

# Report on Contract Farming in Thailand

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## An Overview of Contract Farming in Thailand

In step with many countries around the world, the dramatic growth of technology as well as of marketing systems affected by liberalism in Thailand have led to working principles in which a primary focus is placed on economies of scale and the realization of profit. Such trends have ultimately brought about changes in the very structure of production processes for various consumer goods that remain unable to respond to the markets' insatiable demands and that have, at the same time, resulted in an unfolding of ever more complicated business relationships. Agricultural commodities are no exception and exhibit the same dynamics and trends.

Farmers, especially those in the smallholder sector or who are otherwise incapable of responding to such changes, have had to passively accept fluctuations of agricultural prices, their lack of access to more developed technologies, and inefficient and inconsistent access to markets as well as the vagaries of the weather. In response, the concept of "contract farming" has been put forward as one of the solutions to the problematique. The concept is being increasingly implemented and actualized throughout Western and Eastern countries including Thailand.

During the implementation of Thailand's Sixth Economic and Social Development Plan (1986-1991), contract farming was widely promoted and its implementation in several industries was abundantly successful. Many positive factors contributed to this success including support received from the Thai government, evident for example in the project "See Pra-saan" (four parties) initiated by the Bank of Agriculture and Agricultural Cooperatives in 1987. The aim of the project was to generate income for the farmers and create job opportunities for people in designated project areas. The initial targets of the project covered: 1) those who produce agricultural commodities for export such as pork, eucalyptus trees, asparagus, rice, etc.; and, 2) farmers who produce products to replace imported commodities such as sunflower seeds, bamboo for paper production, wheat, etc.

The project, which remains ongoing today, has stirred much interest in contract farming. The concept of contract farming that originally focused on crops, soon expanded to fisheries as well as various domestic and export oriented industries.

## What is Contract Farming?

The definition of "contract farming" has been heavily distorted to persuade farmers and society in general to believe in the benefits they are told they will receive. The general population sees the agricultural production process (including contract farming) as a fair and just mechanism.

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<sup>1</sup> This report was compiled by Mr Kasem Pansin and Mr.Thiwat Khamkaew for the Foundation for Labour and Employment Promotion and was edited by Mr. Mike Adir.

However, in actuality, many researchers reveal that the company persuades farmer to agree on contract by using a nice definition, but actually this is for the sake of the company.

***Contract Farming as defined by the Government (through the Cabinet Resolution, 2005)***

**“Contracted agricultural farming or Contract Farming”** is an arrangement made between a private company — the buyer of the product — and farmers, referred to as producers or sellers of the product. The two parties are required to sign a Contract prior to the commencement of the production process. In addition, the agreement on the cost and the quantity of the purchased outputs are required to be included in the Contract.

However, it is normal experience that various “extra responsibilities” of the farmer appear as the work advances right up to the time of harvest. For example, the seller may be required to provide assistance to transport the production to the buyer’s premises.

***Contract Farming Defined by a Private Company (in the view of Charoen Pokphand Foods PCL.)***

The project (in this example the promotion of animal raising) pursued through contract farming or future contract farming is initiated in order to promote generation of income among the farmers. Both the farmers and the company are to invest in all materials needed during the production process or any other materials that may be mentioned in the contract. Upon the completion of the production process, the company is required to purchase the produce that is in accordance with the agreed standard from the farmers at the price and in the terms that have been agreed earlier. However, the company is to be responsible for all the risks in regard to the production and marketing (Narong Jienjaibanjong, 2011).

Thus, contract farming is a sale and purchase arrangement arranged beforehand that covers the products’ price and the date on which the products are to be supplied to the company. The company, then, is taking the risk of fluctuations in the production and product price. Farmers, on the other hand, obtain somewhat steady income compared to the situation where they have to be responsible for both the production and the marketing (Sutin Klaimon, 2011).

Based on these definitions, contract farming is widely considered to be just and fair given the support provided - which offers solutions to various critical production issues<sup>2</sup> and reduces the risk to the farmer. Nevertheless, several studies have found that the definition in actual practice not only varies from those of the state and the private companies but also poses a number of issues. An example follows.

Contract Farming means the contract made between farmers and a company in which the business concerns agriculture. Farmers may make an agreement with seed or livestock companies to plant crops or to raise animals as agreed in the requirements and conditions mentioned in a contract signed by both parties. The company, on its part, is responsible to provide the farmer with the

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<sup>2</sup> Especially the availability of a buyer and the financing of production costs.

seeds or animals, fertilizers, any supplementary food, medicine or other materials and to buy all production from the farmer at a price agreed in advance by both parties.

However, in over 95 per cent of contracts seen, farmers are bound to the requirement that all production is to be sold solely to the counterpart company. Most companies will provide seeds, chemicals, medicines, supplementary food, and other material to the farmers on credit, but will later deduct those expenses from the farmers once the products are delivered to the company. In this way, the company effectively determines unilaterally the price of the inputs and the benefits. Farmers normally do not know the details of how company determines financial arrangements. On the other hand, the farmers will be investing in the permanent production inputs such as land, the plant or breeding house, equipment used in raising animal and all expenses concerning water, electrical supplies, and other permanent production factors include some investments in regard to hiring labour (Thai Health Promotion Foundation, 2010).

### **What are some of the Deeper Issues?**

Research on Contract Farming systems shows contract farming comprises three important dimensions as follows (Bureau of Agricultural Development Policy and Planning, 2009):

1. Market needs— determining the quality, quantity, and cost of produce that farmers are required to produce and company is to buy.
2. Production materials— determining the roles of each contracting party in supplying required production inputs.
3. Production— determining the role of the company in providing technical assistance to farmers and the farmer's use of his/her skills and experience in making production decisions.

There is no national level survey on the numbers participating in contract farming due to the lack of assigned responsibility of a role for governmental monitoring. In addition, the companies involved do not reveal the actual numbers of farmers involved in contract farming. Principally, these are the Charoen Pokphand Group (CP) and Betagro Co. Ltd., which studies have identified as the main contractors of farmers.

The farmers are normally responsible for the necessary production infrastructure, for example the physical plant, land, water and electricity and labour. However, farmers are sometimes asked to modify their own building/ structures when available, in order to be consistent with the standards required by the companies. Such adjustments, however, require a certain level of investment for which farmers must secure a loan from a bank or money lenders.

