

Zimbabwe Law Review



Volume 9 - 10

1991 - 1992

THE ZIMBABWE LAW REVIEW

1991- 1992 VOLUMES 9 &10

CONTENTS

	Page
Articles:	
The Zimbabwe Law Review is no Longer a thing of the past	Editorial Board1
Comrade Shephard3
Judicial Activism and Development: Warning Signals from Zimbabwe	B Hlatshwayo4
The United States Bill of Rights and Its International Significance	L Henkin14
The Legal Regulations of Compulsory Motor Vehicle Insurance in Zimbabwe	L Tshuma31
The Philosophy of Public Reason	DT Mandudzo45
International Humanitarian Law and Human Rights in Southern Africa: The Problem of Political Culture	JN Moyo61
The Propriety of Administration of Oaths and Affirmations by Prosecutors in the Magistrates Courts in Zimbabwe	E Sekhonyana72
Socio-Legal Aspects of Contract-Farming: An Overview of Kenyan Case Studies	Okechi- Owiti82
Expropriation Under Roman-Dutch Law	B Hlatshwayo96
Theory and Practice of Liberal Democracy in the Post - Colonial State in Africa : The Zimbabwe Experience	M Gwisai110

The Zimbabwe Law Review is no longer a thing of the past!

You may have been starting to think that the Zimbabwe Law Review had become redundant. One unkind person went as far as to suggest that we should rename our journal "The Historical Law Review" !

Unfortunately we had fallen a few years behind in the production of the Review. The last issue to appear previously was Volume 7 / 8 covering the years 1989 and 1990. The Editorial Board of the Review sincerely apologises to all of valued subscribers and buyers of the Review for the inconvenience caused to them. In order to speed up the process of getting up to date we decided to combine Volumes 9 / 10 (1991 and 1992) of the Review into a single number. Those who have subscribed in advance will be receiving their ordered issues within the near future. The next volume, Number 11 (1993), will be ready for distribution within the next few months. The Editorial Board would like to assure you that in the future the Law Review will be produced on a more regular basis.

We hope that you will renew your interest in this publication by renewing your subscriptions if you have allowed them to lapse. Details of current subscription rates are to be found on the cover of the Review. There is a reduced price for those ordering a set of the Zimbabwe Law Review.

We would like to call for the submission of articles, book reviews and casenotes for consideration for inclusion in this publication. These are momentous times for Southern Africa. Democratic rule has finally come to South Africa after so many years of struggle, suffering and oppression. We would like to take this opportunity to extend our heartfelt congratulations to the people of South Africa on the attainment of their liberation from apartheid rule.

In Southern Africa there is an urgent need to analyse and debate topical matters such as issues relating to development and reconstruction, equitable land redistribution, the impact of economic structural adjustment programmes, the protection of human rights, democracy and constitutionalism and the protection of the environment. We call for the submission of articles on these and other important issues.

Issue Editors for Volume 9-10:

Professor G Feltoe, Mr B Hlatshwayo and Professor W Ncube

Full Editorial Board:

R Austin	J Maguranyanga	V Nkiwane
G Feltoe	K Makamure	T Nyapadi
C Goredema	A Manase	S Nzombe
B Hlatshwayo	D Matyszak	E Sithole
P Lewin	L Mhlaba	J Stewart
M Maboreke	N Ncube	L Tshuma
E Magade	P Nherere	J Zowa

The Editorial Board would like to extend its sincere gratitude to the Raul Wallenberg Institute of the University of Lund in Sweden for its generous donation of desktop publishing equipment to the Faculty of Law of the University of Zimbabwe. This equipment was donated for use in the production of the Zimbabwe Law Review and other Faculty publications. This current number of the Zimbabwe Law Review was produced using this equipment.

SOCIO-LEGAL ASPECTS OF CONTRACT-FARMING: AN OVERVIEW OF KENYAN CASE STUDY

by

Okech- Owiti*

Introduction

Contract-farming has become a fairly common feature of agricultural production in Kenya. It is found in many parts of the country and in the production of a wide variety of crops. These crops include cashew-nuts at the Coast; sugarcane in Western, Nyanza and Coast Provinces; French beans in Eastern and western Provinces; tobacco in Eastern Province; tea in Rift Valley Province cotton in Nyanza Province, and oil-seed in Rift Valley and Eastern Provinces amongst others.

This article analyses contract-farming agreements in relation to five different crops spread all over the country, mainly by large companies. The first part introduces brief contract-farming as a general and historical phenomenon. The second part looks at contract-farming in the context of Kenya and focuses on the contractual relationship between the relevant companies and small-holder farmers — or peasants. The third part reviews this relationship in the light of certain economic and legal arguments.

