1. INTRODUCTION

The Royal Government of Cambodia (RGC), the private sector, and development actors are promoting contract farming as an inclusive agribusiness model. The assumption is that smallholder farmers involved in contract farming will improve their knowledge, skills, income and livelihoods through better access to more sophisticated technologies, quality seeds, technical advice, financial support, and secure markets. The Sub-decree on Contract Farming (2011) provides guidelines governing contract farming arrangements, and procedures for solving disputes arising out of contract farming. The Sub-decree also outlines the roles and responsibilities of different authorities to monitor contract farming and assist farmers. Although the Sub-decree provides a foundation for regulating contract farming, given the increasing number of farmers and companies involved in contract farming schemes, there is a need for legally enforceable contracts to strengthen trust between the parties involved. For this reason, the Ministry of Agriculture, Forestry, and Fisheries (MAFF) is drafting a Law on Contract Farming based on the Sub-decree and the experiences gained from the practices of contract farming so far. This policy brief offers suggestions for making contract farming more inclusive for smallholder farmers based on the experiences of four companies that have used contract farming to work

KEY MESSAGES

1. Clear and fair contractual arrangements understood by farmers and registered by local authorities are easier to enforce and increase the trust between parties and their willingness to collaborates in the long run

2. Agricultural cooperatives can play a crucial role as intermediaries to empower farmers in dealing with companies, avoid disputes, and achieve lasting mutual benefits

3. Contracts signed by both spouses can strengthen gender equal participation in negotiating and managing contract farming, and equal legal standing in the event of disputes.

4. A low-cost, local, independent dispute resolution mechanism can ensure that contract terms are enforced, foster trust, and help in finding quick and mutually satisfactory solutions

5. Specific safeguards, such as minimum purchase commitments, protections for land rights or compensation in case of business failure, can ensure more equitable risk sharing between the company and farmers
with farmers in Cambodia. The lessons from these cases about what worked and what did not work for the farmers involved have important policy implications.

This policy brief is based on a comparative case study of the experiences of different agricultural investments employing contract farming for various crops in two provinces of Cambodia (see Table 1). The findings are drawn from household surveys with 270 farmers; six focus group discussions; and six key informant interviews with representatives of the concerned Provincial Departments of Agriculture, Forestry, and Fisheries (PDAFF) and agribusiness companies. The research was conducted from April 2020 to March 2021.

### Table 1: Agricultural investment models examined in the study

<table>
<thead>
<tr>
<th>Crop</th>
<th>Sugarcane</th>
<th>Rubber</th>
<th>Rubber</th>
<th>Organic Cassava</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company name</strong></td>
<td>Rui Feng</td>
<td>Dak Lak</td>
<td>Socfin-KCD</td>
<td>CACC</td>
</tr>
<tr>
<td><strong>Origin of investor</strong></td>
<td>China</td>
<td>Vietnam</td>
<td>Europe</td>
<td>Cambodia</td>
</tr>
<tr>
<td><strong>Business model</strong></td>
<td>Nucleus-estate</td>
<td>Out-grower</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Province</strong></td>
<td>Preah Vihear</td>
<td>Mondul Kiri</td>
<td>Mondul Kiri</td>
<td>Preah Vihear</td>
</tr>
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</table>

Rui Feng is a Chinese company that has acquired an Economic Land Concession (ELC) for a sugarcane plantation and a sugar refinery. The company contracted local farmers to grow sugarcane for its refinery but failed and discontinued its activities in 2018. Dak Lak and Socfin-KCD are two ELC companies that have invested in rubber plantations. Both companies have developed contract farming schemes as an option to resolve land conflicts with local farmers, although most farmers involved in the disputes did not prefer this option. In the case of Socfin-KCD, farmers agreed to rent the land for contract farming from the company for 60 years. The Cambodian Agriculture Cooperative Corporation (CACC) is a Cambodian company that exports organic cassava chips. It relies completely on supplies of cassava from smallholders through contract farming.

These cases followed two types of investment model – out-grower and nucleus-estate – that had significant implications in terms of contract farming approaches and results from the perspective of farmers.

#### Out-grower model

The company does not acquire land for agricultural production. It buys agricultural products from smallholders who cultivate on their own land based on a pre-determined contract that specifies the quantity, quality, and price.

#### Nucleus-estate model

The company invests in its own plantation and complements its supplies by purchasing produce from independent farmers (who are also out-growers). This model offers three potential advantages for the investor:

(i) the guarantee of a minimum supply from its own plantation

(ii) the production of quality seeds or seedlings for farmers

(iii) a farm in which to experiment and demonstrate new methods to contracted farmers

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2. KEY FINDINGS AND PROPOSED SOLUTIONS FOR POLICY DIALOGUES

Although a majority of farmers considered that they had benefited positively from their engagement in contract farming, many were not satisfied with the arrangements and enforcement of their contracts.

