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Uniform Law for Sustainable Development: The UNIDROIT/FAO/IFAD Guide on Contract Farming

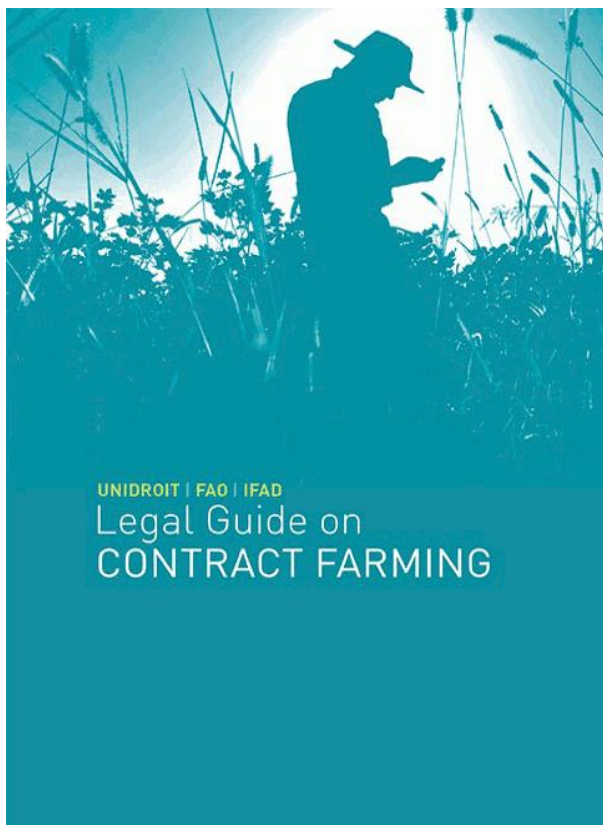
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UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING



- Published in 2015 by UNIDROIT in cooperation with the two UN Rome-based specialised organisations:
 - Food and Agricultural Organization (FAO)
 - International Fund for Agricultural Development (IFAD)
- Text available on the UNIDROIT website in several languages:
- English, French, Spanish, Portuguese, Chinese
- <https://www.unidroit.org/english/guides/2015contractfarming/cf-guide-2015-e.pdf>



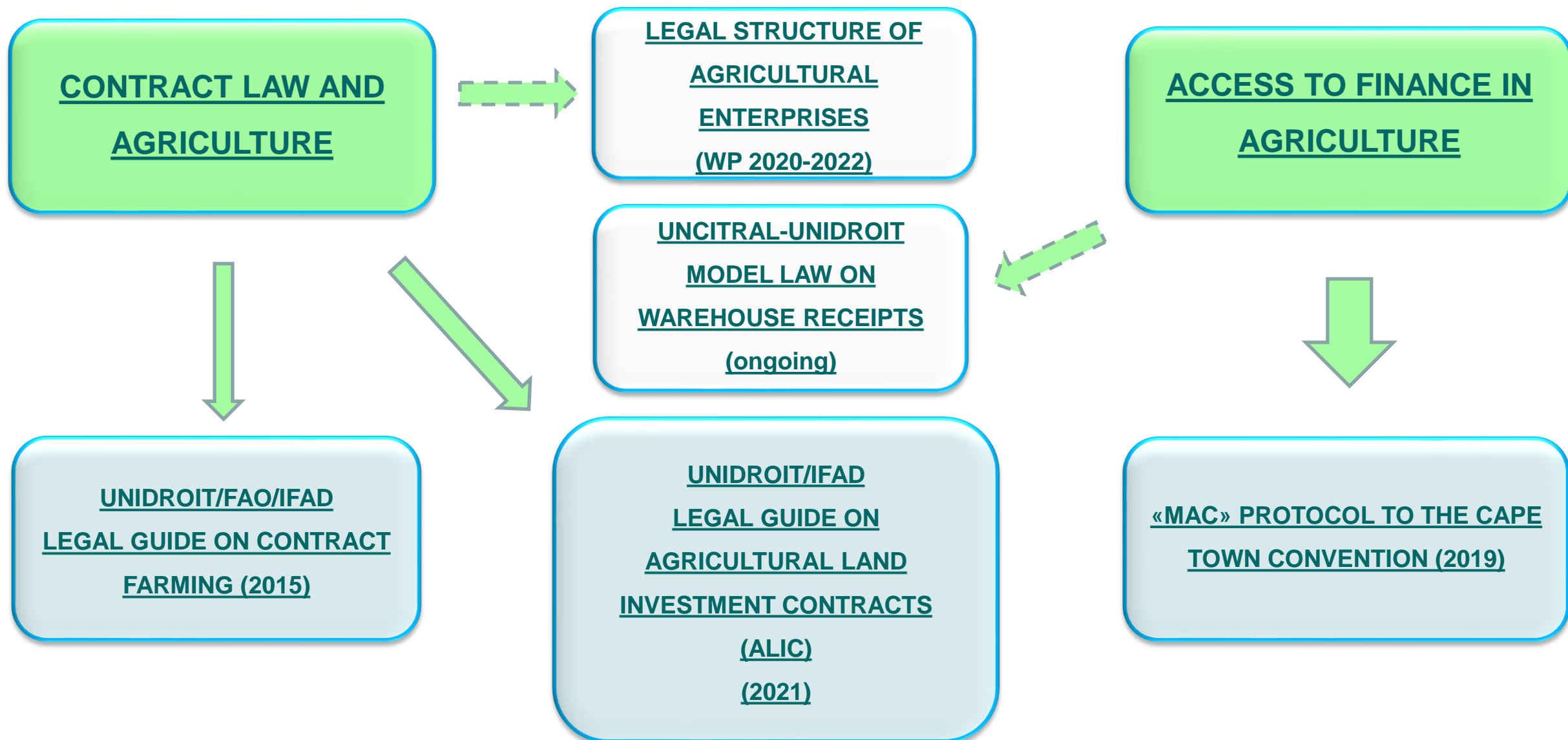
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UNIDROIT's work in the field of agriculture

