law (in Civil law countries, *Administrative Law*).

buyer pays according to a method of price determination that is prescribed in the contract – a sales contract. In other cases, farmers provide a service for agricultural or livestock production which is owned by the buyer, such as, for instance, when farmers agree to feed and care for animals that are owned by the buyer until such time as they are removed, in exchange for a payment based on the performance of the animals. Farmers may also agree to plant and grow on their land the seeds provided by the buyer.⁹⁵ These two cases could be considered services contracts. However, in many contracts, even if the buyer is the owner of the production inputs, the farmer bears the production risk, *i.e.*, the risk of loss of the good set under contract.

Different types of contract have different implications for the rights and obligations of farmers and buyers. In cases of low income or weak economic power, farmers may depend on the technology and production inputs provided by the buyers to produce in the quantity and quality required by the buyer. These inputs may include the land, seeds, and know-how. The line between sales, services and labour contracts in these cases might not be completely clear. Farmers, which are frequently the weaker party, might be forced to accept sales contracts where the risk assumed is too high, in situations where the contractual relation can be considered as a service or labour contract. If, instead, the parties were to establish an employment relationship, the buyer would likely not contract with smallholders because of added administrative expenses.⁹⁶

Looking at typical contract farming arrangements under both common law and civil law doctrines, some factors may actually point towards a closer relationship than that of independent contractors. According to the common law doctrine, the more control a company exercises over a worker's performance, the more likely the worker is an employee rather than an independent contractor. Provision of training and knowledge-sharing by the buyer and the continuity of the relationship between the company and the worker are other factors considered by the common law doctrine that indicate a possible employment relationship. According to civil law doctrine, subordination is the factor that characterizes the employer-employee relationship. This doctrine considers the employer as the party that gives directives to the worker, while

⁹⁵ See, e.g., HAMILTON, *supra* note 4.

⁹⁶ See Joseph A. MILLER, "Contracting in Agriculture: Potential Problems", 8 *Drake Journal of Agricultural Law* (2003), 57.

the independent contractor is free to decide how to perform its duties and, for this reason, bears the risk.

It should be noted that the contracts themselves may vary significantly in formality. Thus, while some contract farming ventures require detailed written contracts which are registered and monitored by the buyer, other ventures rely entirely on informal verbal arrangements. In Slovakia, contracts between sugar processors and sugar beet farmers are written, formal, and highly standardized because of market competition between eight processors; initially, one processing company introduced contract provisions which were soon recognized as successful, and copied by other competing companies.⁹⁷ However, even some very large contract farming ventures operate without written agreements. In India, for example, companies contracting with hundreds of farmers for tomatoes and potatoes sometimes operate only on one-time verbal arrangements with farmers.⁹⁸ Likewise, in Indonesia, tobacco ventures rely on verbal agreements with tens of thousands of separate farmers.⁹⁹

3. Key terms and provisions

Complete contracts may guide the parties to a correct execution of their duties, provide clarity and prevent misunderstandings. To be complete, contracts should contain a number of elements that will protect both parties and help them in implementation. Such elements would include:

- *Identification of the parties* – The parties' identification will usually include the names of the farmer and buyer, address, telephone and ID numbers.
- *Specification of the contract purpose* – The contract should indicate the agricultural commodity that farmers commit to sell or the service for agricultural production that they commit to provide to the buyer.
- *Legal description of the land* – The contract should include the number of acres and geographic location of the land on which production will take place.

⁹⁷ Hamish GOW / Deborah STREETER / Johan SWINNEN, "How Private Contract Enforcement Mechanisms Can Succeed Where Public Institutions Fail: The Case of Juhosucor A.S.", 23(3) *Agricultural Economics* (2000), 253, 262.

⁹⁸ Sukhpal SINGH, *supra* note 4, 1621, 1628.

⁹⁹ EATON / SHEPHERD, *supra* note 2, 61.