Three basic arguments are presented here. Firstly, contract-farming is a historical phenomenon given prominence under capitalist production relations. Secondly, contract-farming is a common feature in agricultural production in Kenya. Thirdly, contract-farming as a socio-legal phenomenon in Kenya characteristically expresses the monopoly position of the participating companies. The companies invariably express this monopoly through control of the activities of, and oppressive contractual obligations on, small-holder farmers. This results in high-level exploitation of these farmers which often places them in a vicious cycle of poverty and dependence, a cycle that can only be broken by the united struggle of the farmers themselves for their economic interests.

Contract-farming

Contract-farming refers broadly to produce supply arrangements between a farmer and a processor and or manufacturer. A company which processes or utilises a certain produce enters into an arrangement with farmers requiring them to produce and deliver the produce under specified or recognised conditions.

Historically, contract farming has its parallels in the feudal socio-economic formation. Within feudal relations, the labour of the serf was appropriated by the feudal lord in three basic ways. The serf, if he had accumulated any money, could pay for

* Lecturer, Faculty of Law, University of Nairobi, Kenya.

the piece of land rented to him through direct rent. He could also work directly on the feudal lord's portion of land for part of the time, and produce for him this form of payment known as *corvee*). Finally he could pay the rent by sharing produce from his portion with the feudal lord (known as quit rent)¹

The difference with the present system is readily apparent. The feudal lord basically owned and/or controlled the major means of production — essentially land. Consequently, he also controlled the labour of the serf and the means of labour utilised by the serf. The appropriation of the labour of the serf appeared as a payment to the feudal lord for the permission to use the latter's land — a thing that did not represent the congealed labour of the lord. Contract-farming as known today is based on the ownership of the basic means of production — land and means of labour — by the small peasant. The peasant — the owner of the only other major productive force, labour — is "rewarded" for expending his labour through the money-price paid for the produce delivered to, and accepted by, the contracting company.²

This difference is basic. It reflects the nature of the two social formations which produce the one and the other — feudalism and capitalism. Whereas the relationship of the lord and the serf reflected more the direct appropriation of labour reminiscent of the slave-owning social formation, that of the capitalist and the small-peasant reflects more the indirect appropriation of labour through the freer exchange of commodities characteristic of the labour-capital relationship. Thus, in a historical sense, the labour relationship between the contracting farmer and the company represents a more liberal form than that between the serf and the lord, reflecting the more progressive nature of capitalist relationships.³ However in order to understand this relationship more clearly and appreciate its essence, it is necessary to briefly discuss "contract" as a socio-legal phenomenon.

Contract

At the basic theoretical level, a contract is an agreement. Legally, it is a judicially enforceable arrangement in which one person agrees to give another something or some advantage in return for something received or accepted.⁴ Obviously, there must be two parties. One person must offer something which the other one accepts. The person who accepts must give something in return. There are cases, however, where because one solemnly promises to give an advantage in writing by signing, sealing and delivering the document containing the advantage, the other is not legally obliged to give something in return to make the contract enforceable. These are called contracts under seal or specialty contracts.⁵ But these are rare, as capitalism is largely characterised by the transfer of commodities.⁶

¹ Konstantinov, 1974: 344, 360 Marx, 1974: 667-712; Lenin, 1967: 193-212.

² Glover, 1987: 1143-57; Vitols, 1985: 107-9; Lyall, 1975:261-3; Lenin 1967:255-334.

³ Lenin, 1967: 602-7; Konstantinov. 1974: 344-6; Marx & Engels, 1976:483-496.

⁴ Atiyah, 1986: 1-9; Hodgkin, 1975: 12; Cheshire & Fifoot, 1972:18.

⁵ Editor's note: under Roman Dutch Law, however, consideration is not essential to the validity of a contract.

⁶ 1972: 17-18.

The two parties must intend to be bound in law to perform their obligations, failure of which performance they may be subject to legally-enforceable consequences. The law demands that the two parties must be of age, and must not suffer from any legal incapacity prohibiting their entering into the contract. And there must be nothing in the arrangement which vitiates it — that is, makes it legally unenforceable or ineffective. For example, it must not be affected by mistakes, misrepresentation, coercion or duress, undue influence or illegality.⁷

In some cases, the law demands some formalities which must be followed if the arrangement is to have judicial legal effect. For example, some agreements — like those relating to land — must be evidenced by something in writing, or be partly performed, to be enforceable. Some have to be registered — like some land contracts, or those relating to guarantees.⁸

Contract as Exchange

Contract is essentially an arrangement of exchange. In this sense, it has as early a history as the beginnings of barter which arose out of the division of labour within the primitive communal socio-economic formation.⁹

It is a necessary condition that once people engage in a variety of forms of labour, there are certain of their needs which they are not able to cater for. So, they seek to satisfy these by consuming the products of other people's labour. Unless these products are given free, something must be given in return. The receiver, therefore, gives in return what he produces which the giver does not produce but needs.

