

## Policy pointers

**Agricultural commercialisation contracts (ACCs)** are little known outside the circle of government and private sector officers involved in their negotiation, yet have far-reaching implications for local livelihoods.

**Key issues include the extent to which ACCs** respond to local development aspirations, are negotiated in a transparent and inclusive way, support (or undermine) the negotiating power of local farmers, and provide specific and enforceable company obligations.

**There is a need for inclusive and informed public debate on ACCs,** and the concerns and aspirations of farmer organisations should be central to that debate.

## Agricultural commercialisation contracts: concessions over people?

Recent actual and expected changes in global agricultural commodity prices have fostered a renewed business interest in tropical agriculture. Agricultural commercialisation concessions (ACCs) are contracts between governments and agribusiness companies allowing the company to supply inputs, purchase farm produce and also sometimes run processing operations and/or provide storage, marketing and distribution services in a given geographical area. ACCs can have far-reaching repercussions for sustainable development in recipient countries. They could provide new livelihood opportunities, however certain features of the contractual processes and clauses raise concerns that ACCs are concluded with little consultation and grant companies monopoly rights. IIED is following ACC development closely, although most contracts are not publicly available and confidentiality restrictions apply. This briefing discusses some of the issues at stake with the aim of promoting awareness and public debate.

### What are agricultural commercialisation concessions?

For many years, governments and development agencies have promoted the inclusion of small-scale farmers in agricultural value chains – for example, through improving farmers' access to credit, inputs and markets, or addressing 'bottlenecks' in storage and processing. In the 1970s, governments used 'package deals' to contract companies to supply farmers with inputs such as fertilisers or pest control solutions. Contract farming – the various arrangements whereby a company supplies farmers with inputs and purchases their produce – has long been used by parastatals and private agribusinesses for crops as diverse as cotton, tobacco, fruit and vegetables.

Agricultural commercialisation concessions (ACCs) constitute an additional element in the long history of commercialising developing countries' agriculture. We define an ACC as a contract between the host government and a company that aims to promote commercial development of specified crops – cotton or rice, for example. Through the ACC, the government gives the company the right to supply inputs to farmers in a given area and to buy produce from those farmers through subsequent contract farming arrangements. The company may also be authorised to establish plantations, develop storage, processing and transport infrastructure, and undertake other activities necessary to commercialise the crop. As yet there is no single term to refer to this type of contract, so we

## *ACCs can have profound implications for small-scale farmers and rural producers*

propose ACC as an overall term that best captures the nature of this economic operation.

Little is known about ACCs, as the contracts are not publicly available and there has been little

public debate about these contractual arrangements. ACCs are not new, however. Since the mid-1980s, for example, Mozambique has operated a system of concessions for the commercialisation of cotton whereby private

companies and joint-venture companies with government participation have been granted concessions providing exclusive rights over defined geographical areas.<sup>1,2</sup>

The rise of ACCs is associated with the growing emphasis on the private sector as the engine for agricultural development. Governments seem to value ACCs as a tool to attract agribusiness and catalyse agricultural development in remote areas where farmers have little access to inputs or markets. The concept of ACCs is aligned with some types of public–private partnership in agriculture, another issue that has received growing attention from both supporters and critics.<sup>3</sup>

The content of ACCs appears to vary widely. One company–government contract IIED has seen focuses on providing a framework for company–farmer contract farming relations, while another appears broader, authorising the company to carry out processing and distribution activities. A recurring feature of ACCs is that they are framework agreements to be followed by more specific contracts. For example, an ACC could pave the way for a company to enter into more or less formalised contract farming arrangements with individual farmers or farmer organisations.

This briefing aims to raise public awareness about ACCs, promote public debate and identify key issues to consider.

### **What do ACCs mean for farmers?**

ACCs are credited with a number of potential benefits, including providing livelihood opportunities for farmers in low- and middle-income countries by facilitating access to inputs, credit and/or markets. Evidence from Mozambique suggests that the concession system resulted in higher, if more volatile, cotton production levels.<sup>1,2</sup> From an institutional perspective, ACCs can help coordinate interventions in the various segments of the value chain.

However, ACCs also raise important questions. Coordination is effectively mediated through a

private company holding significant market power, if not an outright monopoly. In Mozambique, the concession system led to farmer protests and unauthorised competition from buyers encroaching on concession areas.<sup>1</sup>

More research is needed on the long-term socioeconomic outcomes of ACCs, in particular whether more dynamic, commercially oriented farmers may be better placed to seize the new opportunities, leaving poorer and more vulnerable groups increasingly marginalised.