- *Contract duration* – The duration of the contract will usually vary depending on the production cycle of the agricultural goods that are the object of the contract.
- *Terms of payment* – The contract should have a clear and transparent method for price determination. It should indicate when the buyer will remit payment to farmers as well as the method of payment among, for instance, cash, cheque or bank transfer. It is advisable that the parties make sure that the chosen method of payment is practiced in the country of the farmer.
- *Clear indication of quantity and quality requirements* – Contracts should explicitly define quantity and quality requirements and ideally provide for an independent third-party expert to be appointed for quality control purposes. In poultry and livestock production contracts, it is advisable that the contract also make reference to prompt weighing since weight loss or “shrinkage” occurs with the passage of time, affecting the final price to be paid by buyers. If not provided by legislation, the contract should include a term whereby farmers are entitled to be present during the weighing of the animals.¹⁰⁰
- *Liability for inputs supply* – The production of the commodity may take place either through the use of production inputs that belong to the farmer or with inputs supplied by the buyer. It is advisable that the contract specify which party is responsible for the supply of production inputs and indicate a list of recommended seeds and agro-chemical inputs that satisfy buyer and market needs.
- *Risk of losses* – Contracts should indicate how parties must address the risk of crop or animal losses caused by force majeure events. They should take into account, if affordable, insurance mechanisms that minimize risks. In cases where farmers provide a service for agricultural production with no ownership of the production, it is advisable that contracts provide the sharing of such risk and costs among the parties or establish a minimum amount of compensation to farmers.
- *Product delivery* – The contract should indicate a time for commodity delivery as well as the place where the product should be collected,

¹⁰⁰ See, e.g., 9 C.F.R. § 201.108-1(e)(4) (US regulations under the federal *Packers and Stockyards Act* (1921), stating that poultry growers have a right to be present at the time of weighing).

such as the farm gate, a buyer collection point or a processing factory. It is also important that the contract show how the product will be delivered. The delivery of farm products normally implies costs of transportation; thus the contract should clearly state which party is responsible for arranging transportation and for payment of related costs.

- *Contract termination* – It is advisable that contracts specify the situations in which each party is entitled to terminate the contract, either due to negligent non-performance or otherwise.
- *Dispute resolution* – It is advisable that the contract prescribe a method to settle contract disputes, whether it be through judicial proceedings, arbitration or mediation. Amicable dispute settlement is obviously preferable to legal proceedings and alternative dispute resolution; but, when settlement is not feasible, a contract provision on dispute resolution will add procedural certainty. If the parties are located in different countries, it is necessary that the contract identify which national law will govern the contract in case of dispute arising out of its interpretation or execution.
- *Date, place and signature* – The parties should sign the contract indicating the date and place of contract formation. It is preferable that the parties sign in the presence of witnesses.

4. Considerations related to risk

During the performance phase under the contract, there are a number of risks and possible situations that may affect fulfilment of the parties' obligations. These situations include, among others, changes in weather, outbreaks of disease, market price fluctuations, changes in government policy and simple contract breach. The contract should contain specific clauses that protect the parties in these situations and indicate how they will deal with losses caused by such risks.

1. Force majeure events

The term force majeure refers to unpredictable situations that are beyond the parties' control, such as natural disasters or pest outbreaks. As a sector, agricultural production is particularly vulnerable to weather and disease. Extreme rainfall or drought, abnormally high or low temperatures, and pests or diseases could all devastate a farmer's production and make full contract

performance impractical, if not impossible. Contracts should contain clear clauses allocating these risks. These clauses may partially or fully exempt farmers from liability for non-performance in such circumstances and provide for the possibility to renegotiate the terms of the agreement in light of changed circumstances.

Other risks may arise when governments modify their agricultural policies. Thus, for instance, a government's decision to ban the import of specified agricultural products may impede the full performance of obligations under the contract. Contracts should address this as any other arising risk and provide the possibility to renegotiate the terms of the agreement should unforeseeable circumstances make performance impossible. Similarly, extreme market price fluctuations might make contract performance highly impractical. In order to protect the parties in this situation, contracts could provide for price renegotiation if the market price rises or falls outside specified limits.

2. *Contract breach*

Other situations classified as possible risks are due to the conduct of the parties. For example, a buyer's failure to pay (on time) may have serious implications for both farmers and buyers. Delayed payments might lead farmers to sell the contracted good to a different buyer. A late payment or a failure to pay may seriously affect farmers if they have to repay bank loans taken to invest in production. To protect the parties, particularly farmers, from such risk, contracts should clearly specify the time and manner of payment. In addition, to protect farmers from non-payment, contracts might require buyers to provide guarantees such as a lien on the buyer's assets or the right to compensation from an indemnity fund.

A farmer's failure to provide the agreed quantity and/or quality of products is a risk that affects both farmers and buyers. To protect their interests, buyers may include provisions for buyer participation in production, technical assistance and close control over farmer performance. Monitoring systems such as routine visits to farmers' fields can ensure stricter compliance with the terms of the agreement. In addition, in order to encourage farmers to meet the agreed quality requirements, contracts may provide for the award of premiums for high-quality products and penalties for low-quality products.