The division of labour within the primitive socio-economic formation progressively becomes complex and is extended in all the succeeding formation, as is evident even today.¹⁰ And so does exchange of products. However, with the rise of the capitalist formation, exchange takes a more prominent social form.¹¹ Production under capitalism is predominantly for exchange. Things are produced in order to be exchanged. In earlier forms things were mostly produced in order to be consumed. Exchange was largely incidental and subservient to consumption; it was generally a by-product, rather than the single purpose, of production. But under capitalism, production is spurred by the needs of exchange. Products become "commodities" — things produced to be sold.¹² It is through exchange that the capitalist can realise and appropriate that surplus value represented by the surplus labour of the working person. This realisation and appropriation is the basic object of capitalist production, and the driving force behind all technological and other developments.¹³

⁷ Atiyaha, 1986:17-56, 274-328; Hodgkin, 1975:66-72, 112-169; Cheshire & Fifoot, 1973: 117-307; 1972: 201-386.

⁸ Hodgkin, 1975:12-18.

⁹ Konstantinov, 1974: 346,363-4; Popov, 1973; 23-29; Engels, 1972.

¹⁰ Marx, 1978:177-88 Lenin, 1967:3-9.

¹¹ Atiyah, 1986:1-2; Marx 1976; 54-144; Lyall, 1976: 261; Popov, 1973: 58-64; Roscoe, 1909: 454.

¹² Marx, 1974:43-144; Popov; 1973, 46-65.

¹³ Engels, 1978:226-273; Marx, 1974: 173-475; Gauzner, 1973:6-28; Popov, 1973: 64-73; Lenin, 1967: 51-58.

It is, therefore, evident that contract, as the mode of exchange, must also gain prominence. It becomes the most important mode of realisation of surplus value. It is through it that the capitalist procures all his production in-puts. It is through it that the capitalist manages to produce. And it is through it that the capitalist disposes of the products and realises the value of the labour congealed in them. The law cannot help but intervene and regulate the relationship, since law is also the most dominant form of mediating social relations. Just as contract helps to conceal the concrete labour behind the exchange, so does the law help to conceal the concrete exchange values behind the contract.¹⁴

The law holds the parties to their contract because of the presupposed consensus — *consensus ad idem* — existing between the parties. To the law, the matter is very simple: if a person has agreed freely to be bound by some arrangement, then he must perform his obligations under it. Each person, unless legally incapacitated, is free to enter into such an arrangement; each person has “freedom of contract”. Therefore, unless there are exceptional circumstances militating against the enforcement of a particular “consensus” “freely” entered into, the law will hold each party to his bargain.¹⁵

“Consensus” and “freedom”, in fact, form the cornerstone of contract, both as a legal and social phenomenon. It is because a party who is free to, or not to, enter into an arrangement agrees to do so that the law enforces the contract. This freedom and consensus are presumed to exist in every contract unless the contrary is claimed and proved. The law does not begin by looking at the relative positions of the parties to determine whether there could, or could not, be “free consensus”. It exists, unless it is shown not to.¹⁶ This presumption on the part of the law is a most unrealistic one. Relationships between contracting parties are not always equal. Thus “consensus” might not always be consensus nor always the product of the “free will” of the parties. Very often, a party may have no choice but to accept the terms provided by the other. Negotiations in the normal sense may very often be minimal, or completely absent, not because there is no need, but because the opportunity is lacking.¹⁷

This has been perfected into what is now commonly known as “standard form contracts”¹⁸ These are ready-made contracts offered by one party and simply “accepted” by the other without question or negotiation, or, very often, without perusal. They are very common in agreements for the supply of services like water, electricity, telephone, laundry, insurance, banking and transport, among many others. They are also found in other arrangements, like those for the purchase of land or shares in a company, or the provision of loans.

Thus, the contract has become the most important mode of exchange of commodities. It has the backing of the law. But why does it appeal in the field of farming in the “contract-farming” form?

¹⁴ Tumanov, 1974.

¹⁵ Lyall, 1975:261; Cheshire & Fifoot, 1972: 17-24.

¹⁶ Cheshire & Fifoot, 1972:19.

¹⁷ Kirembui, 1985:1-28; Seidman, 1973:67; Engels, 1972: 370; Hale, 1943: 605-6.

¹⁸ Kirembui, 1985:17-28; Cheshire & Fifoot, 1972:22-3; ehrenzweig, 1953:1072; Kessler, 1943: 632.

