



# INVESTMENT IN AGRICULTURE

## Policy Brief #8

# The Farmer and Her Husband: Legal innovations for women in contract farming

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## Overview

Governments, donors and responsible agricultural investors are increasingly looking to contract farming as a more inclusive business model for agricultural investment, and a tool with which to redress economic power imbalances in relationships between small-scale producers and agribusiness. The International Institute for Sustainable Development (IISD) notes that women are largely ignored in this important effort, and we propose several ways to begin to address the problem. We are interested in exploring whether the contract can be an instrument for rebalancing not only power relations between the farmer and buyer, but between a female farmer and her husband.

The research on contract farming points to two disadvantages faced by female farmers: first, they often do as much of the work on the farm as their spouse but are not included in the contract, and second, they tend to raise subsistence crops, which are rarely contracted. Contracted crops displace the subsistence crops that women are more likely to grow.

IISD proposes that protection for women's interests could—and should—be better built into the contract itself. The contract is the primary instrument governing the contract farming relationship. There are examples from different areas of law around the world where the law intervenes in private contractual relationships in order to protect the interests of the parties, particularly where there is an imbalance of power among the signatories. Principles from the laws governing responsible lending, franchising and consumer protection all provide inspiration for innovative legislative and contractual solutions that could be applied to contract farming, and in particular to better protect women's interests. Ideally, these protections should be implemented through legislation or the use of model contracts, so that they apply consistently and uniformly to all contract farming relationships. Until that ambition can be realized, responsible buyers and managers of contract farming schemes wanting to improve the gender outcomes of their projects can already start building them directly into their agreements.

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## Introduction

Contract farming is production carried out under an agreement between a producer and a buyer. The contract usually sets out the terms and conditions for the production and sale of the goods, determining in advance a specified price, quantity, quality and delivery date, and sometimes detailed specifications for production methods and inputs (IISD & Food and Agriculture Organization of the United Nations [FAO], 2018). The contract eliminates some of the risk around agricultural commodity production, creating opportunities for investment and expansion that might not arise in a less regulated transaction.

Contract farming has existed for decades in most countries, but its use and prominence has recently grown, in part in reaction to the so-called “land grabs” (a wave of large-scale, land-based investments) that affected many developing countries after the 2008 food price crisis. As an alternative business model to large-scale, land-based investments, one of the key benefits of contract farming is that it allows farmers to retain control over their most valuable asset: their land. It can also provide farmers with a more predictable income and help them access higher quality inputs such as seed, fertilizer and technical assistance (IISD & FAO, 2018). Yet in spite of these advantages, the evidence suggests that contract farming is doing little to improve outcomes for women.

## Women and Contract Farming: The challenges and commonly proposed solutions

There is a substantial body of research showing two main disadvantages faced by women in the context of contract farming: (i) men sign the contracts but women are the ones doing most of the work (FAO, 2011, 2013; Smalley, 2013) and (ii) contracted crops often displace subsistence crops, which are primarily grown by women to feed the household (FAO, 2001; Vermeulen & Cotula, 2010).

### Men Sign the Contracts; Women Do the Work

There are many case studies indicating that women are less likely than men to be included in contract farming schemes as signatories to farming contracts.

Consider:

- Women made up less than 10 per cent of the farmers involved in contract farming schemes producing fruit and vegetables for export in Kenya (Dolan, 2002)
- Only one farmer out of a sample of 59 was a woman in a contract farming scheme producing green beans in Senegal (Maertens & Swinnen, 2009)
- A study of contract farmers of sorghum, sunflower and rice found that women made up 12 per cent, 15 per cent and 30 per cent of farmers for each crop, respectively (Elepu & Nalukenge, 2009)
- In a study of 39 large-scale agribusiness investments in sub-Saharan Africa and Southeast Asia, only 1.5 per cent of out-growers were women (Mirza, Speller, Dixie, & Goodman, 2014)
- Recent case studies by the FAO found that, of all contracted farmers, women made up 12 per cent of vegetable seed growers and 28 per cent of flower seed growers in the Multiflower scheme in Tanzania, 15 per cent of banana growers in the Unifrutti scheme in the Philippines, 12.5 per cent of mango growers in a scheme in Ghana and 27 per cent of sugar growers in the KASKOL sugar project in Zambia (FAO, 2018).