3. *Unfair practices*

During the implementation of the contract, the parties may adopt practices that hinder the correct execution of the contract. A recurrent unfair practice is

the farmers' sale of the product set under contract or part of it to a different buyer for a higher price (so-called side-selling) resulting in lower quantities delivered to the buyer than those agreed by contract. If buyers want to increase the probability that farmers will deliver their whole production, they may want to include an exclusive dealings clause in the contract. The inclusion of penalties or other consequences (such as including the farmer on a list of non-preferred contractors) could also discourage farmers from contract breach.

On the part of buyers, there may be significant potential for unfair conduct at the delivery and price determination stage. Especially in case of market price changes, buyers may falsely declare that the product is not compliant with the agreed quality requirements in order to reduce the agreed price or to reject the commodity. In addition, buyers may take advantage of ambiguity in quality requirements when farmer production is unusually high, so that they may reject the part that they do not need. Buyers may also downgrade the quality of the commodity through deliberate actions or omissions intended to affect production and quality. For example, in case of livestock production contracts, buyers may commit to supply animal feed. With this allocation of obligations, the opportunity exists to manipulate feed delivery schedules to lower animal weights or nutritional status and thereby lower the final price paid to the farmer. In the case of sugarcane production contracts, when the price is based on the level of sucrose, the buyer may delay the purchase of sugarcane since sucrose levels decline rapidly after harvest.¹⁰¹ In order to prevent the risk of quality manipulation, the contract should clearly indicate input specifications, delivery details, and quality requirements, as well as provide for quality assessment procedures by a neutral third party. The next section will provide further details on a few specific contract provisions that may create opportunities for abuse.

5. Contract terms which may result in abuse

The benefits of contract farming may be hindered by problems arising from unclear, incomplete, or poorly understood contract terms. In some cases, contracts do not include some important clauses necessary to protect the parties. In others cases, contractual clauses are unclear or ambiguous and may lead to misunderstandings between the parties or to manipulation by buyers.

¹⁰¹ See DA SILVA, *supra* note 1, 17.

This section includes a non-exhaustive list of potential problems that may result from incomplete, unclear or poorly drafted clauses.¹⁰²

1. *Lack of clarity in price determination*

In contract farming, contractual clauses related to the determination of price are often unclear, complex or ambiguous, which can lead farmers to misrepresent or misunderstand how the price is calculated. This case is frequent in livestock production contracts where payment may be based on a complex formula combining factors such as the weight gained relative to the feed consumed, mortality and injuries. Farmers may not always understand complex technical language. In crop production contracts, the price is often determined at the time the contract is entered into. Premiums and discounts may be applied in relation to quality, but in some contracts, the quality requirements demanded by the buyer (the so-called “grade specifications”) are often not clearly specified. The ambiguity of contractual clauses may lead to their manipulation by buyers in order to reduce the amount payable, especially in case of market price fluctuations.

2. *Liability for production losses*

Some contracts specify that farmers do not have title to the crops or livestock; in this context, the farmer provides a service by caring for or growing the inputs provided by another party. This arrangement has two major advantages for buyers. First, buyers are better able to obtain intellectual property rights in the crop’s genetic material. And second, they are better able to prevent the farmer’s creditors from claiming legal rights on the object of the contract. But, even when farmers essentially just provide a service for agricultural production using seeds or young animals provided by a company, contracts will typically impose the risk of production losses on farmers.

3. *Large investments required for a short-duration contract*

When a short-duration contract requires large upfront investments by a farmer, the farmer is exposed to significant investment risks. For example, production contracts for poultry or livestock often require the construction of facilities built to exact specifications. The payback period for this capital investment

¹⁰² For a more detailed discussion of potential risks from contract provisions, see MILLER, *supra* note 96, 57.

may be long, so farmers could fall into serious indebtedness should contracts be cancelled or not renewed.

4. *Unilateral termination clauses*

Some contracts might include a *unilateral termination clause*, which allows buyers to terminate the contract at any time and for any reason. Especially in the case of large upfront investments, as discussed above, a unilateral termination clause poses great risks for farmers. Similarly, other contracts specify that buyers are entitled to terminate the contract in case of failure by the farmer to comply with the terms of the contract, without providing the complementary right to farmers.

5. *Confidentiality clauses*

Confidentiality or nondisclosure clauses may potentially create problems resulting from information asymmetry between contracting parties. A confidentiality clause prevents farmers from disclosing contract terms and conditions to other individuals. Thus, the clause may keep farmers from seeking outside technical and legal advice on contracts or simply comparing their contracts with those of other farmers to make sure they are getting a comparable and fair deal.