In the case where the company refuses to provide other inputs, farmers are often forced to buy seeds, livestock breeds, fertilizers, animal feeds or chemical substance through cash or credit from the correspondent company. Only a very few farmers are allowed to buy production material from third parties/ other companies. Moreover, the company (or a delegated counterpart of the contract) will be providing several production process protocols to control the standard of the product. In the case that the protocol was not followed, the company has the right to penalize through unilaterally docking the farmer's agreed payments or by even by cancelling the credit.

Normally, all products that the farmer produces must be sold back to the company. In some cases, the contract between the farmers and the company will cover only the provision of animal feed, for example a case of fish cage culture reviewed in Buriram Province. In such cases, the farmers can then sell their products to local retailers (Phongthep Wiwatthanadech, 2007). On the other hand, if the contract was made through an agent or middle person, that agent will be the one who buys the farmer's product.

Since contract farming is a contract in which the main focus is hiring to produce certain product(s), only Civil and Commercial Code are applicable. Given all the above, the possibilities for then controlling, protecting, and maintaining the interests of farmers are few and far between. In particular, there is no scope for the State or other organization to intervene in the process. Moreover, most Government offices often see such contracts as a private matter, that the contract is *prima facie* fair and just, and that the setting up of any conditions in the contract should be left solely to the parties to the contract.

Nevertheless, it can be said that one of the pivotal issues of contract farming is the ambiguity regarding working conditions. Consider that if the company were the owner of the land as well as all the raw materials required for the production process, the labour would be regarded by law as agri-business wage workers whose status would then not be different from those working in any industrial business. Production in such a context would then be classified as taking place through an employer-employee relationship and would be subject to the Labor Protection Act and the National Labor Relations Act. However contract farming is instead currently considered as a contract made between an employer (who agrees to pay him a remuneration of the result of the work) and a contractor (who agrees to accomplish a defined piece of work for another person). In such a context, relations between the two contracting parties can only be considered under the civil law, not under the labour laws mentioned.

Given the leverage of the company over the farmer on both payments and compliance with production standards, the contracted relationship effectively pushes an unfair proportion the burdens and risks solely on the shoulders of the farmers. It also excludes them from the rights to protection included in the social welfare and security, since their working arrangements make them ineligible to be insured persons under the Social Security Act, Article 33. Furthermore if the farmers were counted as employees, the rights they would receive would be the same as wage workers. For 6 months after their resignation, for example, such insured persons would continue to be protected financially against certain illnesses, being disabled, delivering a child, or passing away.

As mentioned earlier, there is still ambiguity in whether contract farmers are informal workers and whether they are eligible to be insured under Article 40 of the Social Security Act.<sup>3</sup>

### **Farm Level Issues Related to Contract farming**

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<sup>3</sup> Article 40 of Social Security Act states that: any person who is not an employee under Article 33 may apply to be an insured person under this Act by notifying his or her intention to the Office. Rules and rates of contributions, type of benefits to be received under Article 54 including rules and conditions of entitlement shall be prescribed in the Royal Decree.

Contract farming can provide support to small farmers, giving them access to technology and creating an exclusive market for the resulting production through a contract offered by a company. This facility has been used by companies to persuade farmers to be part of contract farming and has resulted, at the same time, in substantial burdens to farmers given the high production and financing costs and the shouldering of other risks which are beyond the manageability of most farmers.

As we have seen, the monitoring of the farmer's compliance with the conditions of the contract lies solely with the company. The company determines the final price for the product, inspects or oversees the production process, and regulates the conditions of purchase. Thus the contract needs to include text that clearly states all the conditions in a language and in a manner that is suitable for the farmer's complete understanding. Farmers should be granted access to all available information and education on the risks before committing to the contract.

Though in some cases written contracts between the farmers and the company were properly executed, some conditions were made verbally and great numbers of farmers were not properly aware of several details mentioned in the contract. Additionally, it was found that some farmers did not possess a copy of the contract which was seen by them only when it was signed—the only original copy was kept by the company. Moreover, when they requested a copy of the contract, farmers were often refused by the company, which claimed that all details had already been acknowledged by the farmers prior to the signature of the contract (Jatuphol WangSoowattana and Chonlaree Wattanawetwijit, 2007).

Furthermore, it was also evident that there were some practices that were found to be unjust. An example includes regulations that were imposed later by the company without obtaining the consent of the farmers where they were then forced to accept the unexpected requirement(s). More importantly, the company was given absolute power to void the contract on their own terms without involving the farmer, who was party to the contract.

Such issues have brought about considerable inequities for farmers as will be illustrated below.

### ***Financial Issues***

Example: Farmers are normally required to maintain production equipment and the environment in accord with agreed conditions determined by the company. These can be later adjusted and production costs dramatically elevated.

In one interview with a farmer raising chickens and pigs under contract, it was discovered that improvements to the poultry enclosure were required by the company from the original "open air system" to a "closed house system" and a large sum of money was required. THB 120,000 to 200,000 THB was needed for the chicken farm and THB 200,000-500,000 for the pig enclosure. Thereafter, the company requested the farmers to modernize their farms by adopting an "EVAP System" (evaporative cooling system) which required an additional investment of about THB 200,000. The total cost excluded the increased electricity which farmers had to pay as a consequence of the new energy hungry system. Likewise, other equipment and materials the company demanded to be purchased had pushed the farmers into for an extremely high investment

cost. In some cases, the company will offer the farmers credit, the costs of which will later be cut from the remuneration to be paid.

Other than fixed costs as illustrated in the example above, unexpected variable costs such as those for required seed, animal stock, feed and fertilizer can also be counted as burdens to farmers since they are beyond the farmers' control. This is due to the ability of the company to define the quantity and quality of the production materials used. This especially affects the cost of animal feed and fertilizer for which the usage ratios often result in the largest costs of the production cycle.

In some cases, it was found that the prices of the production materials sold to the farmers by the company are higher than those on the open market. For example, fish product formula M31, used to feed St. Peter's Fish is sold in retail shops at THB 385 per bag. The company sells the same quantity at THB 450 THB ( Sajin Prachason, 2008). This means that price in the general markets is 15 percent cheaper than that set by the company.