We have been tracking developments with a number of ACCs and have obtained contracts relating to two ACC ventures, both initiated after 2010 and neither concerning Mozambique. In this briefing, we discuss some issues raised by these contracts in terms of both negotiation processes and contract content.

While contract analysis is no replacement for empirical research on socioeconomic outcomes, a discussion of contractual issues can provide important pointers on the extent to which ACCs can contribute to, or undermine, the pursuit of sustainable development. Given the limited information publicly available, we do not know how far the contracts we examined are representative of wider trends. However, the issues they raise deserve public debate and this briefing note should be viewed as a first step in discussing these issues.

### **Do ACCs respond to farmers' aspirations?**

As ACCs create a framework for subsequent contracts between a company and farmers, the extent to which farmers or their organisations become involved in ACC decision making is a key issue. In one ACC, the government purports to make binding commitments on behalf of farmers — namely, to only use seeds and inputs provided by the company concerned and to sell produce to that company exclusively. This is a concern, as once the ACC has been concluded, some key parameters may be difficult for farmers to renegotiate.

Assessing the extent of stakeholder engagement in the negotiation of ACCs requires empirical research that was not possible for this briefing. However, the ACCs available appear to be high-level agreements that show little evidence of any meaningful consultation with farmer organisations. Instead, preambular provisions refer to government policies on agricultural modernisation, food security and/or the development of specific value chains.

This raises questions as to whether the contracts respond to the development aspirations of local

farmers. This concern is even more prominent when a company initiates contract negotiations in the absence of clear government policies on development of the relevant chain and/or geographical area. Once the contract is signed, the company may well engage with farmers as part of the contract implementation, but stakeholder consultation at this stage is limited by the binding contractual commitments already agreed upon within the ACC.

ACC decision making must respond to local development agendas formulated in collaboration with farmer organisations. This could be achieved using existing public participation and community consultation mechanisms within, for example, national- and district-level development planning or agricultural and crop-specific development policymaking. Free, prior and informed consent should be obtained, where applicable, for specific ACC ventures.

### **Watch out for monopolies**

At least one ACC we saw granted the company concerned exclusive rights to commercialise a crop in the agreed geographical area, resulting in a monopoly on the sale of agricultural inputs to farmers and a monopsony (where a sole buyer faces multiple sellers) on the purchase of farm produce. The other contract we saw also mentioned exclusivity but left specifics to be determined by subsequent agreements, which we were unable to access.

Many contract farming arrangements between a company and a farmer provide for exclusivity, but only for the farmer(s) involved in the deal. In the case of ACCs, on the other hand, a government-company contract grants exclusive rights over entire districts or provinces, including many farmers who may be unaware that such a deal has been signed.

From a company's perspective, exclusive rights may help to address problems of side-selling, which occurs when farmers, having benefited from support from the company, sell produce to a competing agribusiness. But farmers have greater negotiating power when companies compete to buy their produce, whether on price or other conditions. Granting monopoly and monopsony rights to one company for an entire geographical area significantly undermines that power, potentially reducing farmers' incomes. In addition, if the company fails to honour its commitment to purchase produce from the farmers, the latter would have no lawful alternatives, with potentially major adverse consequences for their livelihoods.

Depending on the jurisdiction, exclusivity provisions might also raise issues of competition

law, particularly the rules governing monopolies. But because ACCs involve government-awarded concessions, national law may treat them differently from contracts between private companies.

### **Balancing rights and obligations**

Another concern is the balance of rights and obligations enshrined in the ACC. If contractual provisions outlining the company's obligations are unclear or unspecific, they will be difficult, if not impossible, to monitor and enforce. For instance, one contract includes ambiguous provisions concerning technical assistance. The company 'may' (as opposed to 'shall') provide such assistance, with little detail given on what assistance is to be provided, by whom and how frequently, how costs will be covered, or how that assistance will reach poorer, more marginalised groups. Subsequent, more specific government-company contracts may well provide greater detail and clarity, but if a government has already granted exclusivity rights to a company, its ability to extract more specific obligations through subsequent contracts may be reduced.

Also, negotiations between an agribusiness company and local farmers are typically characterised by unequal negotiating power, rooted in different access to capacity, information and resources. Imbalances in negotiating power can be even greater if farmers lack genuine, downwardly accountable organisations that represent their concerns, or if the company is granted exclusive rights in the project area. Given these considerations, a government might want to set minimum standards, such as pricing and credit arrangements, for company-farmer contracts through the government-company ACC. While there may be obvious challenges in defining all of the detailed parameters upfront and while market conditions do change, the two sets of contracts reviewed lacked specificity on important aspects, which raises questions as to how and when these issues will be tackled.