6. *Liability for environmental damage*

Some contracts consider farmers as independent contractors and thus place the risk of liability for the environmental damage that may arise from the farm activity on farmers. Most contracts do not take into consideration, in the calculation of the price, all the risks and costs that farmers bear in case of environmental damage. Even in cases where buyers exert a high degree of control over the production process, they are often not considered co-responsible with farmers for environmental damages resulting from agricultural production.

7. *Abuse of mandatory arbitration clauses*

In many contracts, farmers are forced to sign mandatory arbitration clauses as part of take-it-or-leave-it non-negotiable contracts with buyers; these clauses effectively foreclose recourse to the court system. Arbitration can provide quicker and cheaper dispute resolution but it is also important that farmers are informed and accept to use arbitration. Furthermore, arbitral tribunals might

be more limited than a court with respect to the types of claim that may be heard and the type of compensation that may be given.

IV. –ROLE OF GOVERNMENT

Governments have an active role to play in ensuring fair contractual practices and in supporting farmers that are engaged in contract farming. Governments may potentially improve the success and equity of outcomes of contract farming ventures by providing extension services to educate farmers about contracts, for example by facilitating sample contracts or information checklists.¹⁰³ Most farmers lack both knowledge of and access to information about contracts; in many cases, contract breach is due to a lack of awareness regarding the contract entered into. Training in basic concepts of contract law, fair contractual practices and foreign languages used in contracts should also be supported. Governments can be instrumental in ensuring that farmers are informed and better prepared to negotiate and perform the terms of their agreement. Direct technical and legal assistance, when possible, would also be useful, particularly for small farmers. Finally, the promotion of good contractual practices in the relations of farmers and buyers, such as those illustrated in the Code of Conduct for the sale of horticultural commodities in Kenya, may improve contractual relations between farmers and buyers.

Within the framework of their agricultural development policies and regulatory mechanisms, governments may grant financial incentives and subsidies to agribusiness firms that enter into contracts with small farmers. Governments may support poorer smallholders in their contract farming arrangements and foster the success of contract farming ventures by addressing public infrastructure deficiencies. Agribusiness firms select the farmers with whom they will contract for agricultural production based on a number of factors.¹⁰⁴ Beyond just looking at climate and soil type, a firm might look at factors such

¹⁰³ See UNCTAD, *World Investment Report 2009: Transnational Corporations, Agricultural Production and Development*, xviii (2009). For an example of a contract checklist from the US, see Tom MILLER, *Grain Production Contract Checklist*, Iowa Office of the Attorney General, available at http://www.state.ia.us/government/ag/working_for_farmers/farm_advisories/99grain.htm (1999); see also, Michigan Farm Bureau, *Checklist for Grain Production Contracts*, available at <http://www.michfb.com/commodities> (last visited 14 Feb. 2012).

¹⁰⁴ Christopher B. BARRETT / Maren E. BACHKE / Marc F. BELLEMARE / Hope C. MICHELSON, Sudha NARAYANAN / Thomas F. WALKER, "Smallholder Participation in Contract Farming: Comparative Evidence from Five Countries", *World Development* 4 (2011 – in press).

as farm size, access to irrigation, access to good roads, proximity to transport, storage, and processing facilities, membership in farmer organizations, participation in extension services, and others.¹⁰⁵ Firms care about infrastructure and roads because poor infrastructure development, especially poor road access, drives up the transportation costs associated with a contract farming venture.¹⁰⁶ Deficient road infrastructure additionally increases transaction costs and logistical uncertainty.¹⁰⁷ Furthermore, some studies provide evidence of an inverse relationship between remoteness (as a function of road condition and distance to urban centers) and crop yields, agricultural inputs use, and income.¹⁰⁸ By investing in rural roads in targeted agricultural areas, a government might open the door for smallholders in a new area to explore contract farming opportunities.

Many contracts require compliance with strict quality requirements as well as Good Agricultural Practice (GAP) standards. Industrialized countries such as Europe, the USA and Japan, have enacted legislation to control food quality and ensure an acceptable level of safety for food imports. In addition, many private companies have put in place an increasing number of private voluntary standards. Accordingly, certification of agricultural practices carried out on farms is increasing in many industrialized countries as a way to guarantee compliance with these GAP standards or other private standards. Governments should regulate and ensure the availability of quality control and certification mechanisms to enable farmers to meet quality standards required by their buyers.

Governments may have a role to play in general market regulation. Monopsony conditions and a lack of information on market prices and agricultural trends are obstacles for farmers to negotiate a fair price. Farmers should be protected in situations where there is only one buyer and many

¹⁰⁵ See *idem*, at 3-4.

¹⁰⁶ *Idem*, at 3.