Another example can be found in the fish cage culture case at Kewayai Sub-district, Kantarawichai District in Mahasarakham Province. It was noted that the price of fish fingerlings and equipment used in fish farming were increasing while the purchase price of the resulting harvest has been the same for the last 8 years<sup>4</sup> (Sumeth Panjumlong, 2007). The owners of pig farms located in Northeastern Thailand<sup>5</sup> (Isabelle Delforge, 2007) are also experiencing the same scenario as are those with corn fields (Bundit Thanachai Setthawut, 2005) who are now facing the rising prices of piglets, feed and fertilizer against the unchanging price they are paid for their product.

It was also revealed in some cases that farmers are given substandard production materials. For example, they are provided with old fertilizer and fish products for which the quality are not of the standard previously agreed to with the company. This has resulted in substandard production which does not comply to the standard set by the company, also ultimately affecting the farmers' total income.

An example of this can be seen in one farmer working on a duck farm who claimed that s/he did not get the proper quality of the duck raising raw materials from the company. This was later revealed only after using the product to raise the ducks led to inferior growth in ducks; poor quality duck meat was apparent. The company's remuneration then decreased (Chantana Chareonsak, 2008).

Furthermore, there are some cases where the company did not send the production material to the farmers at the time designated nor did they inform the farmer why it was delayed. The consequence was that the annual production cycle decreased. For example, one pig farmer who signed a contract with CP Company was told by the company's representative that in one year, the farmer should raise 3 cycles of pigs. However, because the production materials sent from the company were delayed, the farmer was able to conduct only two cycles (Isabelle Delforge, 2007).

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<sup>4</sup> [http://www.sathai.org/images/Story\\_thai/010-Contract\\_Farming\\_on\\_Fish\\_English\\_version.pdf](http://www.sathai.org/images/Story_thai/010-Contract_Farming_on_Fish_English_version.pdf)

<sup>5</sup> <http://focusweb.org/node/1210>

Another factor affecting the farmers' income is remuneration after the products have been submitted to the company. With no access to arbitration procedures the company uses in calculating their remuneration, farmers face unilateral decisions on the purchase price. It is clear that the procedure used by the company is not transparent and farmers are unequipped by the lack of information to pose any disagreement with the company.

In calculating the chicken farmer's remuneration, the company has been using a calculating system called "Feed Conversion Ratio" or FCR, in which the ratio between the chicken product and the animal food used to feed the chicken is calculated (Isabelle Delforge, 2007). Or in the case of pig farming, pork quality is calculated by the ratio of sugar found in the sugarcane (Tosaphon Tasanakulpun, 2012). No matter what the case, most farmers have difficulty understanding the process and are therefore unable to check the validity of the calculated results. Whenever disagreements from the farmers' surface, the company will make use of the set of calculations to establish the validity of their own claim; the farmers are then unable to puzzle out whether they were deprived of their rightful benefits.

"Risk" influences the profitability of all types of businesses, especially in the agricultural sector where turnover depends on many environmental factors that are often out of humans' ability to manage. Therefore, risk management is indispensable for proper management of agri-business. When analyzing the principle of contract farming, if the contract is clear and can be properly implemented, the company will face the risks concerning the price in the market at the time of sale and the quality of the produce they buy from the farmer.

At the same time, the farmers experience their own kinds of risks; for example, the fluctuation of production materials' prices they use as determined by the company and the effect of weather and natural disasters. Asserted in most contracts in the case of "force majeure" such as an epidemic among the stock, a flood, earthquake, or electric blackout, all of which are beyond the responsibility of the company. The farmers then fall victim to these scenarios.

A commercial chicken house requires an EVAP System to regulate the temperature appropriate for the chicken — normally between 25 – 27 degree Celsius. If there is a blackout as a result of lightening and the cooling and filter fan stop working, large numbers of chickens can die. In this case the company will not be responsible for any of the damages. Their claim would be that such risks are already determined in the contract and that earthquake and thunder strike are not included in the insurance. Farmers are responsible for all the damages<sup>6</sup>.

A survey conducted with fish cage culture group from Kee Lek Village in Kantarawichai District, Makasarakham Province, found that some farmers decided to withdraw from the contract farming with "risk" given as the main reason for withdrawal. They were concerned that the company refused to provide support in the case that fish die due to polluted or contaminated water.

Problems mentioned above are all influencing the farmers' turnover. The picture of financial security propagated by the company is now being replaced with the unresolved debts, which the

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<sup>6</sup> <http://measwatch.org/writing/2806>

farmers not only owed to the company and other formal financial institutes, but also to informal ones. A great number of farmers who have operated for years are still experiencing chronic debts that do not show any signs of resolution. Indeed, the company might grant freedom to the farmers by letting them withdraw from the contract whenever they find better alternatives. However for some farmers, the bondage of debts that resulted from contract farming is not that easy to break free from.

One of the reasons might be that in the preliminary stage, the farmers made the full investment required by the company by installing required equipment and used the different chemicals out of fear that the company would void the contract. Eventually, the farmers' initial investment turned out to be wasteful as the company continued to bring in new technology. Though such investment cost was not included in the investment details stated in the signed contract given by the company, the farmers gave in to the conditions proposed by the company despite the knowledge that they might encounter reduced profits.

### ***Health Issues***

The company does not only commit the farmers who are party to the contract in terms of investment to ensure that quality of the produce match the requirement made by the company, but it also controls and oversees almost every step of the production process—quantity of the animal feeds, fertilizer used and even reports on the work status. The farmers sometimes followed the suggestions from the company without being aware of the risk which is a consequence of the production process.

To ensure that one production process cycle yields the highest quantity and quality including protecting the produce from any possible damages, the company requires the use of various kinds of fertilizer, drugs and chemicals that will boost growth. The daily quantity is defined by the company and then has to be strictly followed by the farmers. However, in using some chemicals, the farmers are not well equipped with the knowledge of how to use it and the correct way to protect oneself; therefore, in some cases the farmers' health is continuously deteriorating.

One example can be illustrated by a group of contract chicken farmers in Pattalung Province who experienced an allergy to the animal feeds and waste which later resulted in respiratory health problems. Additionally, the farmers are also allergic to the chemical used to kill bacteria and flies in the chicken waste. The allergy caused skin irritation also found in farmers working in Marigold fields and potato farms in Lumpoon Province. It was revealed that both used the chemicals that lead to respiratory and skin problems (Faculty of Medicine, Chiangmai University, 2008).