And yet at the same time, there are many examples of women carrying out a significant share of the work in contract farming arrangements:

- A study of sugar farming contracts in Africa found that women held less than half of the contracts but provided the majority of the labour on contracted plots (Porter & Philips-Howard, 1997).
- In a large contract farming scheme involving thousands of farmers in China, women—while excluded from signing contracts themselves—performed the bulk of the work (FAO, 2001).
- Women worked longer hours than men in cottonseed and vegetable contract farming schemes controlled by male farmers in the Indian state of Punjab (Singh, 2003).
- In Guatemala, women held only 3 per cent of snow pea production contracts despite contributing more than one third of total field labour and almost all processing labour (World Bank, FAO, & International Fund for Agricultural Development, 2009).
- In an organic mango project in Ghana, it is estimated that women contribute up to 70 per cent of the labour (FAO, 2018).

As a result, female farmers are disempowered, with no control over the income earned from the contract nor how it is spent. This has knock-on effects for the household: some studies have also found that men are inclined to spend the income from contract farming on individual rather than family needs (Schneider & Gugerty, 2010).

### **Contracted Crops Displace Subsistence Crops**

The second significant negative impact of contract farming on women identified by the literature is that contract crops displace the subsistence crops grown by women. For instance:

- In East Africa, the introduction of contracted tobacco displaced the cultivation of millet, a key subsistence crop (FAO, 2001).
- Contracted rice production interfered with sorghum grown by women (FAO, 2001).
- As export horticulture crops grew in value in Meru District in Kenya, the land allocated to women's vegetable cultivation was increasingly overtaken by men (Dolan, 2002).

This displacement of subsistence crops produced by female farmers can also have negative effects on household food and nutrition security. Including women as signatories to farm contracts has been shown to have broader benefits for women. In a case study in Zambia, women in male-headed households who had been signatories to the contract farming scheme (and not their husbands) reported they had more say over how the income was spent and more decision-making influence in the household and community (FAO, 2018).





## Making the Contract Itself a Part of the Solution

Contract farming is by definition based on a contractual relationship. The most direct way to use a contract to protect women's interests is to use the contract itself to address some of the known negative impacts that contract farming can have on women. Perhaps first and foremost, by requiring their inclusion. The legal framework provided by domestic legislation can support contracts becoming part of the solution.

While the literature contains many recommendations on the legal content of contract farming agreements, most relate to ensuring contract “completeness.” This means ensuring the contract includes key provisions such as identification of parties, description of land, contract duration, terms of payment, clear indication of quality and quantity requirements. It is obviously vital that these terms are clearly specified. The frameworks can provide not just a practical support, but a strategic one as well. By introducing some creativity or innovation in introducing new terms or contractual mechanisms, better designed contracts can protect the interests of female farmers and help to ensure a fairer bargain overall in contract farming arrangements.

It is important to be realistic about the limitations of a legal and contractual approach to addressing gender issues in contract farming. There are underlying structural barriers preventing women's access to contract farming schemes, such as their lack of access to land, capital and representation in farmers' organizations. These barriers need to be addressed as part of broader policy reforms—they cannot be corrected in a contract farming agreement or contract law alone. However, the contract can support positive change. Contracts can help to surmount some of these barriers by realigning the incentives for male farmers and buyers to encourage women's meaningful inclusion in the contract. The contract can be a tool that provides options for raising women's visibility in contract farming arrangements, ensuring them a place at the negotiating table.

Of course, the effectiveness of legal and contractual approaches to redress gender-based inequity is constrained by women's access to, and equality before, the law itself. Where the letter or application of the law disadvantages and discriminates against women, this will limit the effectiveness of innovative legal protections for women in contract farming. Nonetheless, the law matters. It may not be a “magic wand” that can solve everything on its own, but it plays a vital role in securing women's rights. A progressive and innovative contract farming law can play an important role in changing norms and cultural assumptions, even if compliance with the law is initially limited.