Farming and Contract

A company which processes certain farm produce, or uses the same in a manufacturing process, may procure it in several ways. It may purchase the produce in the open market or enter into an agreement with a particular person or group to supply the same. It may also engage in agricultural or farm production in order to provide its own produce. But both of these methods have certain drawbacks which a company may seek to avoid.

Purchasing from the open market or specific persons may not ensure a constant supply of the required quantity of the produce. Secondly, the company may not be able to control the quality. Thirdly, the company may be unable to control the prices at which the produce is sold and the fluctuations in such prices. Such variations may negatively affect the operations of the company, at least in its view.

Agricultural production, on the other hand, requires capital outlay. It is also a specific type of operation with its own methods, expertise, technology and other needs. The company may not want to "meddle" in these. Moreover agriculture has its own risks, such as failure of crops due to such factors as drought, disease or pests, or wrong application of fertilisers and other chemicals. And, in some situations, the land needed for such production may not be readily available at all, or may be available only under unfavourable conditions. For example in some jurisdiction such as in Kenya, foreigners, including companies, may not own land except under a special dispensation.

Thus, a company may opt for contract-farming in order to avoid these problems. It may be added that in some situations, small-scale farmers of the relevant produce may already exist. The company may, thus, seek to take advantage of this.

What, then, is the legal situation of contract-farming in the Kenya context in relation to the agreements? In other words, what is the characteristic content of the contracts?

Kenyan Case Studies

The purpose here is not to present a detailed analysis of each case study. On the contrary, it is to give an overview so as to identify the broad trends characterising the socio-legal relationships between the small peasant and the contract-farming company.

The crops dealt with in these case studies are sugar-cane (two companies), tobacco, oilseeds and French beans. In total, five companies are involved. Their production, however, covers farmers in a large part of the country, stretching from Western Province through Nyanza, Rift Valley and Central Provinces, to Eastern Province — five out of the eight provinces of Kenya.

The contracts are entered into between these companies and small-holder farmers, that is, small peasants. There are, of course, differences amongst these farmers with regard to the quality and quantity of their production, the resources at their disposal, and the income received. But this is not a significant point for the present purposes.

Although these contracts may have different names, their main aim is to facilitate the production and delivery by the farmer of specified crops of indicated quality and

accepted quantity. In the process, the company offers technical advice, instruction and supervision, as well as certain basic services and materials.

Formal Details

All the agreements considered are standard form contracts containing blank spaces in which is inserted information peculiar to the small-holder farmer, the other party. The contracts are drawn up by the companies and presented to the chosen farmers. The blank spaces are in respect of such matters as the farmer's name, personally identity card number and situation address; the plot number and acreage permitted to be put under the crop, and where this is part of the contract the amount of money lent to the farmer.

As a formality, there are requirements for witnesses to the signatures of the parties, and, in two cases, for recommendations from specified government and company officials. Although some of the agreements run for five to nine pages and others are from one to two, they contain similar essential provisions. Much of the rest is mainly elaboration and explanation.

The Farmers' Obligations

In all cases, the farmer is obligated to plant the relevant crop. In one case, this must be done only after inspection of his farm and grant of permission by the contracting company. In another, the farmer is required to also construct barns and sheds for treating and storing the produce, and to plant a specified quantity of a particular tree eucalyptus.

Secondly, the farmer is under obligation to cultivate the crop in accordance with the advice and instructions of the company's agents, and to submit to their supervision of all operations. Where the company offers services, in-puts and /or loans, the farmer must use the same solely for the production of the contract crop. In some cases, the farmer must permit the company to carry out some of the work at the farmer's expense. Interestingly, some of the agreements permit the company to enter onto the farmer's plot and carry out the production if the farmer fails to prepare the plot, plant, weed, harvest and deliver the crop. This is to be done at the company's absolute discretion. But the costs therefore are to be borne by the farmer, although determined by the company. This is very unusual in classical contractual relations. Normally, when there is failure of performance, the aggrieved party seeks redress through the courts. The redress may be given by way of compensation damages, or specific performance.

Thirdly, the farmer must plant only the specified type and quality of the crop permitted by the company. In other words, the farmer must be loyal to the variety of the crop that the company requires. He must use the seeds supplied and/ or approved by the company. And he must produce the same under conditions of good crop husbandry as solely determined by the company. Fourthly, the farmer must, when all is done, offer the crop for sale to the company. He is under a duty not to sell to any buyer other than the relevant company. But the farmer must deliver only such crop as satisfies the description and quality provided for in the contract, or advised by the company. In no case, however, is there any indication as to what the farmer is expected to do with the produce, if any, rejected by the company. Some of the agreements additionally obligate the farmer to irrigate the land in times of drought;

to permit the company to inspect the land and all operations thereon, to use the farmer's land for purposes of access to other farms and to deduct all expenses incurred by the company from the farmer's monetary entitlement; to take precautions against any damage to the crop; to pay the cost of any damage to other farmers arising from breach, and not to assign his land without the company's consent.

