A Case for Regulatory Frameworks and Laws to Govern Contract Farming in Zimbabwe

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Abstract: Zimbabwe’s economy has been on a freefall at the backdrop of decreasing agricultural productivity since the turn of the millennium. Agriculture is positioned to be the cornerstone of Zimbabwe’s economic recovery plans as espoused in the Zimbabwean Agenda for Economic and Social Transformation (ZimAsset) economic blueprint as it has traditionally contributed immensely to the country’s gross domestic product. In this regard, contract farming has risen to prominence in agricultural and development considerations due to potential benefits that may be derived from sound practices in agricultural production. Yet, there is lack of regulatory frameworks to guide contract farming in Zimbabwe. This paper seeks to present a case for regulatory frameworks and laws to govern contract farming to ensure that the potential it offers is translated into tangible benefits for farmers, agribusiness companies and the economy at large.

Introduction

Contract farming in its most basic meaning implies the existence of agreements between a farmer and an agribusiness firm governing the production and marketing of agricultural produce. According to Nhodo and Changa [1] contract farming is premised on a contract signed between a farmer and a firm with the agreement the later will purchase the farmer’s produce to market or process it. The contracts usually vary but entail the independent farmer producers being provided with loans or agricultural inputs (e.g. seeds, fertilisers and pesticides) coupled with technical advice. On their part, the agribusiness firms within the contract stipulate how much produce they will acquire and the prices. Harish and Kadrolkar [2] identify three types namely: (i) procurement contracts under which only sale and purchase conditions are specified; (ii) partial contracts wherein only some of the inputs are supplied by the contracting firm and produce is bought at pre-agreed prices; and (iii) total contracts under which the contracting firm supplies and manages all the inputs on the farm and the farmer becomes just a supplier of land and labour. The contracts are designed to ensure that any assistance financially or otherwise, rendered to the farmer will the recouped then the produce is sold. As such there are attendant risks of production and marketing which are apportioned between the farmers and the agribusiness companies. The existence of such risks between these interdependent parties renders imperative the debate on the desirability of having statute governing contract farming in Zimbabwe.

Confluence of Actors with often Conflicting Interests

The above definition of contract farming is over-simplistic failing to expose the complex nature of contract farming especially how it is a confluence of a number of actors with divergent interests proving a case for the enactment of statute to govern contract farming. Baumann [3] observed that there are many actors with different motives involved in contract farming making it difficult to define a simple private-public dichotomy in contract farming. As articulated above, contract farming largely remains a private arrangement between producers and firms in which they undertake to share the risks involved in the production and marketing of agricultural produce.

However, the public perspective cannot go unnoticed as other players as governments may want to promote smallholder farmer development, ensure technological transfer, create a smallholder farmer political base, promote and generating foreign exchange. It is relevant to know that other parties may play an important role in facilitating the contractual agreement and obligations of farmers and the buyer. This is the case of government where it facilitates access to land or agricultural inputs to farmers or monitors the correct implementation of the contract or the financial institutions that extend credit to farmers. On their part, the farmers are also motivated by other considerations relating to food security, cash flow and limiting risks involved in contract farming (Harish and Kadrolkar) [7]. Granted this mixed bag of interests and considerations, the statutes and regulatory frameworks will then help to eliminated challenges that will inevitably arise from these often conflicting considerations. The statutes will clearly lay the modus operandi of each actor to
ensure that the goals of contract farming are achieved.

Abuse of Market Power

Statutes are important in regulating agribusiness firms to guard against trade malpractices such as abusing market power. The existence of statute will act as checks and balances guarding against the excesses of the agribusiness firms which usually disregard fair trade practices….has noted that most developed countries have restrictive trade practices or antitrust legislation that penalises aggressive pricing by firms that usually hold dominant market positions. The goal of prosecutions under such laws have primarily been to protect customers in immediate and final produce markets but this also applies to aggressive pricing in sourcing raw materials where a dominant firm is buying from a large number of small producers. Even where such legislation exists, protecting farmers involved in contract farming is still an elusive goal. Harish [2] report that Australian farmers servicing potato contracts claim they are exploited and have taken political action to get government protection however there have been no prosecutions. Mafuse et al [4] report a similar story for Canadian potato contractors with political action on the part of growers not evoking a legal response.