Overall, a large percentage of rubber and organic cassava farmers perceived positive impacts from the contract farming they were engaged in. They reported increased household consumption, a better standard of living, and a higher rate of school enrolment among their children as positive impacts of contract farming. On the contrary, sugarcane farmers had experienced a negative impact due primarily to over-indebtedness and to the fact that the investor failed to maintain the scheme.

Farmers’ satisfaction with contractual arrangements varied across cases. Organic cassava farmers’ satisfaction with contractual arrangements via CACC was high, particularly regarding the price and the adherence to the contract terms. Yet they were less satisfied with quality requirements and payments. Rubber farmers expressed a high level of satisfaction with the technical requirements and negotiations, but low satisfaction relating to the adherence to the contract terms. Sugarcane farmers’ satisfaction was very low, especially with price, payments and the contract terms.

The variances in satisfaction demonstrate both the positive potential of contract farming and the range of issues that can result from how contracts are managed from the perspective of farmers. Despite some positive impacts, farmers face difficulties in their relationship with companies that could be improved through policy interventions. Below, some solutions are proposed to strengthen farmers’ position in contract farming.

Clear contract terms are necessary for effective implementation and enforcement

Contracts are prepared by the company and written in Khmer but contain jargon and ambiguous statements, which are difficult for farmers to understand. Particularly in the cases of nucleus-estate models (sugarcane and rubber), the contracts tend to be a translation of an original version written in the company’s native language (e.g., Vietnamese, Chinese or English). Farmers also lack understanding about the contract terms and conditions, and do not have access to legal advice. There has been little or no support from a third party that might have the required expertise and authority – such as the PDAFF or NGOs – to assess the contracts. Both the companies and farmers would have benefited from professional expertise and guidance in ensuring that the contract terms were complete, clear and fair.

For example, in the contract written by Socfin-KCD, loan amounts are not specified and the setting of the buying price is unclear. The contract states that ‘the latex will be bought by the processing factory at the market price or at a price that will be determined by rubber traders for latex or coagulum. This price will be indexed on the global price list of natural latex’. Farmers have no information about how the ‘market price’ is determined and by whom, or about who the ‘rubber traders’ are, who will decide the price, and what ‘the global price list of natural latex’ is.

Often, the companies are attempting to limit their contractual commitments so that most risks are borne by farmers. For example, Socfin-KCD only guarantees to buy the latex during the loan repayment period, leaving farmers with no purchase guarantee for the rest of the production cycle. The farmers, unaware of this specific clause, viewed it as a breach of the contract when the company refused to purchase their rubber. Although they lacked a coordination mechanism to respond, they could nevertheless sell their latex to local traders. Fortunately, this alternative market mitigated the adverse impact on farmers and enabled them to maintain their income.
There are no provisions about penalties or compensation in case one of the parties fails to fulfil its contractual obligations. For example, there were no consequences for the Dak Lak company if it failed to purchase latex from farmers as stipulated in their contracts. Similarly, when CACC failed to collect cassava in accordance with the agreed schedule – which led to reduced weight and quality – farmers could not claim any compensation.

Agricultural cooperatives play a crucial role in communication and collective bargaining power in contract negotiation

The companies in nucleus-estate models (sugarcane and rubber) generally proposed a standardised contract with individual farmers. The terms were prepared by the company and farmers did not have much opportunity or leverage to propose changes. Farmers felt that they lacked bargaining power in their dealings with the companies.

As an example of good practice, the sugarcane company invited all the farmers together to attend the contract discussions. However, they lacked a collective mechanism, such as a committee, to represent them in the negotiations and to help them to discuss issues with the companies throughout the contract duration.

In the case of organic cassava, the agricultural cooperative represents and acts as a party to the contract on behalf of the farmers. It played a key role in building trust and facilitating communication and agreements between farmers and the investor throughout the contract period. However, farmers also wanted to be able to directly engage with the company during the negotiation process or when tensions arise with their agricultural cooperative.

PROPOSED SOLUTIONS:

To avoid unclear contracts that are difficult to enforce, it is useful to:

• define the required minimum content of a contract, including penalties and compensation, in case a party fails to fulfil its obligations. This could be done by developing contract templates and checklists that are specific to different crops and contract contexts
• require a contract to be registered with the MAFF or PDAFF that has a clear mandate to promote and oversee the contract
• make legal advice and support available to farmers, particularly from legal aid NGOs
Women’s participation in contract negotiation and management will strengthen the performance of contract farming

Women play a key role in decisions to engage in contract farming, whether independently or in joint decisions alongside their husband. They also play an important role in the production cycle of the crops under a contract farming agreement. When a representative body – such as an agricultural cooperative – is involved. The company should have a contact point for interacting with individual farmers. Women from indigenous communities were even less involved in decisions or signing of rubber contracts. The lack of the wife’s signature on the contract may hamper her capacity to manage the contract should her husband be absent, her ability to benefit equally with her husband, or legal standing in the event of contract breaches.