And, finally, where the farmer is given any loan in cash or kind, he must repay the same directly, or through proceeds, by way of deductions within the required time. In most cases, repayment of the loans is actually through deductions from the proceeds due to the farmer. The amount of deductions is determined by the company at its discretion. Some agreements permit the company to charge interest on outstanding credit at a rate determined by the company.

The company's obligations and rights

The companies respectively undertake and reserve certain obligations and rights. In cases where there is a loan component to the agreement, the company undertakes to provide a specific amount of money's worth in materials and services. Although the agreements are partly referred to as "loan agreement" in only two instances, all the contracts make provision for credit to the farmer. As already indicated, repayment is invariably by way of deductions from the proceeds occurring to the farmer from the produce delivered to the company.

The company also promises to receive and purchase the crops delivered by the farmer at appointed delivery stations. This is, of course, subject to the crop being of the quality acceptable to the company; the latter decides, at its discretion, what is — rejecting what is not — of the required quality. The company also determines the quality it will accept at the time of delivery. In all cases, the company becomes the owner of the produce after acceptance, sometimes evidencing the same by way of a ticket or a certificate. This means that any costs or losses incurred prior to this are borne by the farmer.

In cases where the company accepts to provide such materials and services as labour, equipment, transport, and weighing facilities, or to carry out any of the operations on behalf of the farmer, the latter pays for the costs. The company, however, reserves the right to determine the cost and prices of whatever is supplied. The company also reserves the right to terminate any of the services and remove any of the materials supplied in the event of the breach on the farmer's part. In fact, the materials supplied remain the property of the company. This is an anomalous situation. In the law of contract, credit sales — which is what these are, in essence — ownership in the goods to the buyer once the agreement is entered into. So the farmer is supposed to be the owner of these materials. Apparently, no court has been seized of this matter. The judicial position on it is, therefore, unknown.

In one case, the company undertakes to maintain records of what is delivered by the farmer. A copy of this is supplied to the farmer. This is, however, routine with or without contractual obligation, the companies do maintain such records.

In all instances, the prices for the produce are periodically determined by the company. In two situations, the actual price per unit is expressly stated in the contract, but is subject to review by the company. Whereas one company obligates itself to pay cash on delivery, and another to pay within thirty days of delivery, two

provide for payment at the end of the seasonal period, while a fifth does not give any indication. The latter three promise to pay through banks.

Termination, breach and disputes

None of the agreements state expressly the period for which the agreement is to run under normal circumstances. By implication, however, the companies normally choose eligible farmers and enter into contracts with them at the beginning of the cultivation and planting season, thus pegging the contract-period to the time required for the crop to mature, and be harvested and completely exhausted. The agreements do provide for a repayment period, suggesting that the credit/loan component of the contract terminates at the expiration thereof.

Only two agreements provide for normal termination by notice on the part of the farmer, the period of notice being two and three years, respectively. In two instances, provision is made for termination of the contract by one party in the event of breach by the other. There is also possibility of termination through *force majeure*, or events deemed to be out of the control of the parties. Uncharacteristically, breakdown of machinery and equipment, failure of supplies, and strikes are included in some agreements as examples of such events, although these may, quite foreseeably, arise as a consequence of the company's negligence or intransigence.

Finally, three contracts provide for submission of any disputes arising between the parties to arbitration. The possible arbitrators are identified in one case as the Ministry of Agriculture and the District Commissioner, and in another as a Board. In this last case, the Board is appointed by the company — and its decision is final! One contract allows for the modification thereof if such is required by legal conditions imposed by the government. But this is subject to the parties agreeing. In the event of this failing, the matter is to be submitted to an expert, whose qualifications are not indicated.

A Review

In theory, the existence of a contract-farming relationship reflects a desire on the part of the company to spread out production, and provide economic benefit — and, therefore, spread development — to several small-holder producers. But in practice, it is the consequence of many varied factors. It sometimes results from the company's failure to procure adequate land within the locality to produce the required quantity and quality of the crop. Although the government, under the hand of the President or his delegate, may grant land to any persons considered deserving enough under the Government Lands Act (Chapter 280 of the laws of Kenya), this may not be possible for a number of reasons. For one, there may be no government land available in the relevant locality. For another, the government may not consider the company deserving of such grant in the circumstances. And although the company may be able to purchase land by private treaty, there are certain barriers to this. The private individuals may not be willing to sell their holdings for one reason or another, including the fact that these are too small. Even where the company is able to procure adequate land by private treaty, the Land Control Act (Chapter 302 of the Laws of Kenya) requires the consent of the area Land Control Board for the transaction. Section 9 thereof enjoins the Board to generally refuse consent where one of the parties is a foreigner. Only a presidential waiver exercised under Section 24 may be of help in this event. Secondly, the contract-farming relationship arises from the fact

that small-scale producers of the required crops already exist. What the company does is, then, to provide them with a market, and, more importantly to control the quantity and quality of the produce, and also ensure a certain minimum level of production. In this connection, it may also be necessary for the company to merely facilitate the expansion of the farmer's production just so as to expand its own.