- 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)
- Potential areas of work were defined:
 - Contract farming →
 - 2015 UNIDROIT/FAO/IFAD Legal Guide - LGCF
 - Financing of agriculture →
 - 2020 UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts – ALIC
 - 2019 MAC Protocol to the Cape Town Convention
 - Ongoing project with UNCITRAL on a Model Law on Warehouse Receipt
 - Legal structure of enterprises →
 - Ongoing UNIDROIT/FAO/IFAD project
 - Title to land

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



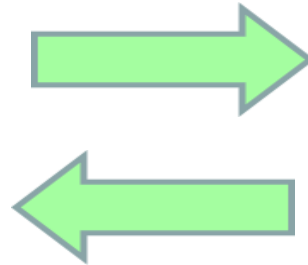


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UNIDROIT's work in the field of agriculture (2)

**KEY ROLE OF THE
CONTRACT to create a
balanced investment
relationship**



**Interplay with the
REGULATORY
FRAMEWORK**

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)
- UN Global Compact
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)



GUIDANCE DOCUMENTS CONTAINING A MORE SPECIFIC (PRIVATE) LAW FRAMEWORK

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



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CONTRACT FARMING AS A RISK MANAGEMENT TOOL IN AGRICULTURAL VALUE CHAINS

**Contract farming as an intermediate form
of coordination and connection between production and
(international) markets:**

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

- The buyer agrees with the farmer on the commodity (type, quantity, quality attributes), on place and time of delivery, often on production methods
- The buyer agrees to sell for 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:** material inputs, financing, technical assistance, monitoring of production...

POTENTIAL BENEFITS OF CONTRACT FARMING?

KEY POTENTIAL ADVANTAGES FOR CONTRACTORS:

- **guaranteed access and regularity of supply of the commodity**
- **conformity to product quality and safety standards and traceability control**
- **facilitated access to land without land acquisition**

KEY POTENTIAL ADVANTAGES FOR FARMERS:

- **a secured output market and stabilized income, mitigated production risks**
- **facilitated access to inputs, services, technology, credit and financing, enhanced production methods**
- **empowerment with agronomical skills**
- **no interference with land right issues**

POTENTIAL BENEFITS OF CONTRACT FARMING?