The remainder of this policy brief covers the relevant legal principles from common law jurisdictions intended to redress vulnerability and power asymmetries in contractual relationships. The analysis considers how these principles could be adapted and applied to better protect the interests of women in contract farming.

### Taking Inspiration from Laws Protecting Vulnerable Parties in Commercial Relationships

Per the classic principles of contract law, contracts are seen as private legal arrangements made by willing parties, and the courts will not typically intervene in the terms agreed upon by those parties. Nonetheless, legislatures around the world have passed laws that set parameters for private contracts. Such laws are intended to address the inherent vulnerability and power imbalances that inhibit truly free and fair contracting in some types of commercial relationships. These are commercial relationships in which, like the smallholder farmer and the agribusiness enterprise, one party is larger, better resourced, more sophisticated, and in a stronger position to protect its own rights and impose its terms on the other party. The laws are also directed at commercial relationships in which, like the woman whose husband is entering into a contract farming agreement, the actions of one individual can negatively impact the interests of another person close to them.

There are laws for mortgaging, franchising and consumer protection that are all designed to redraw commercial contracts to protect the weaker party in a contract and vulnerable third-party interests. While the specifics of these relationships differ in a number of ways from a contract farming relationship, the core notion of power asymmetry and vulnerability is the same. Principles from these laws can provide practical guidance on how contracts can be designed to:



- Obtain a woman's consent to a contract farming arrangement that affects her
- Create strong incentives for a female farmer to be included as a party to the contract
- Ensure a woman's standing to enforce and benefit from a contract farming arrangement
- Strive to ensure that women (and indeed all) farmers who sign contracts have a clear understanding of the contract's key terms, their rights and obligations, and the risks involved

## How Can These Legal Measures be Implemented?

Ideally, the below model provisions would be incorporated by policy-makers into a contract farming law. Domestic law is the most effective tool for ensuring consistency and helping to change social norms that prevent women from being signatories to contracts that affect them. As such, the example language provided in this paper is drafted in the form of legislative provisions.

Yet few countries currently have specific legislation to address contract farming. Until laws catch up, responsible buyers, and those wanting to set up contract farming schemes with positive gender outcomes, may wish to adapt the language proposed here as contractual terms or voluntarily comply with the proposed processes. It is in the interests of buyers to do so for several reasons. Failing to recognize women as the main workers in the contract can result in labour stoppages and conflicts that reduce productivity and interrupt delivery (for example, see FAO, 2001). Land-use conflict can also interrupt the delivery schedule, and unclear contract terms and/or a lack of understanding of the obligations contained in the contract farming agreement is a common source of non-compliance (UNIDROIT, 2014).

Governments entering into investment contracts with investors and requiring them to establish a contract farming scheme may wish to annex a template contract farming agreement to the investment contract. The language proposed here could be used in such a template contract, perhaps in conjunction with the Model Agreement for Responsible Contract Farming developed by IISD and FAO (2018).

## The Legal Measures to Protect Women in Contract Farming

### Obtaining Consent to Contract Farming Agreements

**The principle:** In situations where one person's decision to enter into a contract with a company can have a negative impact on another person's rights and interests, the law may impose a positive obligation on the company to take active steps to obtain the consent of that other person.

**Examples of this principle in action:** Some mortgaging laws address situations where, for example, a husband takes out a mortgage on the family house without the knowledge or consent of his wife. Although the wife may not be on the title to the house, she would clearly be disadvantaged if her husband took out a mortgage on their home and then defaulted on the loan, resulting in the home being repossessed. The UK Finance Mortgage Lenders' rules requires lenders to obtain written consent to a mortgage from any occupant of the house who is over 17 and who is not a party to the mortgage. In another an example from the United States, Minnesota statute 507.02 provides that, if a homeowner is married, no conveyance of the home is valid without the signatures of both spouses.

In both of these examples, the law prevents a party from entering into a contract with another private individual without actively seeking consent from another person who is not a party to the contract but whose interests could reasonably be expected to be affected by the contract.