And finally, production through contract farming reduces the work that the company needs to engage in, and removes the inconveniences and risks arising from uncertainties connected with farming. It is also less expensive in terms of capital outlay. Additionally, the "exchange value" of the peasant farmer's labour is considered low; surplus value is, therefore, increased.

The overall picture which emerges from the analysis of the contractual relationship is characteristic of capitalism at its imperialist stage.¹⁹ First, it is noteworthy that all the relevant companies have substantial financial and or management control by capitalist multinational and or international finance associations.²⁰ In other words, their production is a manifestation of the decisive role played by finance capital in agriculture, as in other forms of production. Secondly, these companies, although already having complex monopoly positions — both international and national in their production areas, seek not only to protect, but also to expand, these through restrictive terms in their contract farming agreements. And such terms are numerous. They relate to, among others, control of the farmer's ownership and use of the relevant plot; use by the farmer of seeds and other inputs, equipment and machinery, and chemicals supplied solely by the company; production only with the consent and advice, and under the supervision, of the company; loans/credit provided by the company but operated and serviced in a manner reminiscent of the appendage-relationship between the serf and the feudal lord; sale of produce exclusively to the company, and total control of the amount and time of payment of proceeds and repayment of loans, and the duration of the agreement. Moreover, the agreements are invariably standard form contracts whose content is essentially determined by the companies at their absolute discretion. Thus, whatever modicum of consensus there is amounts to the farmers agreeing to someone else's terms.

Thirdly, the small-scale peasant farmers, although very often producing for personal consumption, have largely been drawn into the capitalist money-economy by their activities. Production demands inputs and tools of all sorts which they must purchase. Their basic needs like food, clothing, shelter and medical attention mostly require financial expenditure. School fees, uniform, and equipment and contributions which they must occasionally make toward school facilities complicate the situation. The farmers are, therefore, economically disadvantaged, even though they attempt to alleviate this through commodity production. These same farmers are dogged by extremely high levels of illiteracy and ignorance of economic, politico-legal and other social facts. Thus, they have very limited bargaining power. Their organisational unity upon which they could depend is still at a very low level of development owing to some of the factors indicated above, and to their socio-economic isolation.²¹ Their condition, therefore, enhances the monopoly positions of the companies and contributes further to the exploitation of their labour.

¹⁹ Lenin, 1975: 634-732.

²⁰ Generally, Swainson, 1980; Leys, 1976; NCCK, 1968.

²¹ Lenin, 1967: 385-8.

There are, of course, situations in which the state intervenes in the relationship between the farmers and the companies, just as it does in that between the labourers and the owners of industry. But of the considered crops, this happens only in the case of sugar-cane, and essentially with regard to price. It is evident from the analysis that this intervention has not changed the oppressive nature of the contract as a whole. It is also evident that the minimum price established by the state is fairly low and is inadequate to justly compensate the farmers for their labour, or to satisfy their basic as well as other socio-economic needs. This is understandable, though not necessarily acceptable. The state is not a neutral entity. On the contrary, it predominantly pursues and protects the interests of those sections of society — classes — which dominate it.²² The small peasants are not in this category. The Kenyan state characteristically puts the interests of the international monopoly capitalist association to the fore in priority to those of the nationals in general, and the working people, in particular. This is in the name of protecting foreign investments, the foremost exploitative tool of imperialism.²³ The interests of the small-peasant are placed very low on the priority scale.

Finally, it must be understood that these capitalist associations are not in the business of philanthropy; they have never claimed that. They produce commodities. The basic purpose of this production is to secure surplus value. In this circumstance, surplus value is represented in the difference between the value paid for the labour expended by the farmer, and the value produced by that labour. There are several avenues for enhancing this surplus value, including the prices paid by the farmer for the inputs and services; the price paid to the farmer for the produce, and the interest charged on the loans/credits advanced.