ACCs can also raise other important issues of public concern requiring the development of clear rights and obligations. For example, one ACC contract we saw purports to restrict the use of GM seeds, but the wording is ambiguous, casting doubt on the effectiveness of the restriction. The same contract refers to a stabilisation clause – a provision whereby either any changes in applicable law do not apply to the project or, if they do apply, the government must restore the economic balance of the contract or otherwise compensate the company for losses suffered. Stabilisation clauses raise important issues about the ability of government to regulate, and should be treated with extreme care.<sup>4</sup>

*Granting monopoly rights to companies undermines farmers' negotiating power*

## Greater transparency is needed

There is little transparency in negotiation processes, and contracts themselves are seldom, if ever, disclosed. The memorandum of understanding for one of the two ACC deals we reviewed contains a broadly formulated confidentiality clause. Yet public interests are at stake, and public disclosure of contracts, environmental and social impact assessments and other key project documents is critical in promoting public accountability.

Broad confidentiality provisions are often unnecessary because, for the most part, the framework contract does not contain commercially sensitive information or matters of competitiveness for companies. Companies often cite those two concerns to support their alleged need for confidentiality provisions.

Disclosure through government websites or official gazettes needs to be accompanied by re-elaboration and dissemination activities by non-governmental or producer organisations so that information is accessible to small-scale farmers.

## Conclusion

ACCs could provide new opportunities for improving local livelihoods by supporting the development of value chains. However, they could also lock farmers into the wrong deal, resulting in inequitable distribution of costs and benefits within local communities. These are matters for empirical research, and more field-based studies are needed to assess the sustainable development outcomes of ACCs. Analysis of a larger number of contracts is also needed.

Discussion of the contractual arrangements raises a number of issues relating to whether ACCs respond to local development aspirations, are negotiated in a transparent and inclusive way, support or undermine the negotiating power of local farmers, and provide specific and enforceable company obligations.

Carefully addressing these issues is critical in harnessing capital, know-how and market links for local development agendas. But where ACCs are concluded with little local consultation and provide companies with enforceable monopoly and monopsony rights in return for vague and unenforceable promises, they could effectively amount to concessions over people.

More generally, using contracts (rather than legislative or administrative tools or the establishment of publicly accountable institutions) to coordinate interventions in different segments of value chains raises real concerns about the accountability of private and public actors, especially where contracts are negotiated with little transparency.

ACCs can have profound implications for small-scale farmers and rural producers, so it is critical that the concerns and aspirations of rural producers are listened to and addressed through greater public debate and oversight.

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## Notes

<sup>1</sup> Osório Ofiço, A and Tschirley, D (2003) An overview of the cotton sub-sector in Mozambique. Collaborative Research Project on Competition and Coordination in Cotton Market Systems in Southern and Eastern Africa. / <sup>2</sup> Dias, P. 2012. Analysis of incentives and disincentives for cotton in Mozambique. Technical notes series. FAO, Rome. [www.fao.org/fileadmin/templates/mafap/documents/technical\\_notes/MOZAMBIQUE/MOZAMBIQUE\\_Technical\\_Note\\_COTTON\\_EN\\_Oct2012.pdf](http://www.fao.org/fileadmin/templates/mafap/documents/technical_notes/MOZAMBIQUE/MOZAMBIQUE_Technical_Note_COTTON_EN_Oct2012.pdf) / <sup>3</sup> See, for example, Oxfam (2014) Moral hazard? "Mega" public-private partnerships in African agriculture. <http://policy-practice.oxfam.org.uk/publications/moral-hazard-mega-public-private-partnerships-in-african-agriculture-325221>; and Fairtrade Foundation (2014) A seat at the table? Ensuring smallholder farmers are heard in public-private partnerships. [www.fairtrade.org.uk/~media/fairtradeuk/what%20is%20fairtrade/documents/policy%20and%20research%20documents/policy%20reports/a%20seat%20at%20the%20table%20-%20exec%20summary.ashx](http://www.fairtrade.org.uk/~media/fairtradeuk/what%20is%20fairtrade/documents/policy%20and%20research%20documents/policy%20reports/a%20seat%20at%20the%20table%20-%20exec%20summary.ashx) /

<sup>4</sup> These issues are further discussed in Shemberg, A (2009) Stabilization clauses and human rights. Research project conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights. [www.ifc.org/wps/wcm/connect/9feb5b00488555eab8c4fa6a6515bb18/Stabilization%2BPaper.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/9feb5b00488555eab8c4fa6a6515bb18/Stabilization%2BPaper.pdf?MOD=AJPERES); and Cotula, L (2008) Reconciling regulatory stability and evolution of environmental standards in investment contracts: towards a rethink of stabilization clauses. *Journal of World Energy Law & Business* 1(2) 158–179.