PROPOSED SOLUTIONS:

• supporting the creation of a representative body or committee that is mandated to negotiate with the company on behalf of farmers. This should be made compulsory when the number of contracted farmers is above a defined threshold
• maintaining an opportunity for individual farmers to have direct engagement with the company even when a representative body – such as an agricultural cooperative – is involved. The company should have a contact point for interacting with individual farmers
• making legal advice and support available to farmers and agricultural cooperatives

Establishing a grievance mechanism will expedite dispute resolution

Even with clear and fair contractual terms and conditions, disputes occur. In this study, the most frequent sources of conflict were related to prices, the quality of products, the timing of delivery, and payment schedules. Disputes were more prevalent in the nucleus-estate model (sugarcane and rubber cases), focusing on prices, the failure to purchase produce, and late or no payment.

As mentioned above, the lack of a coordination mechanism between individual farmers in this model made them helpless when the company did not adhere to contractual obligations. In all models, farmers had no specific avenue to file grievances and seek support when they needed to. When Dak Lak did not uphold their contractual commitments, farmers were unable to lodge a complaint and hold the company to account.

When Rui Feng failed to pay and refused to return the land titles deposited by farmers as a condition of contract farming, farmers tried to seek help from the commune council and the district and provincial authorities. Yet their response was that they did not have a mandate to resolve the issue. Farmers also tried direct communication with the company but were unable to speak to a company representative. The devastating impacts of the failure of this investment on farmers is expressed by a respondent as follows:

"We are very disappointed. How can we trust it in the future because even though our contract was facilitated and witnessed by the authorities, the authorities still could not help us when the issue arose? We are helpless. The company did not resolve the issue. It has put us in the middle of nowhere: we do not get the payment for our land; we cannot get our land back; and we are not allowed to grow crops on our land.”
- A sugarcane farmer in Preah Vihear province

Grievance mechanisms were among the key areas to which farmers, particularly those involved in sugarcane production, requested improvements.

PROPOSED SOLUTIONS:

• Make a clear and compulsory stipulation that a contract must be signed by both husband and wife and that they are both authorised to manage it
• Allow for other family members to also be mentioned in the contract where appropriate
Safeguard measures will protect farmers against business and market failures

Some commodities are riskier for farmers and create a stronger dependency towards the company, particularly those that:

- require a substantial initial investment causing farmers to become heavily indebted
- have a long maturation period (e.g., perennial crops such as rubber that can be tapped only after six years)
- require mastering new techniques to achieve the quantity and quality required
- do not have an accessible market independent from the contracting company

For instance, rubber farmers are tied into the credit scheme offered by the companies who advance the costs of establishing the plantation. Similarly, sugarcane farmers provide their land titles as collateral for the investment made by the company on their land. This has created a strong dependency on the company and thus greater risks for farmers in the event of business or market failure.

The production of sugarcane in Preah Vihear failed mainly because of management problems that were not the responsibility of farmers. The company had already suspended its operations for a few years without any formal notification to the farmers or an official announcement of bankruptcy. Further, the company had not returned land titles nor paid any land rent to farmers. According to the farmers’ accounts, their lands had been rented by the company to a third party for rice production. This investment failure seriously affected the farmers’ livelihoods and pushed them into debt.

PROPOSED SOLUTIONS:

To provide safeguards for farmers against malpractice by the company and to reduce risks from business failure, new legislation could:

- set a minimum purchase commitment at a minimum price from the company in the contractual terms for long-maturing crops
- prohibit the company from taking a land title from farmers to guarantee the contract or for any other reason
- allow farmers to revoke the contract and repossess their land if the company fails to fulfill their commitment in a specified period
- entitle farmers to receive compensation from the company’s assets if that business becomes bankrupt
- include a right to a minimum compensation in cases of business failure to ensure that risks are equitably shared between the farmers and the company
3. FINAL MESSAGE

The outcomes of contract farming are highly contextual and contingent on local processes and trust nurtured between stakeholders. Although the study showed that most farmers involved in contract farming benefited from higher income and that some were satisfied with their contractual arrangements, the research also highlighted serious risks for smallholder farmers and a lack of trust that impeded more satisfactory and longer-term relationships.

These issues deserve a policy response. There are opportunities to improve the legal framework and its implementation to prevent misunderstanding, create the necessary climate of trust and make contract farming more beneficial to both farmers and investors. Clear contracts that are facilitated and recognised by the mandated authorities would considerably improve the position of farmers. Public institutions (such as the MAFF and PDAFF) have a key role to play in monitoring and facilitating contracts as stated in the Sub-decree on Contract Farming. Providing clear avenues for lodging a grievance, and a simple and effective dispute resolution mechanism, would reduce conflicts and ensure the effective implementation of the relevant legislation. These are key elements that deserve attention in the ongoing development of the draft contract farming law.

Finally, strong and business-oriented agricultural cooperatives would provide capable support and link farmers to public services to improve their capacity to engage in contract farming. Cooperatives should be a key target for policy support through partnerships between the public sector, the private sector and producers (the ‘4P policy’ that is presently under consideration by MAFF). Such multipartite arrangements can help to provide a collective platform for farmers, improve contract stability and outcomes for all parties, and minimise disputes.
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