**How could this be applied to protect the interests of women in contract farming?** A contract farming law could establish a similar principle that a buyer must seek the consent of those who would be affected by the contract farming agreement, for example with the following provision:



### Article 1: Spouse's consent to the contract farming agreement

(1) If the Producer has a spouse, no Contract Farming Agreement between that Producer and a Buyer shall be valid without the signature of the Producer's spouse in accordance with paragraph (2) or (3) below.

This provision could go one step further and require that consent be given in one of two ways:

(2) Where the spouse will perform a substantial amount of the work required to produce the Goods to be supplied under the Contract Farming Agreement, the spouse shall be a party to the Contract Farming Agreement and shall sign the Contract Farming Agreement in his or her individual capacity.

(3) Where the spouse will not perform a substantial amount of the work required to produce the Goods to be supplied under the Contract Farming Agreement (a "Non-Party Spouse"), the Non-Party Spouse shall be requested to provide their written consent to the Contract Farming Agreement in accordance with Article 4 – Warranty of Non-Party Spouse.

There is strong justification for a blanket requirement for a wife to give her active consent to any contract farming agreement because her rights and interests will be affected in some way. This will be as the primary worker, another user of the land, or as the person who will bear additional duties as a result of the overall greater household workload. By rendering the contract farming agreement invalid (and therefore unenforceable) without the signature of the wife, either as a party or a non-party, this provision creates a strong incentive for the wife's signature to be obtained. The provisions proposed below are designed to help ensure this consent is free and informed.

### Ensuring Informed Consent

**The principle:** If the woman's consent is essential to the validity of the deal, it is critical that her decision to give consent is well informed regarding the key elements of the agreement and the risks it entails. To help address the issue of informed consent to a complicated commercial contract in the context of an asymmetrical power relationship, there are various legal measures used in different jurisdictions. Some laws require the stronger party to provide warnings in prescribed language and contract coversheets that contain a plain language summary of key terms. There are also laws that require positive statements from an individual about their understanding of a commercial agreement.

**Examples of this principle in action:** There are some examples from the United States in this respect. Pennsylvania's public utility regulations require electricity retailers to provide consumers with a separate contract summary, which is an easy-to-read document that provides a clear and concise summary of key terms and conditions. The Texas Property Code states that home improvement contracts between a contractor and a consumer must contain, in a conspicuous place, the words:



**"IMPORTANT NOTICE:** You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. **KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."**

The Franchising Code of Australia requires that, before a franchise agreement is entered into, the franchisee must provide a written statement to the franchisor confirming that they have received, read and had a reasonable opportunity to understand the disclosure document and franchise agreement, and that they have been given advice about the proposed franchise agreement or franchised business by an independent legal adviser, business adviser or accountant.



**How could this be applied to protect the interests of women in contract farming?** A contract farming law could include provisions that require the contract to include a standard form warning and a cover sheet of key terms. For example:

#### Article 2: Disclosure of information

(1) A Contract Farming Agreement is not valid and enforceable unless it contains the following:

(a) On the first page of the contract, in a conspicuous place and in text no smaller than size 12, and otherwise in compliance with any additional formatting requirements prescribed by regulation, the following words:

“IMPORTANT NOTICE: This is a legally binding contract. You and the buyer are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet its terms and conditions, you may face serious financial consequences. The terms of this contract may involve you taking on a debt. You are strongly advised to consider the terms and conditions of this contract carefully before signing [including with the help of an independent legal advisor or producer organization.]”

(b) On the second page of the Contract Farming Agreement, a single page entitled “summary of key terms” that contains only the following:

- (i) The price or price mechanism for the Goods;
- (ii) The delivery date or schedule for the Goods;
- (iii) The cost of any inputs provided for the production of the Goods; and
- (iv) Any other item prescribed in the regulations.

The following provision is designed to reinforce the practical steps of fair contracting. It gives the producer (which will include a woman who is incorporated as a party to the contract, in accordance with Article 1(2) above) time to review the contract, seek advice and properly understand their obligations. This provision is based on a similar clause in the Model Agreement for Responsible Contract Farming (IISD & FAO, 2018).

