

Can the HCDA Code of Conduct serve as an example for Ethiopia?

Despite the high potential for Ethiopia's sesame sector, it is generally felt that it faces different challenges, including the adulteration of sesame with foreign materials or the mixing of sesame with different sources of varying quality, a lack of transparency among chain actors and the contract default of producers and/or buyers in some cases.

Different types of solutions exist to organize transactions between buyers and sellers of agricultural products. Not only can buyers use spot markets to obtain products, they can also enter into contracts with individual farmers or groups of farmers. In using contracts, transaction risks and costs can be decreased for both buyers and sellers and access to markets increase. Contracts can thus have advantages over spot markets.

Contracts are usually agreed upon by both buyers and (groups of) sellers. However, contracts can vary widely in their specification. In the case of unequal power relations, the contract specifications may be unfavourable to the weaker contracting party (such as small-scale farmers).

A national Code of Conduct (CoC) can be useful in managing contractual relations and develop mutual trust by setting certain ground rules for actors in the sector. Dispute settlement can be part of such a CoC. A well-known example of a CoC can be found in Kenya, where the Horticultural Crops Development Authority (HCDA) has established a Code of Conduct (CoC) for the horticultural sector. Can the HCDA CoC be a template for Ethiopia?

HCDA

The Horticultural Crops Development Authority (HCDA) is a state corporation under the Kenyan Ministry of Agriculture, 'with the responsibility to develop, promote, co-ordinate and facilitate the horticultural industry in Kenya'.

The functions of the HCDA have changed through time by several amendments of the HCDA order under the Agriculture Act. The last change of the HCDA order occurred in 1995 to give the HCDA the mandate of 'revitalizing the horticultural industry'.

The 1995 export order

One of the tasks of the HCDA is to grant licenses to exporters. The 1995 HCDA export order specifies that if a company wants to receive an export

licence, it needs to enter into a formal written contract with its suppliers (e.g. farmers) and communicate this to the HCDA. The HCDA then can become a 'witness to the contract' and act as an arbitrator when required.

According to the export order, a company license will be cancelled when a company does not comply with these rules. This should give the HCDA some leverage with exporters. In reality, however, licences are rarely cancelled, but according to the HCDA, in the future the export order may be enforced more often. The reason for the current practice of not cancelling licences could be that the legal notice (1995 export order) was never enacted into law. The 1995 export order thus lacks a solid legal basis.

The Code of Conduct (CoC)

After the 1995 export order was finalized and communicated, the HCDA developed a Code of Conduct (CoC) in 1996 with key stakeholders, 'to enhance business relations between buyers and a sellers, and to use it as a framework to 'stay in check with the sector'. The HCDA sees the CoC as a memorandum of understanding between buyers and sellers and as a guideline for the buyer and seller to develop a legally binding contract. This is in line with



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VC4PD Brief 6

VC4PD

the 1995 export order, to which the CoC often refers, which specifically obliges exporters to enter into contracts with their suppliers.

The HCDA CoC spells out specific contract terms that should be included in written contracts between buyers and sellers of horticultural produce. These contract terms are similar to the obligations stated in the 1995 export order. Thus even though a company does not use the CoC, it is required by the 1995 export order to use formal contracts and to adhere to certain practices that are presented as contract terms by the CoC. Using the CoC is however voluntary, so the exporters can use different contract terms to suit their individual needs.

The HCDA performs various tasks in implementing the CoC:

- as reviewer of the 1995 export order and the Code of Conduct
- as promoter of the Code of Conduct
- as the verifier of contracts to grant export licenses
- as witness to contracts.

Experience

Exporters' views vary about using the HCDA CoC. Exporters that are new in the industry find the CoC useful in

drafting contracts. When companies grow and become more experienced, they usually have their own legal officer or hire lawyers to draft or check their contracts. Such lawyers normally do not use the CoC as a contract format.

Contracts differ in specifics between the exporters, but the general terms agreed upon are quite similar. The contracts contain almost always the terms that are required by the CoC. One difference, a cause of concern to the farmers, is that the CoC describes that when natural calamities occur, 'the affected party(s) should be held harmless for non-performance'. This clause is often not included, resulting in the farmers to take the risk when natural calamities occur.

Actual practices around written contracts also differ from the terms advocated by the CoC. First, in the CoC it is stated that a farmer can produce different crops for multiple exporters. However, in several contracts we have seen it is stipulated that farmers cannot sell anything to another exporter. Second, in several contracts, the fact that the HCDA can become a witness to the contract is not mentioned. Finally, NGOs already working with

the farmers are often not included in contracts or exchange relationships.

Useful to Ethiopia?

There is a role for a HCDA type of CoC in Ethiopia in (i) providing contract models and (ii) conflict resolution. When a CoC becomes official, its usefulness depends whether the regulatory bodies will actually implement and enforce it. In addition, stakeholders (companies and farmers, farmers' representatives or cooperatives) also need to be convinced that they will benefit from such a CoC. Otherwise they may avoid using the CoC, especially when enforcement is low. Having sufficient staff at relevant governmental institutions to inspire, advocate, inform and enforce the CoC is therefore a requirement for its effective uptake.

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