Blood tests of contract farmers producing seed in Sakon Nakhon Province, 6.1 percent found agricultural chemicals exceeding safe levels, while another 24.2 percent faced a border line risk. Such high blood levels can lead to long term health issues. It was found that the cause was intense chemical use during the production process—from the chemical fertilizer and pesticides use including direct contact with the chemical while weeding (Faculty of Medicine, Chiangmai University, 2008).



Another factor affecting the farmers' health includes the farmers' incorrect posture during farming. Agricultural practitioners are prone to such risk. This is due to intensive labour that is required in certain kind of agricultural practices determined by the company which could lead to pain, muscle ache, arthritis, or cramping.

In harvesting asparagus, farmers have to stoop and bend down on their knees to pull asparagus from the ground and lift 20-kilo packages of asparagus. Thereafter, the farmers have to spend five hours selecting the best asparagus. This has caused muscle pain, arthritis, including other diseases caused by humidity and some from allergies that result from continually wearing gloves (Faculty of Medicine, Chiangmai University, 2008).

Aside from the farmers' physical health, several studies have shown that numbers of farmers are experiencing mental difficulties/issues which are the results of a stressful working environment. Insufficient time to rest, debt and worries concerning possible damage to their produce, along with lack of social interaction with the community, all contribute to the stressful situation in the farmers' lives.

Additionally, the pig and chicken farmers are also required to continuously check the EVAP in poultry houses that use the closed system. The reason is that in the case that there is a blackout, the pigs and chicken will suffer from the extreme heat and die. The farmers then did not feel free to partake in any activity held in the community (Faculty of Medicine, Chiangmai University, 2008). This is also true for farmers who grow plants or vegetables. The farmers have to set aside tremendous amount of time in fertilizing, vaccinating, weeding, and harvesting in the designated times determined by the company. It is obvious that if these practices persist, the strength of the community is likely to decrease and eventually the sense of community will disappear.

### ***Environmental Issues***

Not only does contract farming require a tremendous labour force, it also puts an extreme strain on natural resources. The negative impacts, then, do not only affect the individual farmers—the mainstreaming of such farming methods ignores the possible damages from the resulting pollution, degradation of the environment and the community's natural assets and the life of the community itself in the vicinity.

Within the fish cage culture zone in Mahasarakham Province, farmers have been using Chee River as their base. In 2006, due to a large use of the fish cage culture in the location, the density of St. Peter's fish population being raised per one farmer was as high as 1,200 fish within the 3 X 3 meters cage. The numbers exceed the appropriate number for fish farming, which should be between 500–800 fish per farm. Such a high density of fish caused the Chee River to become contaminated from leftover fish feed and fish excrement. The consequence was that large numbers of fish died because of the polluted water and fishermen then were profoundly impacted by the resulting damage (Bureau of Agricultural Development Policy and Planning, 2009).

The use of fertilizers and chemicals in sugar cane farming in Pone Tong District, Roi Et Province have also tremendously affected the environment. Because of the fertilizer use, the soil

within the area deteriorated quickly. Aside from the soil, the streams in the village were also found to be contaminated by the chemicals that were washed into the streams by the rain. The polluted water then affected the creatures living in the stream and the cows which drank from the stream and fed on the grass growing near the stream. It was found that the cows living in the area often had miscarriages. Additionally, despite the fact that burning sugar cane causes air pollution, the farmers were forced to do so to make sure that they were able to grow sugar cane by the timeline determined by the factory<sup>7</sup>.

Waste is inevitable, especially when intensive use of natural resources during the production process is involved. If the management of waste produced is not handled well, problems can be expected, especially in contract farming where large amounts of natural resources are being used in an intensive manner.

This can be illustrated through the case in Sun Sai Community, Chiang Mai Province. That community experienced significant conflict because there were large numbers of chicken contract farms in the village that resulted in a serious odor problem in the village and an increase of flies due to the large amounts of chicken excrement. Such environmental pollution has brought about several conflicts and legal suits amongst the people in the community<sup>8</sup>.

### ***Legal Issues***

Asst. Prof. Bunchorn Kaewsong, Ph.D has categorized the legal relationships typically found between farmers and companies into the following four types (Bunchorn Kaewsong, 2006), by reviewing several contracts:

**1. Relationship between employer and a hired person or contractor** – In this kind of contract, the farmers agree to execute a certain set of agricultural activities requested by the company. The company will be responsible to provide raw materials while the farmers are required to invest in other infrastructure as agreed in the contract. Nevertheless, the company has the authority to oversee and inspect all production processes. Thereafter, the agreed remuneration will be based primarily on the productivity of the production process. For example, in the case the farmer agrees to raise pigs, the farmer will be the one investing all concerned land, animal shelters, electricity costs, labour, etc while the company will be providing piglets, feed for pigs, and medicine or drugs. The ownership of the raised pigs will lie with the company, and the company shall pay remuneration to the farmer in accord to a ‘Feed Conversion Ratio’ as indicated in the contract or agreement (Jatuphol WangSoowattana and Chonlaree Wattanawetwijit, 2007).

**2. Relationship between a buyer and a seller** – In this contract farming relationship, farmers purchase all raw materials from the company and will be responsible to invest in any necessary basic infrastructure. The production will be sold to the company and shall meet the quality and quantity considerations as agreed in the contract. For example, in the case where the farmers agree to raise chickens, the farmers might be requested to buy baby chicks, chicken feed and medicine

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<sup>7</sup> <http://prachatai.com/journal/2008/06/23827>

<sup>8</sup> <http://measwatch.org/writing/2806>

from the company. In some cases, the company might provide these on credit to the farmers and later deduct the costs from the remuneration to be given to the farmers. And in other cases, the farmers are able to sell their production to third parties if such transaction has no negative impact on the contract (Jatuphol WangSoowattana and Chonlaree Wattanawetwijit, 2007).

**3. Relationship through an agent** – This kind of contract provides for three parties—farmers, the company and an intermediate farmer or so-called chief farmer or agent who will act as the focal person in coordinating between the company and the farmers. Coordination means the intermediate farmer will receive a production plan from the company and will disseminate the plan to the group members, providing the required monitoring and inspection of all production processes to ensure that all is in accord with what has been agreed in the contract.

For example, once the farmers agree to grow corn, the agent/chief farmer will be coordinating between the farmer group and the company. The chief farmer will also participate in the conduct of the plan together with the company, planning with other farmers how to plant the crops as well as monitoring the quantity of produce. For the input supply, farmers are not required to buy seeds or fertilizer from the factory individually; rather the agent will be responsible for overseeing these processes and for providing suggestions concerning fertilizer and its application, including consistent inspection according to the recommendations given by the company (Jatuphol WangSoowattana and Chonlaree Wattanawetwijit, 2007).