The combination of the monopoly positions of the companies, the disadvantaged positions of the farmers, and the struggle for surplus value by the companies is an obvious recipe for disaster for the small-peasant.²⁴ The farmers have themselves reacted to the attendant iniquity in various ways, including non-delivery of produce; sale of produce to non-contractual buyers; uprooting of commodity-crop; interplanting of commodity-crops with other (subsistence) crops, and ultimately, abandonment of the production of the contract-crop.²⁵ Although these measures may have varying consequences, both positive and negative, they are largely spontaneous and intermittent, and have had limited positive effect on the farmer's conditions. It is only through their organisation and unity in pursuing their concretely identified interests — revolving around a just return for their labour — that small peasant farmers can hope to change their conditions which include the kind of one-sided contract-farming agreements analysed here. As it is often said, it is the wearer of the shoe who knows it pinches. And one may add: it is him who can remove the shoe, though he can ask for help from others!

²² Engels, 1975, 1972; Chkhikvadze, 1972; Lenin, 1970; Dicey, 1914; Tumanov, 1974.

²³ Lenin, 1975:703-764; Smith, 1974: 44-107; Popov, 1973: 74-82.

²⁴ Glover, 1989; 1987a; Goldsmith, 1985.

²⁵ Ayako *et al*, 1989.

REFERENCES

- Atiyah P S, *Essays on Contract* (Oxford, Clarendon Press 1986)
- Ayako AB, Makanda DM, Mwabu GM, Awiti LM and Okech-Owiti, "Contract Farming and Outgrower Schemes in Kenya: Cases Studies", 1989 *Eastern Africa Economic Rev* 4-14.
- Buch-Hansen M & Marcussen HS "Contract Farming and the Peasantry: Cases from Western Kenya", 1982 *Review of African Pol Econ* No.23, 9-36.
- Cheshire GC & Fifoot CHS, *Cases on the Law of Contract* (London, Butterworths, 1973).
- Cheshire & Fifoot, *The Law of Contract* (London, Butterworths, 1972).
- Chkhikvadze V, *The State, Democracy and Legality in the Soviet Union* (Moscow, Progress Publishers ,1972).
- The Soviet State and Law* (Moscow, Progress Publishers, 1969).
- Dicey, *Law and Public Opinion in England During the Nineteenth Century* (London, MacMillan, 1914).
- Ehrenzweig, "Adhesion Contracts in the Conflict of Laws "1953 3 *Col LR* 1072.
- Engels F, *Anti-Duhring: Herr Eugen Duhring's Revolution in Science* (Moscow Progress Publishers).
- The Origin of the Family Private Property and the State in Marx & Engels: Selected Works*, Vol. III 204 (Moscow, Progress Publishers ,1972)
- The Part Played by Labour in the Transition from Ape to Man*, (1972) *ibid* 66-77.
- Ghai YP & McAuslan JPWB, *Public Law and Political Change in Kenya* (Nairobi, OUP, 1970).
- Glover DJ, "Contract Farming and Outgrower Schemes in Eastern and Southern Africa: Conclusion", 1989 *Eastern Africa Econ Rev* 108-116.
- "Contract Farming and Small-holder Out grower Schemes in Less Developed Countries" 1987 Vol 12 No 11 *World Development* 1143-57.
- "Increasing the Benefits to Small-holders from Contract-Farming: Problems for Farmers" Organisations and policy Makers' 1987 Vol 15 No 4 *World Development* 44108.
- Goldsmith A, "The Private Sector and Rural Development: can Agri-business help the small Farmer?" 1985 Vol 13 No 11/12 *World Development* Vol. 13 No. 11/12, 25-38.

Gauzner N *The Social Effects of the Scientific and Technological Revolution Under Capitalism* (Moscow, Novosti 1973).

Goulbourne H (ed) *Politics and State in the Third World* (Nairobi, OUP, 1970).

Hale RL "Bargain, Duress and Economic Liberty" 1943 Col LR 605-6.

Hodgin RW *Law of Contract in East Africa* (Nairobi, EALB, 1975).

Hoxha E, *Imperialism and Revolution* (Tirana, Nentori P.H. 1979).

Jackson JC and Cheater AP, "Contract Farming Sugar Tea and Cotton in Zimbabwe" 1989 *Eastern Africa Econ Rev*, 97-107.

Karroki CN, *The Role of Criminal Law in Labour Relations in the Nascent Stages of Colonial Capitalism in Kenya* (LL.B., U.O.N., Nairobi ,1987)

Kessler, "Contracts of Adhesion: Some Thoughts About Freedom of Contract" 1943 43 Col L R 629.

Kirembui JN "Freedom of contract Under the Capitalist Socio-economic Formation: A Freedom to Exploit or be Exploited?" (LL.B., U.o.N., Nairobi, 1985).

Konstantinov FV *et al*, *The Fundamentals of Marxist Leninist Philosophy* (Moscow, Progress Publishers, 1974).

Lenin, *On the Socialist State* (Moscow, Novosti,1978).

Imperialism, The Highest Stage of Capitalism, In Lenin, Selected Works, Vol. I 634-731 (Moscow, Progress Publishers, 1975).