KEY POTENTIAL GLOBAL ECONOMIC AND SOCIAL ADVANTAGES:

- **Food security objectives:**
 - early planning and better alignment between production and demand
 - enhance the stabilization of markets and limit price volatility
 - contribute to higher quality of produce
- **Economic development:**
 - private sector's input (investment capacity, advanced technology, and facilitated access to export markets)
 - Empowerment of farmers and support transition from a subsistence production to a commercial/ market-oriented production
 - Economic and social development of rural areas

POTENTIAL RISKS FOR PARTIES?

POTENTIAL RISKS FOR CONTRACTORS:

- viability of the investment
- Potentially high transaction costs
- Risk on farmers' non compliance with quality requirement, proper use of inputs, delivery of the agreed commodity (no side-selling)...

POTENTIAL RISKS FOR FARMERS:

- **asymmetrical relationship** in access to information, exposure to risks, bargaining power ...
- **small farmers in disadvantage** against commercially oriented farmers
- **potentially high dependency** on the buyer regarding access to inputs, credit etc. and risk of growing indebtedness.
- **risks of unfair conditions** and fraudulent practices by buyer, with difficult or unavailable redress mechanisms
- **shift to monoculture** entails risks regarding access to subsistence crops, loss of biodiversity, environmental threats...

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

Promotion of good practices:

- The aim is to reach a fair and enforceable agreement in application of basic principles:
 - 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



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CONTRACT FARMING IN THE UNIDROIT-FAO-IFAD LEGAL GUIDE

Bilateral contract farming relationship between:

a “**producer**” (farmer producing agricultural commodities, either as an individual or through a cooperative or other associative venture, including indigenous communities),

and a “**contractor**” (a commercial purchaser, investor, exporter and/or food processor, typically an agribusiness company, but also non-commercial such a public or religious entity)

Third parties are usually involved: depending on the commodity, country, etc. (credit institutions, certification bodies, NGO’s, governmental bodies (also within a Public Private Partnership – PPP))



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ORIGINAL FEATURES OF AGRICULTURAL PRODUCTION UNDER CONTRACT

- Remarkably uniform wherever used, *but*:
 - impact of domestic laws and practices as well as the different economic environment may introduce important variations
- Generally, stable, long-term relationship with frequent interaction between parties
 - Importance of providing risk-sharing tools and alternatives
- Generally, not an international contract, *but*:
 - Impact of international/regional standards
 - Impact of contracts concluded along the value chain

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

- **Description of contractual phases and issues to be considered:**
 - **The Guide follows the development of the contract from the negotiation phase to remedies and dispute resolution:**
 - **Parties, formation and form; Obligations of the parties; Excuses for non-performance; Remedies for breach; Duration, Renewal, and Termination; Dispute Resolution**
 - **The Guide highlights the interplay with the national or international private law and/or regulatory framework**
 - **A general approach, to be adapted to domestic legal, economic and social environments**

A SPECIFIC EXAMPLE: PRICE DETERMINATION MECHANISMS

Chapter 3 of the Legal Guide

- **Price** as a central element in the sustainability of the relationship for both parties
- The issues discussed in the Legal Guide include:
 - May the parties freely agree on the price and at what time?
 - Is it an essential term of the contract?
 - Situations where price terms may be invalidated under the applicable law
 - Illustration of advantages and risks of common price determination mechanisms:
 - fixed prices
 - flexible prices with scales according to quality, performance or yield (bonus and penalties)
 - Examples of good practices:
 - transparency regarding price mechanisms
 - Cooperation
 - mutual profitability
 - considering mechanisms for price adjustment for long term contracts

HOW CAN A GUIDANCE INSTRUMENT BE SUCCESSFUL?

- NEED TO INVOLVE ALL ADDRESSEES/STAKEHOLDERS IN THE DRAFTING AND SUBSEQUENT IMPLEMENTATION
 - Contract parties and their representatives
 - Early involvement in Working Group and consultation events
 - International organisations engaged (also) in field work
 - Field work needed!
 - Legislators defining public policy in contract farming and related areas
 - Specificities of domestic legal, social and economic environment to be taken into account!
 - National cooperation agencies