**4. Relations between the seller of production inputs and farmers** – Relations between the farmers and company using this kind of contract are similar to those between any buyer and seller of production inputs. In this type of contract, farmers will be purchasing the production materials from the company; however there are variations where the production inputs can be provided on credit and the farmers are free to find purchaser(s) for their produce. For the actual sale of the produce nevertheless, this shall be through the company who are the counterpart of the contract or sold to any other buyer as their preference.

For example, in fish farming (fish cage culture), the farmers will be requested to buy the fish cages, fingerlings and fish feed from the company and raise the fish in a public river. The company will then calculate loans to be given to the farmers based on the farmer's performance and the production. Notwithstanding this, the farmer can also sell the fish to other independent buyers or directly to the company who will determine the conditions of purchase based on the fish weight (Jatuphol WangSoowattana and Chonlaree Wattanawetwijit, 2007).

It was found that most of the contracts examined typically fell more under the scope of Hire of Work Contracts rather than Production Contracts or Hire of Labour / Services in that the contract between the farmers and the company is based upon the provision of remuneration for the agreed production. Additionally, there is also a specification for the required standard of production inputs, the production process, the quantity and the quality of the produce upon which the remuneration will be based. From this, it is clear that the contract puts more focus on the *accomplishment* of the work<sup>9</sup> rather than the *duration* of work. Duration type contracts usually

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<sup>9</sup> Civil and Commercial Code, Section 587

require a job description, which makes them into Hire of Work type contracts<sup>10</sup>. In addition, the company normally has the authority to oversee and inspect the production process. Therefore, the contract cannot be considered a contract of sale<sup>11</sup>.

Furthermore, it is also observed — given the nature of contracts — that whenever there might be potential disagreements regarding damages that result for the farmers, whether they stem from the performance of the work, risks that required more investment, health or environmental damages or the failure of other benefits to materialize that the farmers expected to receive, if the contract were to fall into a Hire of Work type, the company would have no responsibility for any of the said damages.

Since the farmers are not employees but rather function as hired persons or contractors, the company is not required to invest in any equipment or other production necessities or to provide any welfare to the farmers as is required by the Labor Protection Act. However, practically speaking, even though the farmers may be legally portrayed as independent contractors, it is unavoidable that they will depend on the company for things such as technology, production inputs and marketing. Furthermore, the farmers also have to work full time according to the guidelines set by the company but still do not possess any right to obtain any benefits or protection from the company, unlike the regular employees of the company (Isabelle Delforge, 2007).

Additionally, all activities concerned in the production process are considered as the farmer's affair. Therefore, any pollution or impact on the environment caused by the production process, is held to be beyond the responsibility of the company.

Although the forms of contract in contract farming are close to that of a Hire of Work in the Civil and Commercial Code, the governing law can be effectively enforced only when the both parties of the contract are held to have equal rights and authority in the negotiation. However in practice, farmers do not possess such authority or rights and therefore, are forced to comply passively with an unfair agreement in order to earn an income that sustains their lives. With all this in mind, it is worth taking into serious account how to create fairer treatment within the contract farming system (Chantana Chareonsak, 2008).

Not only do several traits or characteristics of the contract bring about deprivation of benefits among farmers, but certain details typically articulated in the contract are also found to be unfair. The reason is that the contract is often drafted by focusing on one party's benefits over the others. Based on the Unfair Contract Terms Act 1997, Article 4, unfair treatments are indeed evident in contracts between farmers and companies, as can be illustrated below by some clauses that have been found in actual contracts:

*The agreement can be voided by the company without reason or Right is given to the company to void the contract without objection by the farmer*<sup>12</sup>. As asserted in the contract, the company has

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<sup>10</sup> Civil and Commercial Code, Section 575

<sup>11</sup> Civil and Commercial Code, Section 453

<sup>12</sup> Act on Unfair Contract term (2540-1997), Section 4(3)

the absolute right to void the contract made with the farmers immediately while farmers have no right to pose any argument or disagreement. Such a clause in the contract is the major reason why the company has superior authority in negotiation over farmers. This has caused intense worries in farmers for they can be dismissed from the contract or business at any time without cause of objection.

*The agreement allows one of the parties to set up a new condition to the contract which adds more obligations to another party than which has been first agreed.* The company is given the right to set up new conditions or regulations after the contract is drafted; any condition(s) added are then to be followed by the farmer. In this way, even after the contract is drafted, the company is within its rights to force farmers (for example) into buying equipment or other production materials without prior notice, though the farmers themselves may see no necessity in buying such equipment. This will cause situations where farmers are penalized and unable to negotiate.

*The agreement obligates one of the parties of the contract to be responsible more than that normally indicated by law.* – It is unfortunately normal for contracts to push disproportionate risks onto the farmers. In the case that there are damages, losses, including to the condition of equipment or production materials, and with or without the company being the party that caused the damages, the farmers will normally be responsible for all the damages and the cost will be determined by the company. It can be seen that the said details of the contract have pushed all the burdens and risks—which are mostly force majeure—onto the shoulders of the farmers. Such burdens are much more than ordinary people can handle.

However, the contract faces some limitations in that it must be a standard form contract of which conditions and essences have been properly written in advance. The contract can be in any type and the contract can be used by the contractor in his/her business. Therefore, the said Unfair Contract Terms Act 1997 cannot be enforced in verbal contract. The fact that the government is involved in the contract between the farmers and the company also contributed to the said restriction.

### **Governmental Policy: Roles in Promoting**

Government has promoted contract farming in Thailand beginning with the 6<sup>th</sup> National Economic and Social Development Plan. Since contract farming requires high investment in its initial stages, the Ministry of Agriculture and Cooperatives created the *See Prasarn* (Four Parties) Project to enable collaboration with finance institutions, such as the Bank of Agriculture and Agriculture Co-operatives, to provide loans to farmers. Farmers can receive a loan by contacting the bank through a company that will become the farmers' contract counterpart.

During implementation, it was found that officials often turned a blind eye to farmers engaged by agribusiness companies that exploited public or protected resources. For example, farmers involved in contract farming in an area of preserved forest have a lower risk of being arrested than those who are not part of the contract farming schemes.