¹⁰⁷ Bart MINTEN / Steven KYLE, "The Effect of Distance and Road Quality on Food Collection, Marketing Margins, and Traders' Wages: Evidence from the Former Zaire", 60(2) *Journal of Development Economics* (1999), 467, 494.

¹⁰⁸ See, e.g., David STIFEL / Bart MINTEN / Paul DOROSH, "Transaction Costs and Agricultural Productivity: Implications of Isolation for Rural Poverty in Madagascar", 56 IFPRI MSSD Discussion Paper 56-57 (2003); see also, David STIFEL / Bart MINTEN, "Isolation and Agricultural Productivity", 39(1) *Agricultural Economics* (2008), 1; see also, Jean RAZAFINDRAVONONA / David STIFEL / Stefano PATERNOSTRO, "Changes in Poverty in Madagascar: 1993-1999", 19 *World Bank Africa Region Work Paper Series* (2001), 35.

sellers for a single commodity (monopsony) since in such situations they have weak bargaining power. In monopsony situations, governments might choose to set the prices to be paid to farmers.¹⁰⁹ Governments should also allow access to information about market prices and trends in order to help farmers assess whether the terms and conditions of the contract are appropriate.

Governments should facilitate dispute resolution through mediation or arbitration, providing an expedient method of protecting parties' rights which is financially accessible for farmers. The government of Malawi, for instance, has established a set of guidelines on dispute resolution for agricultural contracts and has established the role of mediator in contractual disputes in the Ministry of Labor. In India, the APMC Act provides that any dispute arising from the contract farming agreement shall be referred to a dispute settlement authority, which shall resolve the dispute in a summary manner within thirty days after giving the parties a reasonable opportunity of being heard.¹¹⁰ The model act (APMC) also provides the possibility to appeal against the decision of the referred authority within thirty days from the date of its decision and stipulates that the decision of the appellate authority will be final.¹¹¹

Governments should additionally foster a dialogue between farmers and buyers. This can be achieved through organizing joint meetings where the parties have the opportunity to discuss the contractual terms and their duties, to explain the management program, to rectify misconceptions and to resolve their conflicts. In Mozambique, the government always participates in the annual meeting of cotton producer representatives and processors as a neutral facilitator in the negotiation and acceptance of the price.¹¹² In Ecuador, the government plays an important role, coordinating private and public actors in the negotiation of wheat production, giving suggestions on the duties of the contracting parties and on the price to be paid to farmers.

¹⁰⁹ EATON / SHEPHERD, *supra* note 2, 17. See also the commodity-specific laws in Kenya, discussed in the section on legal frameworks above, where government agencies are given the power to set prices paid to farmers.

¹¹⁰ See S. 38(3), APMC (2003).

¹¹¹ See S. 38(4), APMC (2003).

¹¹² See Jason AGAR / Peter CHILIGO, *Contract Farming in Malawi for the Ministry of Agriculture and Food Security* (2008).

V. – CONCLUSIONS

A sound legal framework governing contract farming may promote fair contract negotiations and guide farmers and buyers to a more successful implementation of agricultural contracts. Depending on the country, this legal framework may consist of a set of norms from sources such as international law, domestic codes, specific legislation, and soft law. Strengthening regulatory frameworks on contract farming helps to protect farmers from potential abuses of power by their buyers. Conversely, incomplete or inadequate legal frameworks may expose farmers to situations where they have to accept abusive clauses and “take-it-or-leave-it” contracts from their buyers or unclear and ambiguous contractual clauses with hidden risks. Sound contracts are indispensable for the protection of the parties in cases where unforeseeable circumstances, breach, and other situations arise.

Governments have an important role to play in supporting fair contractual practices and contributing to the success of contract farming ventures for all involved parties. Governments should promote fair contract farming through clear and complete legal frameworks, and training on basic concepts of contract law and good contractual practices. Governments should facilitate farmers’ access to market information and foster a dialogue between the parties. Finally, they could have a role in ensuring the availability of quality control and certification and transparency mechanisms and make available dispute settlement mechanisms to provide a quick, accessible and efficient means of resolution to contractual disputes.

A sounder legal regime for contract farming is important to improve access to legal information. A joint collaboration between FAO and UNIDROIT in the development of a specific guidance document providing an in-depth legal analysis on contract farming legal issues would be beneficial to the parties for the improvement of contractual relations and settlement of disputes. This guidance document may serve as a basis for public authorities in the development of a sound regulatory framework in view to promoting fair contractual practices and strengthening farmers’ position to contract farming. It may also be a valuable tool for FAO work in providing technical and legal advice to contractual parties, government agents and NGOs.

III