#### Article 3: Warranty of Producer

(1) A Contract Farming Agreement is not valid and enforceable unless, prior to the signature of the Contract, the Producer provides the Buyer with a written statement in the following words:

“The Producer warrants that:

- (i) No less than 10 days before the signature of this Contract Farming Agreement, I received a [copy of this Contract Farming Agreement]/[a written offer incorporating the terms of this Contract Farming Agreement];
- (ii) I have read this Contract Farming Agreement or had this Contract Farming Agreement read to me by an independent third party and had a reasonable opportunity to understand this Contract Farming Agreement before signature; and
- (iii) I have had the opportunity to seek the advice of [an independent legal advisor]/ [a producer organization] on this Contract Farming Agreement before signature.”





The following provision is designed to help ensure that a woman who is not a party to the contract provides her consent to the contract, having reviewed and understood it:

#### Article 4: Warranty of Non-Party Spouse

(1) If the Producer has a Non-Party Spouse, a Contract Farming Agreement is not valid and enforceable unless, prior to the signature of the Contract Farming Agreement, the Non-Party Spouse provides the Buyer with a written statement in the following words:

“The Non-Party Spouse warrants that:

- (i) No less than 10 days before the signature of this Contract Farming Agreement, I received a [copy of this Contract Farming Agreement]/[a written offer incorporating the terms of this Contract Farming Agreement].
- (ii) I have read this Contract Farming Agreement or had this Contract Farming Agreement read to me by an independent third party and had a reasonable opportunity to understand this Contract Farming Agreement before signature.
- (iii) I had the opportunity to seek the advice of [an independent legal advisor]/[a producer organization] on this Contract Farming Agreement before signature.
- (iv) I understand and acknowledge the implications of the Contract Farming Agreement on, among other things, the use of the household land, labour, and other resources.
- (v) I consent to this Contract Farming Agreement.’

The following provision is intended to provide options to a woman who is not incorporated as a party to the contract, and whose consent is not freely given but arises as a result of deception, duress, etc. The existence of such deception, duress, etc. may be difficult to establish, and option (i) will depend on the woman having access to a court or other dispute resolution method, which is by no means a given. The inclusion of this provision should however put the onus on a responsible buyer or manager of a contract farming scheme to try and establish whether consent is freely given, for instance by asking the spouse for her consent not in the presence of her husband.

(2) Where any of the Non-Party Spouse’s warranties were procured under deception, duress, influence or pressure, the Non-Party Spouse may, as applicable:

- (i) Apply to the competent court [or insert other relevant local dispute resolution authority] to have the Contract Farming Agreement set aside;
- (ii) Request the Buyer to renegotiate the Contract Farming Agreement in whole or in part, and the Buyer shall consider such request in good faith; and/or
- (iii) Request the Buyer to make payments owing under the Contract Farming Agreement directly to the Non-Party Spouse, and the Buyer shall consider such request in good faith.

## Conferring Rights to Third Party Spouses

**The principle:** Although there are benefits to a woman being made a party to the contract, it may not be possible or desirable in all situations. In some cases, it may be better to simply confer the benefits of that contract onto the woman as a third party to the contract.

Where a woman is made a party to the contract, she will be entitled to enforce the contract in her own right, to receive payment from the buyer, to discuss or renegotiate the terms with the buyer. A woman who is not a party to the contract will not necessarily have these rights, even if she consents to the contract in accordance with the above provisions.

A woman may choose not to be a party to the contract, for example because she is not performing work under the contract, and as such she does not wish to be liable for the commitments under the contract. But there are reasons that are not so benign. For example, a woman may not be party to the contract because her husband minimizes or fails to recognize the work she will perform under the contract. At the time of signature, it could be thought that the





woman will not perform work under the contract, but she could end up performing a substantial amount of the work. Or it could be socially or culturally unacceptable for a woman to sign contracts in the local context.

These situations may be difficult to predict or influence. In each situation, however, the woman may wish to be able to benefit from the rights conferred under the contract, in particular receiving payment, but also participating in training opportunities. A responsible buyer or manager of a contract farming scheme may similarly wish to make payments directly to the woman in satisfaction of its contractual obligations.