Practically, collaboration between farmers and agribusiness has both positive and negative features. From the view point of small farmers, requesting a loan from the bank through the contract counterpart company is a lot easier when compared to small farmers who have to go through the application process themselves and have to meet all the various conditions. However, given the powerlessness of the average contract farmer vis a vis the large agribusiness interests to negotiate and earn benefit from their involvement, it is evident that the loan benefits the company even more than the farmer as the borrower. It can be argued that it is primarily a lack of investment options that drives the farmer to borrow the funds and participate in such one sided schemes.

At the level of the economy of the schemes itself, it can be said that the investment costs in agriculture for small farmers who prefer to operate independently tend to be even higher than those in contract farming. But what are the alternative policies that small farmers can take advantage of? How does the employment of the current and future generations of Thai farmers relate to this situation?

Through the direct propaganda favouring contract farming made in the community, it is not surprising that numbers of contract farmers have rapidly increased while alternatives for independent small farmers continue to decrease. It seems that this policy puts all its eggs in the basket of enabling farmers in large numbers to access technology and insuring sales through a contract farming system without examining and managing the alarming disparity in relationships and bargaining power within which it takes place. The questions remain: How do the principle and practice of contract farming support the long term stability of vibrant family life in rural Thailand? And, at the level of the individual contracts, to what extent are the benefits of contract farming materializing, compared to the propaganda that promotes it?

Aside from the examination of policy alternatives (which needs a fuller handling as we have indicated), a major key in answering the latter question (and at least an important step overall) is to examine the role of the government in overseeing the conduct of the contract that yields just treatment towards both the farmers and the company.

### **The Evolution of the Government Role**

At the beginning stage of the *See Prasarn* Project, the operation was not that successful. One reason was that the success of the project depended on a type of oversight that the government was not in a position to provide. When government attempted to intervene in the project to ensure fair treatment between the farmers and the company, limitations on the company were created in carrying out the operation that proved unacceptable to agribusiness.

Consequently, the operation plan of the governmental units responsible was amended in the year of 1995 and the intervention of the government during the conduct of the contracts between farmers and the companies were reduced significantly. The operation then was left to the “invisible hand” of a market force with the hope that such would open the gate for a more effective operation. Given the unequal bargaining power of farmers, this was doomed to failure.

However if considering the negative and exploitative impacts of contract farming in its later stages, it can be said that the government had failed in finding a balance of power between farmers and companies, by withdrawing its intervention the government had instead only managed to replace its ineffective intervention with a passive negligence and abdication in finding proactive solutions. Clearly, the government has been short of resources to manage the problem. And with only passive solutions available, the farmers were left to manage their long term relations with the companies only through the use of the existing patronage system found in agri-business.

This is an impossible situation to be sure. Additionally, should farmers wish to sue on the grounds of unfair treatment, they would be required to invest in a costly legal process. Can it be that the lack of attention from the government came from the fact that they see contract farming as something in which both parties voluntarily engage in a contract? This ignores the fact that farmers lack the same authority and access to legal process that the company enjoys, and the manifest lack of transparency of information that has been available to the farmers.

Surely the government needs to take into serious consideration an appropriate role they can take with farmers to ensure that equal treatment is available to both parties.

### **Amendment of Laws through a Participatory Approach**

Several recommendations (Jatuphol WangSoowattana and Chonlaree Wattanawetwijit, 2007) have been made for providing solutions to contract farming issues. Most recommendations include ensuring that relations between farmers and companies is just and fair, use of written contracts (rather than the verbal ones), balancing market bargaining power between the farmers and the companies, ensuring a fair distribution of risks and their cost among both parties, improving farmers' access to legal redress and building capacity to receive and use information by the farmers.

All in all, to make sure that the ideal contract farming can yield fair and just treatment to both parties, two conditions must be followed: 1) the contract must be agreed by and satisfactory to both parties and a complete information platform must be provided to both sides. For example, farmers cannot be party to a contract that violates their legal rights. Also, farmers should be given complete and correct information concerning costs of production means/factors or other supplementary equipment; 2) the contract must be effectively enforced. For example, the company must not be allowed to make changes regarding cost of the production materials or the purchase price of the produce without the consent from the farmer once the contract is signed.

These conditions can only flourish when the power to negotiate is equally available to both parties; in other words, both parties must have equal access to justice under the law and mutual trust must prevail. However, in actuality, this does not usually happen because the company has more funds and possesses greater assets compared to the farmers. Mutual trust is then difficult to build. It is, therefore, the responsibility of the government to act to bring forth solutions to the issues.

The Law is an essential tool that establishes the state's or the government's roles in intervening in social and market structures with the intention to bring about justice to all parties including enforcing all related regulations. However, we can see that existing social protection and labour laws still contain many loopholes and are very much inadequate. The amendment of law is, therefore, indispensable. Nevertheless, movement towards such goals might not be possible without participation from among stakeholders in the problem, meaning the farmers themselves.

The lack of negotiating power is the major obstacle that prevents farmers from such participation. Though acquisition of power can be derived from various means and methods, such as strength, confidence, and wealth, the vital factor that can create such change is the coming together of a group of people (who share the same experience). There are examples that stand out.

A group of contract corn farmers in Saraburi Province have shown within them strength and power owing to the presence of a committed leader on whom the members can lay their complete trust. This is the most important factor that allows farmers to have the power in negotiating with the company.

In advocating on behalf of existing and improved laws, only a collective of contract farmers will be able to influence government to use its power. At the same time, farmers will also earn increased recognition and visibility within society. This can help make the problems faced by farmers more tangible in the eyes of the government, thus developing effective solutions will more likely occur.

### **Examples from Other Countries**

In the United States of America, an organization of farmers was established in 1986 under the name Farmer's Legal Action Group (FLAG)<sup>13</sup>, an institution mandated to provide legal knowledge in relation to agricultural issues and to offer legal advice to all types of farmers in the country including contract farmers. Its role is to take the lead in calling for the amendment of laws as well. This can be illustrated through one example in 2002 where FLAG submitted a proposal to federal agencies that called for changes in the law for the protection of contract farmers called the Packer and Stockyards Act 1921, which dealt with matters affecting poultry raisers. The proposal eventually led to an amendment for a more just and fair law.

However in some context, confederation of farmers might not be enough as in the following case study of potato growers in Canada.

