



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Breakout session on Agricultural Law and Financing

Implementation of Secured Transactions Reforms in Latin America»

UNCITRAL, UNIDROIT and CONFÉCAMARAS Workshop

University of the Andes, Cartagena, Colombia - 14 February 2019

UNIDROIT's instruments on private law and agriculture and their relation to the financing of agricultural production

UNIDROIT's work in the field of agriculture

- **The idea for UNIDROIT to work in the area of agricultural development originated in 2009 with a memorandum presented to the Governing Council on “Private Law and Economic and Social Development”**
- **An important step was the Colloquium in Rome in 2011 on “Promoting Investment in Agricultural Production: Private Law Aspects”, where the synergy with the multilateral organisations working for agricultural development was explored (FAO; IFAD)**
- **Possible areas of work were defined:**
 - **Title to land**
 - **Legal structure of agricultural enterprises**
 - **Contract farming**
 - **Financing of agriculture**

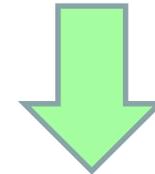
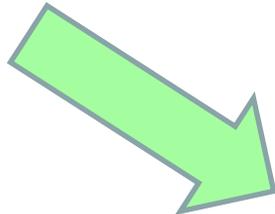
UNIDROIT's work in the field of agriculture (2)

LAW AND DEVELOPMENT IN THE FIELD OF AGRICULTURE

LEGAL STRUCTURE OF AGRICULTURAL ENTERPRISES)

FINANCING OF ACQUISITION AND USE OF AGRICULTURAL HIGH VALUE EQUIPMENT

INSTRUMENT ON WAREHOUSE RECEIPTS



UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING (2015)

DRAFT LEGAL GUIDE ON AGRICULTURAL LAND INVESTMENT CONTRACTS (2020)

«MAC» PROTOCOL TO THE CAPE TOWN CONVENTION (2019)

Role of the contract and legal guidance documents

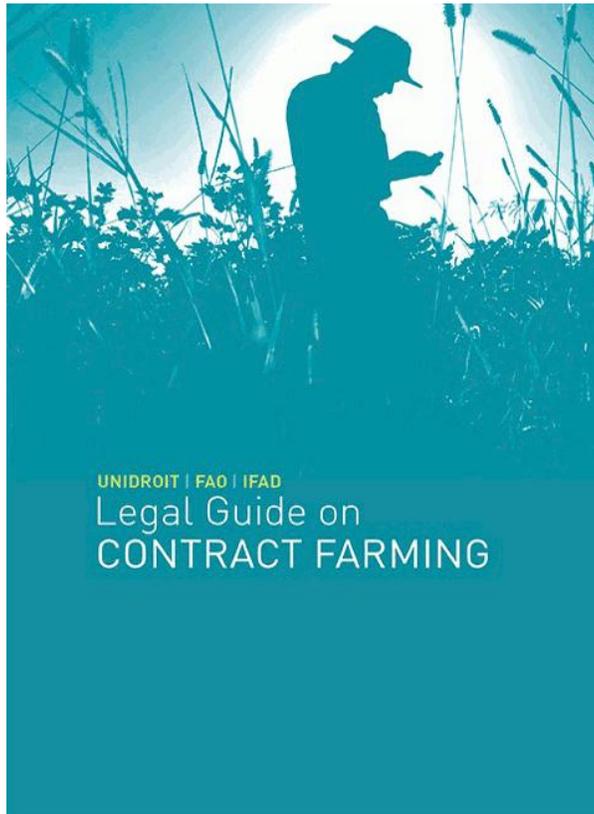
General Principles elaborated at international level

- CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles)
- VGGT - Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

GUIDANCE DOCUMENTS CONTAINING A MORE SPECIFIC (PRIVATE) LAW CONTRACTUAL FRAMEWORK

- Legislation at national or regional level
- Model contracts, standard terms...

UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING



- Published in 2015 in cooperation with the partner organisations specialised UN agencies FAO/IFAD:



Food and Agriculture
Organization of the
United Nations



Investing in rural people

- Available in English, French, Spanish, Portuguese and Chinese
- Result of a cooperative endeavour:
 - **Working Group** combining legal expertise and practical knowledge (including farmers (WFO) and agribusiness representatives)
 - Four sessions between 2013-2014 and extensive consultations with stakeholders in Africa, Asia, South America and Europe
 - Online Consultation with Governments (member States)
 - Approved by UNIDROIT Governing Council

CONTRACT FARMING IN AGRICULTURAL VALUE CHAINS

CONTRACT FARMING FROM AN ECONOMIC PERSPECTIVE:

Form of production and distribution of agricultural products connected to the industrialisation of this sector and, more recently, to the globalisation of agriculture

- **Already practiced since mid-XX sec in industrialised countries (e.g. for livestock)**
- **Expansion in the last few decades in emerging and developing economies acquiring a global dimension**

CONTRACT FARMING IN AGRICULTURAL VALUE CHAINS (2)

Contract farming as a **RISK MANAGEMENT TOOL**
and as an **INTERMEDIATE FORM OF COORDINATION:**

Based on an **agreement prior to production:**

- Buyer and farmer agree on the commodity (type, quantity, quality attributes, place and time of delivery, often production methods)
- Buyer and farmer agree on a price (or price formula) set in advance (which takes the provided inputs and services into account)
- **The buyer generally provides support for the production: inputs, credit, technical assistance, monitors production...**

UNIDROIT/FAO/IFAD LEGAL GUIDE: NATURE, PURPOSE, CONTENT

- **a soft guidance instrument** relying on voluntary implementation, with a discussion of contract clauses in practice and solutions provided by the applicable law
- **a general approach**, to be adapted to domestic legal, economic and social environments
- **Promotes good practices** based on:
 - principles of fair and loyal dealings
 - Transparency
 - cooperation between parties
 - effective and proportionate remedies
 - easy and fair settlement of problems arising during performance and in final dispute resolution with a view to keeping the value of the relationship

IMPLEMENTATION ACTIVITIES AND FUTURE WORK

IMPLEMENTATION WORK UNDERTAKEN BY FAO (financed by IFAD):

- Study of regulatory frameworks (see: <http://www.fao.org/in-action/contract-farming/en/>)
- IISD has prepared a “Model Agreement for Responsible Contract Farming”

IMPLEMENTATION WORK UNDERTAKEN BY UNIDROIT:

<https://unidroit.org/studies/contract-farming>

- Forum on Legal Aspects of Contract Farming
- Translation of the Guide into various languages
- Chile – Strengthening the legal framework of agricultural contracts in Chile and Latin-America (academic project in relation to the Statute passed in 2016)
- Colombia – Development of a new regulatory framework

UNIDROIT/FAO/IFAD LEGAL GUIDE ON AGRICULTURAL LAND INVESTMENT CONTRACTS (ALIC)

- Growing international awareness on the need to provide guidance for **responsible governance of tenure of land**, with a view to improving food security and equitable access to land
- Focus is on **investment contracts in agriculture involving land**: e.g. investor leases land for investment purposes or enables acquisition
- The legal guidance would assist in **evaluating the applicable private legal framework**, the identification of gaps in that framework and the **understanding of customary systems and rules**
- Consistent with general principles such as the VGGT and the CFS-RAI Principles
- Special attention to the dangers of “land-grabbing” and the needs of small holders and their families