**Examples of this principle in action:** There are laws that allow contracts to confer rights onto non-parties to the contract. The UK Contracts (Rights of Third Parties) Act of 1999 allows for a contract to confer enforceable benefits on a third party to the contract, where the contract identifies the third party by name, description or as a member of a class. The third party has the same rights under the contract as a party of the contract, including rights to contractual remedies, but is not subject to the contractual obligations.

**How could this be applied to protect the interests of women in contract farming?** A contract farming law or agreement could define a person who is not a party to the contract but who is a) doing a substantial amount of work under the contract or b) engaged in subsistence farming that could be disrupted by the contract, as third parties under the contract to whom the benefits of the contract can be conferred. This means that the buyer could make payments directly to the woman and that the woman could directly enforce the contract, which could be especially important in the event of her husband's death or departure from the family home.

A contract farming law could include the following type of provision:

#### Article 5: Third-party rights

(1) A Non-Party Spouse who:

- (i) produces food for household consumption on the Production Site; and/or
- (ii) performs a significant amount of the work required to produce the Goods under the Contract Farming Agreement;

is entitled to receive and enforce the benefits of this contract.

The benefit of this provision is that it automatically comes into effect. It confers benefits on the woman by virtue of her interests in the contract, regardless of whether the producer or buyer has decided to incorporate her as a party or obtained her consent. As such, it complements the previous provisions and provides a backup in the event that they are circumvented. If a buyer or male producer considers it disadvantageous that a woman should be entitled to benefit from the contract but not have obligations under it, this should serve as motivation to have her included as a party.





## Complementary Legal Measures

There are a number of other legal measures, inspired again by laws to protect vulnerable contracting parties, which could be implemented to support the above provisions. These are not necessarily gender-focused but would serve to enhance the overall fairness of the deal. These could include:

- **Cooling off periods** allowing the contract to be cancelled within a short period following signature, to correct situations where a producer may have signed under duress, confusion or pressure. Cooling off periods are common in consumer protection legislation, usually for unsolicited selling agreements.
- Provisions allowing “**unfair contract terms**” to be voided. In Australian consumer protection law, an unfair contract term is one that enables one party (but not another) to avoid or limit their obligations under the contract or to vary or terminate the contract, or that penalizes one party (but not another) for breaching or terminating the contract. A contract farming law could set out specific contract farming-related clauses that are deemed unfair and voidable, for instance price mechanisms based on consignment.
- **Mandatory disclosure** of information about the buyer, such as the buyer’s financial situation, experience, and who they report to (the chain of command in the buyer’s firm). This type of provision is often seen in franchising laws, as it allows a franchisee to make an informed decision about the risks of engaging with the franchisor. Given the high rate of failure of agricultural investment projects, this could be an important protection in some contexts.
- Requirements that all legal documents be made available in the **preferred local language**.

In addition to the above, the provision of gender-sensitive legal aid or advisory services and access to justice reforms that support women in their efforts to secure their contractual rights are vital to the success of the provisions set out in this policy brief.

## Conclusion

The above proposals extract the principles from laws designed to protect vulnerable contracting parties in asymmetrical power relationships and apply them to contract farming. The result is some new suggestions for how the contract itself can be a tool for improving the gender outcomes of contract farming. Of course, the contract is only one small piece of the puzzle, but as the key legal document governing a contract farming relationship, it should not be overlooked in its ability to influence change.

Policy-makers, responsible buyers and managers of contract farming schemes wanting to use these provisions should be sure to adapt them for the local context. A few of the considerations to take into account in this exercise include whether the definition of “spouse” under the domestic legal system is inclusive enough to cover women in unmarried domestic relationships, or whether it is desirable to broaden this definition so it would cover siblings, for example. In addition, it will be important to consider the status of contract farming in the country; for example, if it is well established and dominated by large and sophisticated corporate buyers, a higher level of regulation may be appropriate.

Policy-makers seeking advice on how to incorporate these provisions into domestic laws or model contracts may also benefit from [IISD’s investment advisory services in agriculture](#).



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