Potato growers in New Brunswick who were involved in contract farming with McCain Company were not satisfied with some of the company's policies. The fact that the farmers felt they were being taken advantage of had led to the establishment of the farmer confederation in 2006–2007. The confederation then acted as a representative for the potato growers in New Brunswick, including through coordination with local legal units. However, the work of the confederation turned out to be unsuccessful. There are two main factors that contributed to the failure. First, aside from the farmers themselves, the confederation was composed of members

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<sup>13</sup> <http://www.flaginc.org/>



from various other lines of work, such as exporters and processors. Such a varied combination did not truly represent the farmers as was intended when it was first established. Second, the confederation lacked efficient management and corruption was found consistently. The committee members were often voted out after a short period in the confederation. Such failure has created doubts of members in the motives of the committees and true objectives or agenda of the confederation. When disunity and ambiguity was present in the confederation, it was impossible for the Canadian Government to understand the roots of the problems farmers were facing; therefore, no legal assistance was given to the farmers.

As can be seen, the integration of farmers or the establishment of a farmer confederation is not just the gathering of a group of people, but it must also mobilize and generate power to successfully push to amend the law or policies. However, the attempt to cause such change must come together with the awareness of the problem and common visions shared by all member farmers. The mobilization then must be operated under an efficient mechanism which can yield just and fair treatment to all stakeholders.

Impacts arising from the problems of short-term contract farmers in Thailand might affect only to a small proportion of people. However, if the problem is neglected, it is possible that this will lead to a long term negative influence within the society, for the Thai majority still rely on the agricultural sector. Therefore, the above issues are not only those of farmers but include all Thais. The solution then will need to search out the varied impacts of the problem and seek collaboration from the public, and governmental and private sectors. It is only then that a more ideal contract farming model can be molded and provide a life for people that resonates with healthy food and secure livelihoods.

### **Movements to Address the Problems of Contract Farming**

It cannot be denied that if there were no sustained interest from academics and NGOs in the variety of issues presented by contract farming, it will be hard to create any policy proposals or even to generate curiosity on the nature of the problem. Farmers themselves are well aware of their circumstances and there are many examples of their interest to get together and strive for improvement. A more unsettling reality is the trickery indulged in by the companies involved, in trying to hide the true problem of the exploitation of farmers from society and the variety of means that they employ to prevent farmers from effectively demanding, fighting, and even getting together to protest. One such example would be threat actually made by one company to pig farmers that if they protested, the company will not send them more piglets or would send low quality pigs. Such is the nature of the inequality, that such threats can be effective and that farmers have to be silent because of their debt situation.

Therefore, the current movement to improve contract farming exists jointly through studies of urgent issues by academics working together with farmers and through the work of interested NGOs and farmers. The work of these groups have together resulted in various proposals for the reform of contract farming made to Thailand's political parties and voters alike by the Thai Reform Committee. These are also proposals to reform contract farming made by Paisith Panichkul, Law Faculty, Chiangmai University.

## **Patronage Mechanisms Leading to the Current Injustices**

1. The lack of mechanisms through which men and women farmers can obtain effective knowledge and understanding of the production system requirements under the contract farming system, especially in terms of the production cycle risks involved. This lack of mechanisms is certainly partly due to the intentional unwillingness, both on the part of the agricultural company and the government officers with responsibility to support men and women farmers, to reveal the information that would effectively empower farmers and create a more equal relationship. The resulting lack of power of farmers as a group has had multiple effects:

- the inability to negotiate with awareness and equality,
- the requirement to comply with a system that lacks alternatives and that binds them to the contract farming system,
- the creation of a state of fear in men and woman farmers' minds, of being denied freedom of access to market mechanisms both to obtain inputs and to market their produce,
- a sustained lack of power to negotiate with the monopolistic practice that contract farming presents, and
- the effective abdication by government of their proper role in providing the elements of a level playing field, preventing exploitative behaviors and refusal to use existing laws to prevent injustice and inequality.

2. As for the agricultural businesses, they benefit enormously both from the government's policy and the lack of it, together with the inefficient and ineffective job done by public servants in intervening to counteract the injustices of a market system that monopolizes both the sale of agricultural inputs and produce. Another feature of this patronage mechanism is the use of a mostly compliant media to create various one-sided and unchallenged propaganda. This lures farmers into entering contract farming and that promotes the false belief that farmers alone should have to carry all the risks that might emerge from the contract farming system. Agricultural businesses also enjoy the advantage of their superior access to knowledge, technology and legal mechanisms that then function as tools, allowing them an unfair advantage over farmers.

3. And where is government in this? The role of the government clearly should be to promote justice, prevent and protect those who have fewer opportunities, as well as to create the systems that provide for the enhanced welfare for the people. In the case of agriculture however, there have been studies that show that the government's policies are not beneficial to medium and small scale farmers, but rather show a strong bias towards the support, both in direct and indirect ways, of the big agricultural industries. Government agencies involved with the system use coercive force, both directly and indirectly, that pressures farmers into contract farming without considering, or placing any importance on, the injustices that might follow and that would eventually become burdens.

The potential role of the organizations and representatives of government to negotiate on behalf of the interests of the farmers is undeveloped and even unencouraged.

Thailand's judicial system, which has the direct responsibility for the application of the law and for the operation of the various monitoring and implementing organizations, operates as if it had no knowledge of the state of the injustices that happen under the contract farming system and the monopolistic practices regarding the sale of production inputs and the marketing of products. The systemic obstacles within the judicial system mean contract farmers face daily injustices and have insufficient access to the corrective action possible under existing laws. On the other hand, the agricultural companies make regular use of contract law and the judicial system to benefit themselves by using rights that are legal but that fail the test of justice.

Therefore, given the injustices under the contract farming system, there is an urgent need to change the system and proposals for the reform of the structure of the unjust relationships that are created under existing contract farming arrangements need to be discussed.

### **A Proposal for Reforming the Unjust Structures of the Contract Farming System.**

1. The equations governing agricultural production can be improved by the following.

1.1 An Agriculture Charter should be created that uses principles based on justice in both the production and the marketing aspects of the agricultural sector. Such principles should serve as a beacon, pointing to the righteous and just conduct of any such activities, and should include the following rights of farmers:

- the rights of assembly as a group;
- the rights to equality of access and use of public and environmental resources;
- the rights to be compensated with a fair and just income;
- the rights to security and quality of life.;
- the rights to preserve and pass on their identity and local knowledge;
- the rights to access information and knowledge.