As contract farming is increasing in developing countries, Zimbabwe included, legal protection of smallholder farmers is critical especially anti-trust legislation or as specialised legislation designed for contract farmers. Specialised anti-trust legislation is used in the United States where protection of contracted farmers occurs under the Uniform Business Code and the Perishable Agricultural Commodities Act. The enactment of such specialised legislation results in the need for specialised judicial institutions to carry out enquiries and making judgements on issues relating to contract farming. Lessons on such institutions of arbitration on contract farming can be learnt from those offered in Malawi. According to Eaton and Shepherd (2001) the Malawian government has established guidelines for dispute resolution in agricultural contracts and offers services of an officer of the Minister of Labour for Mediation. Checks and balances have to exist to ensure that customers are protected and that the playing field remains level for the small agribusiness firms as they contend with the big firms. Hence, these definitive measures are important to ensure that abuse of market power by dominant agribusiness firms is nipped in the bud.

Unequal Power Relationship between Firms and Farmers

Critics of contract farming have reiterated the existence of power asymmetries between the agribusiness firms and farmers with the latter being victims in the relationship. Contract farming is often characterised by unequal power relationships between the firms and farmers, with farmers providing a cheap form of labour and the firms simply transferring risks to the farmers. Dzingirayi [5] argued that contract farming emerges as a mechanism to reorient smallholder agriculture in ways that answers to the needs of private business. While farmers are to provide answers to the agribusiness firms, they also have questions which these agribusiness firms should answer to create a mutually beneficial relationship. However, it seems farmers have largely been at the receiving end as they often lack the bargaining power in these contracts. It is not surprising that in many contracts, farmers are forced to sign mandatory arbitration clauses as part of take-it-or-leave-it non-negotiable contracts with buyers (Eaton and Sherperd) [6]. Some of these clauses effectively foreclose recourse to the court system yet arbitration can provide quicker and cheaper dispute resolution.

An important point to be made is how the existence of statute will help transfer and equip farmers with power that will help in equalising the relationship with the agribusiness firms. Without bargaining power, farmers will remain at the mercy of the agribusiness firms and their operations will be characterised by operational challenges as they assume greater risk and farming becomes unprofitable. Under the unequal power relationship, there is great potential for trapping small-scale farmers in cycles of debt. Contracts create dependence by small farmers on the technology, credit, inputs and services provided by their contracting companies (Baumann) [3]. Because contract farming mostly involves the use of intensive technologies in industrial agriculture, farmers may have to risk borrowing money to invest in agricultural production. They then may not earn enough money to cover their debts, a risk that is heightened when the contracting firm is the only buyer.

Contracts have often been found to be inequitable because of this power asymmetry. One recent review of 19 contracts from a FAO database shows how poor contracts are from the farmers’ perspective. Of the 19 contracts examined (in Brazil, Afghanistan, China, Honduras, South Africa, Thailand, Uganda and Zambia), only seven stipulated the duration of the partnership, and only
five stated that the farmer had legal ownership of the land (Eaton and Sherperd) [6]. The review found that: “The contracts contained few details on the specific inputs provided to farmers” although pricing details were clear in most cases. The review concludes: “Firms frequently fail to include basic detail in contracts, so that farmers are frequently not fully informed about the nature of the agreement they are entering into” (ibid). The benefits of contract farming may be hindered by problems arising from unclear, incomplete, or poorly understood contract terms. In some cases, contracts do not include some important clauses necessary to protect the parties. In others cases, contractual clauses are unclear or ambiguous and may lead to misunderstandings between the parties or to manipulation by buyers. Pultrone [8] identifies some of the contract terms which may result in exploitative relationships to include lack of clarity in price determination, Liability for production losses, unilateral termination clause, confidentiality clauses and abuse of mandatory arbitration clauses. Hence, there is need for statutory instruments to guide the crafting of contracts to ensure mutually beneficial relationships between farmers and agribusiness firms.

Harmonising Local Laws and Practices with International Laws

There is need for local agricultural practices to be in tandem with international best practices are important to ensure that contract farming is well regulated. The United Nations Convention on Contracts for the International Sale of Goods (CISG) provides the international legal framework for many transnational sales contracts (Putrone) [8]. Another international reference document for contract farming is the UNIDROIT Principles of International Commercial Contracts (PICC). In addition to these two documents at the international level, international organizations may also provide international guidance focused on contract farming (ibid). FAO is one such international organization that serves an important role by providing guidance on contract farming practices through advice for integrating good practices for responsible contract farming operations.

Against the backdrop of these broad legal frameworks for contracts, various countries have chosen to enact legislation that narrowly focuses on contract farming. Countries have approached the regulation of contract farming practices in different ways depending on domestic legal traditions and era in which the legislation was drafted. Various norms governing contract farming are identifiable namely civil codes, agrarian codes, general contract legislation, specific agricultural contract legislation and sector or product specific legislation (Harish) [2]. These sources of governing law vary in how specifically tailored they are to focus on contract farming. Guided by international provisions, there is need for governments to expedite the incorporation of international provisions on contract farming into local legislation for sound contract farming practices.