The State in Lenin, Selected Works Vol II 259-731 (Moscow, Progress Publishers, 1971).

The State and Revolution in Lenin, Selected Works Vol III 283-376 (Moscow, Progress Publishers, 1971).

The Development of Capitalism in Russia (Moscow, Progress Publishers, 1967).

Leys C *Underdevelopment in Kenya: The Political Economy of Neo-Colonialism, 1964-71* (London, Heinemann, 1976).

Lyll A, "Contract, Freedom and Exchange," 1975 EA LJ 261.

Maganya E N, Chambua S and Hyuha T, "Outgrower Schemes in Tanzania: The Case of Tea and Sugarcane" 1989 *Eastern Africa Economic Review* 70-82.

Marx K, *Capital Vol. 1* 111 (Moscow, Progress Publishers ,1978).

Proudhon M "The Poverty of Philosophy: Answer to the 'Philosophy of Poverty' " by M. Proudhon, in Marx and Engels, *Collected Works*, Vol. 6, 105-212 (Moscow, Progress Publishers).

Marx K, *Capital*, Vol. 1 (Moscow, Progress Publishers, 1974).

Marx K, *Introduction to a Critique of Political Economy* (London, Lawrence & Wishart, 1978) .

Marx K and Engels F, *Manifesto of the Communist Party in Marx and Engels, Collected Works* Vol. 6 (Moscow, Progress Publishers, 1976) 476-519.

The Holy Family or Critique of Critical Criticism, in Marx and Engels: Collected Works Vol. 4 5-211 (Moscow, Progress Publishers 1975) 5-211.

The German Ideology (Moscow, Progress Publishers, 1968).

Menshikov S, *Millionaires and Managers: The Structure of U.S. Oligarchy* (Moscow, Progress Publishers, 1973).

Mwongo RM, *The Plight of Coffee Cooperatives in Kenya: A Legal Treatise* (LL.B., U.o.N. Nairobi, 1986).

Nankumba JS and Kalua B, "Contract Farming in Smallholder Sugar and Tea Authorities" 1989 *Eastern Africa Econ Rev* 42-58.

National Christian Council of Kenya, *Who Controls Industry in Kenya?* (Nairobi, NCKK 1968).

Nyirongo GK and Shula EWC, "Contract Farming and Small-holder Outgrower Schemes in Zambia" 1989 *Eastern Africa Econ Rev* 83-96.

Popov Y, *Marxist Political Economy as Applied to the African Scene* (Moscow, Novosti, 1973).

Quibria MG and Rachid S, "The Puzzle of Share-Cropping: A Survey of Theories" 1984 Vol 12 No 2 *World Development* 103-14.

Pound R, "Liberty of Contract" 1909 18 *Yale LJ* 454.

Rugege S and Santho S, " Contract Farming and Outgrower Schemes: Asparagus Production in Lesotho" 1989 *Eastern Africa Econ Rev* 20-41.

Seidman RB, "Contract Law, the Free Market and State Intervention: A Jurisprudential Perspective" 1973 *J Econ Issues*.

Sithole VM and Boeren CCM, "Contract Farming in Swaziland: Vuvulane Irrigated Farms and Mphetseni Settlement Scheme" 1989 *Eastern Africa Econ Rev* 59-69.

Smith S, *U.S. Neocolonialism in Africa* (Moscow, Progress Publishers, 1974).

Summer C, *Reading Ideologies: Marxist Theory on Ideology and Law* (London, Academic Press, 1979).

Swainson N, (1980) *The Development of Corporate Capitalism in Kenya, 1918-1977* (Nairobi Heinemann, 1980).

Tandon Y (ed), *Debate on Class, Class Struggle, State and Imperialism* (Dar-es-Salaam, Tanzania, 1982).

Tumanov VA, *Contemporary Bourgeois Legal Thought* (Moscow, Progress Publishers, 1974).

Vitols M "Share-Cropping and X-Efficiency" 1985 Vol 36 No 1 *J Agric Econ* 107-9.

Weber M *The Methodology of the Social Sciences* (NY, Free Press, 1969).

Williams S and Karen R (eds), *Agribusiness and small scale farmers: A Dynamic Partnership for Development* (Boulder Co , Westview Press, 1985).

Wilson J, "The Political Economy of Contract Farming" 1986 Vol 18 *Rev of Afr Pol Econ* 4.



This work is licensed under a
Creative Commons
Attribution – NonCommercial - NoDerivs 3.0 License.

To view a copy of the license please see:
<http://creativecommons.org/licenses/by-nc-nd/3.0/>

This is a download from the BLDS Digital Library on OpenDocs
<http://opendocs.ids.ac.uk/opendocs/>