1.2 A role for government should be developed that directly relates to the causes and impacts of any monopoly that arises in the market for agricultural inputs or in product sales. Such a role needs to be adjusted from time to time to successfully intervene and reduce or eradicate a monopoly as it develops or changes. It also needs to include the government's judicial system and units (such as the justice court or the local administration offices, etc.) that need to be tasked with and accountable for rooting out and finding solutions to prevailing injustices.

2. The insufficiency of the legal system in protecting those who are weaker, namely contract farmers and their families, has to be changed in order to create justice as follows.

2.1 An effective law is needed to allow interventions that can manage and arbitrate relationships under the currently unjust contract farming system. That law should be based on these 4 principles:

- a) A farmer who becomes a contract farmer by investing his/her land or labour, has to be in a position of a partner having the right to the products that are produced. The company has to take proportional responsibility for any damage that occurs as a result of the contract.
- b) The principle of the distribution of benefits from the contract has to additionally ensure a just allocation of such benefits.
- c) Government units within any area under contract farming should be integrated to act as an effective registrar and to guard against injustices that might occur.
- d) In the meantime, there have to be policies and an improved justice mechanism that can be brought to bear quickly on the problems farmers are facing under their contracts, especially those who are being sued as a result of unjust arrangements.
- e) A negotiation and arbitration process needs to be created to allow a third party to responsibly manage conflicts that will occur from time to time under contract farming.

2.2 There has to be an effective law and a monitoring mechanism that protects the natural and social environment of agricultural areas as well as providing for the sustainable use of natural resources.

2.3 Standards and a legal system are needed that effectively protect agricultural labourers' health and safety in the work environment.

2.4 As for contract farming crops with existing laws, such as the Sugarcane and Sugar Act of the year 1984, there is a need for a transparent audit/check up by the public in order to motivate relevant officials to follow up and check that the activities are continuously performed according to the law.

2.5 There has to be a code of law that determines the contracts that involve the production under the agricultural business within the contract farming system, which has to be controlled in order to prevent it from having injustices or taking unfair advantage of the farmers.

2.6 Certain requirements for contracts to be considered valid are needed. Contracts should be considered void if they are found to be: taking unfair advantage, providing opportunity to cheat, concealing important information and inappropriately using knowledge or privilege. A contract should be void if a second original of the contract documents is not provided to the farmer.

2.7 The role of government should be to protect and create justice in the process of signing the contract under the contract farming system and this role should be known to the farmers, government offices, and the company.

## **NGO Efforts to Rectify Contract Farming Injustices**

Apart from work by academics in research and in formulating policy proposals, NGOs have been active for years in spreading word about the problems to the public. They also provide a forum where farmers can exchange ideas and knowledge between areas facing the same problems. An example was the large 2012 seminar on “Contract Farming; who gets full and who starves?” on June 26-27 at Chulalongkorn Univerisity. The event was well attended by contract farming networks and involved:

- The Contract Farming Network (networks of farmers raising pigs, chicken and caged fish as well as corn and sugarcane farmers)
- The Alternative Agriculture Network of Isaan
- Bio Thai Foundation
- Foundation for Consumers
- People's Institution on sustainable Agriculture, Faculty of Law, Chiangmai University
- The faculty of Humanities and Social Sciences, Mahasarakham University.
- Faculty of Political Science, Chulalongkorn University
- The Workers' Health Promotion Office.

The following declaration was drafted:

*The Declaration of the Working Group for Contract Farming*

We farmer groups, who have not received justice from contract farming and from the monopolies of the industrial companies, have come together with NGOs, academics, and consumers to exchange ideas and experience concerning contract farming. We have found that contract farming within the Thai context, with the push from government and investors, inherently relies on injustices towards farmers that have pushed a lot of farmers into debt, lawsuits, or the very loss of their land. We have found that farmers have had to carry risks that might threaten the production, their labour and our health. Contract farming carries risks from natural disasters that might destroy public resources and degrade the natural environment and that might lead to the contamination of the food and health problems for consumers and that might also contribute to food insecurity. Therefore, we demand support from the Thai society, such as for policies that support justice in agriculture.

1. We want to push investors in agriculture to stop the system of contract farming which is unjust, destroys the environment, causes health problem and threatens food security.
2. We want to push the government to launch a policy on contract farming that is seen to create justice for farmers while protecting the environment and consumers' health and encouraging food security. The policy should involve remedies for farmers who have not received justice from the contract farming system.
3. We want to push the agri-business sector to take their true responsibility within society to stop any business practices that are destroying the environment and violating the law, that do not respect community and human rights and that produce food that is not safe for consumers.

We want to make our point here that we will be working to strengthen farmers and to push for a contract farming system that is just for farmers while protecting resources, the environment and food security. We declare jointly that we will work with the government, allies, consumers, academics, and the media to ensure that the rights of the farmers are respected.

In unity,

The Working Group on Contract Farming at Chulalongkorn University

June 27th, 2012.

## **Conclusions**

Since 1986, through the direct propaganda by government and agribusiness, contract farming and the numbers of contract farmers have rapidly increased while alternatives for independent small farmers continue to decrease. With its emphasis on enabling farmers in large numbers to access technology and insuring sales through a contract farming system, this policy has failed to address the examination and management of the alarming disparity in relationships and bargaining power within which contract farming takes place.

The questions remain: ‘How do the principle and practice of contract farming support the long term stability of vibrant family life in rural Thailand’, and, at the level of the individual contracts, “To what extent are the benefits of contract farming materializing compared to the propaganda that promotes it?”

Aside from the examination of policy alternatives (which need a fuller handling as we have pointed out), a major key in answering the latter question (and at least an important step overall) is to examine the role of the government in overseeing the conduct of the contract that yields just treatment towards both the farmers and the company.

This paper provides recommendations for improvements in the functioning of contract farming based on an analysis of contracts for agricultural production and the experience of small farmers.

Beyond that, it will be worthwhile to reflect on the fact that “government departments” and “agribusiness” alike are actually made up of individuals who can think, speak and act by themselves and in collaboration with others.

Even as necessary changes are made to legal and implementing structures, there needs to be a proactive move away from the monolithic and oppressive silence on principles by compassionate and brave people who serve the higher values espoused by all well intentioned people in Thailand.

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