Zimbabwe can draw lessons from other countries that have enacted legislations to govern contract farming. In 2000, Spain enacted legislation which defines the principles that regulate contractual relations between agricultural producers, buyers and processors. The objective of the law is to regulate commercial transactions, to promote the stability of markets and to improve transparency of transactions and market competition. In India, the Agricultural Produce Marketing Act (APMC) is a model act put forth in 2003 for the purpose of regulating the marketing of agricultural products at the state level (Harish and Kadrolkar) [7]. Zimbabwe may also choose to include measures on contract farming in product-specific legislation. Kenya is one country that has frequently taken this approach. For example, Kenya’s Dairy Industry Act aims to regulate the entire dairy industry, including contracts between producers and processing and trading businesses (Mafuse et al.) [4]. It is incumbent upon Zimbabwe to embrace international provisions and adopt best practices to ensure that there is harmonisation with practices in other countries as dictated by international regimes such as CSIG and PICC. The harmonisation is not only beneficial but helps to attract foreign investors for the improvement of local agricultural industry.

Concerns Related to Risks

The presence of risks within the contract highlights the importance of having statutory instruments for the governing of contract farming. These risks compromise the ability of either party to fulfil their side of the bargain. These situations include, among others, changes in weather, outbreaks of disease, market price fluctuations, changes in government policy and simple contract breach (Dzingirai) [5]. A contract breach by either party occurs when the conduct of a party violates the provisions of the contract. For example, a buyer’s failure to pay (on time) may have serious implications for both farmers and buyers. Delayed payments might lead farmers to sell the contracted good to a different buyer. A late payment or failure to pay may seriously affect farmers if they have to repay bank loans taken to invest in production. To
A farmer’s failure to provide the agreed quantity and/or quality of products is a risk that affects both farmers and buyers. To protect their interests, buyers may include provisions for buyer participation in production, technical assistance and close control over farmer performance. In addition, in order to encourage farmers to meet the agreed quality requirements, contracts may provide for the award of premiums for high-quality products and penalties for low-quality products. In Zimbabwe, tobacco farmers and agribusiness have been on several occasions been on collision course with the former bemoaning the low prices of tobacco while the latter argued that the produce were of poor quality. In the cotton industry, there emerged a very militant section of the farmers which has taken the contracting companies head-on and is refusing to sell the produce until all their demands are fulfilled, while on the other hand a number of farmers are taking an indifferent approach and in a way are prepared to sell the cotton as a result of social economic pressure that come with the continued delay in selling their cotton (Nhodo & Changa) [1]. Coulter et al. [10] argued that unfortunately farmers may also be willing to participate in side marketing if they perceive potential for strategic default. The onus is on the provider to anticipate situations in which this might arise (for instance, where a crop can be consumed on-farm or marketed locally), to put the necessary mechanisms in place to avoid it, and to make sure that farmers are aware that strategic default will not be possible. Statute will help reduce breaches and offer recourse to parties when these breaches take place.

The contracting companies should justify their nefarious cotton prices rather than just forcing the villagers to accept their position and always try to be transparent in the way they engage farmers in this farming enterprise (Nhodo & Changa) [1]. In a related issue Likulunga [9] argued that the contractual arrangements in Zambia vary from commodity to commodity, but common to all of them is the weakness of enforceability when the contract is breached. In this regard, contracting companies have very limited legal cover and in cases their operations can be affected by the politics of a country particularly in Zimbabwe. He also stated that this is mainly because the litigation process in Zambia takes too long and therefore enforceability through litigation process is costly and therefore not resorted to which works against the contracting businesses, a situation likely to obtain in Zimbabwe. It is therefore imperative to ensure the existence of measures beyond legal frameworks to curb side marketing.

Conclusion

Contract farming can be the panacea to the decline in agricultural productivity that has come to define Zimbabwe and help in the country’s economic recovery plans. However, for this potential to be translated into tangible benefits there is need for the creation of an enabling environment for the practice of contract farming. Governments have an active role to play in ensuring fair contractual practices through statutes and in supporting farmers that are engaged in contract farming. Most farmers lack both knowledge of and access to information about contracts; in many cases, contract breach is due to a lack of awareness regarding the contract entered into. Training in basic concepts of contract law, fair contractual practices and foreign languages used in contracts should also be supported. Governments can be instrumental in ensuring that farmers are informed and better prepared to negotiate and perform the terms of their agreement.

References


