



Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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PRIVATE LAW AND AGRICULTURAL DEVELOPMENT: PREPARING, NEGOTIATING AND IMPLEMENTING AN AGRICULTURAL LAND INVESTMENT CONTRACT THAT IS CONSISTENT WITH THE VGGT AND CFS-RAI PRINCIPLES

NEALE BERGMAN,¹ ANNA VENEZIANO,²
FREDERIQUE MESTRE,³ MARGRET VIDAR,⁴ CHARLES FORREST⁵

¹ Presenting author, Legal Officer, UNIDROIT

n.bergman@unidroit.org

² Secretary-General *a.i.*, UNIDROIT

a.veneziano@unidroit.org

³ Senior Officer, UNIDROIT

f.mestre@unidroit.org

⁴ Legal Officer, FAO

margret.vidar@fao.org

⁵ Senior Legal Counsel, IFAD

c.forrest@ifad.org

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Abstract

The VGGT and the CFS-RAI Principles set out high-level principles and standards to promote secure tenure rights, equitable access and responsible agricultural investment. For prospective investors seeking to lease land for an agricultural investment, as well as for host States, legitimate tenure right holders and local communities that might be affected by that investment, preparing and implementing a lease that is consistent with those principles and standards can be challenging. A Working Group comprised of experts, international Organisation representatives and stakeholders is developing a future international instrument to provide concise legal guidance on operationalising those principles and standards. While not endorsing large-scale land acquisitions but acknowledging they continue to occur, such guidance is to raise awareness about alternative investment models (e.g. contract farming) and to support due diligence, impact assessments and use of contractual safeguards in leases to protect legitimate tenure right holders, human rights, livelihoods, food security and the environment.

Key Words: agricultural land investment contracts, impact assessments, land tenure, responsible agricultural investment, safeguards



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“Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. Such investments should be made working in partnership with relevant levels of government and local holders of tenure rights to land, fisheries and forests, respecting their legitimate tenure rights. They should strive to further contribute to policy objectives, such as poverty eradication; food security and sustainable use of land, fisheries and forests; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable; and comply with national laws and international core labour standards as well as, when applicable, obligations related to standards of the International Labour Organization.”

(Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 12.4)

I. Introduction

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles), endorsed by the Committee on World Food Security (CFS) in 2012 and 2014 respectively, set out principles and internationally accepted standards for the promotion of secure tenure rights, equitable access to land and responsible agricultural investment. For prospective investors seeking to lease land for an agricultural investment, as well as for host States, legitimate tenure right holders and local communities that might be affected by that investment, the process of preparing, negotiating and implementing such an investment in a way that is fully consistent with those principles and standards can be challenging.

The International Institute for the Unification of Private Law (UNIDROIT), in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), is preparing an international instrument for use by legal counsel working on the leasing of agricultural land, whether from a State, local community or private party. The future instrument – which is being developed by a Working Group of renowned experts, representatives of international Organisations, and stakeholders and is to build upon the UNIDROIT Principles of International Commercial



Contracts and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming¹ – is not to endorse large-scale land acquisitions. In acknowledging that land acquisitions continue to occur, however, the instrument is to raise awareness about alternative investment models and to help ensure that leases of agricultural land are done responsibly and that stakeholders’ rights, particularly those of legitimate tenure right holders,² are protected and respected.

This paper intends to raise awareness about the future instrument, which is to be an important tool for responsible agricultural investment, and to seek input on its development. In particular, the paper provides background on the need for greater investment in agriculture and the role of agricultural land investment contracts (Part II), offers an overview of the future instrument on such contracts as currently envisioned by the Working Group (Part III), describes the process by which the future instrument is being developed (Part IV) and briefly concludes with a request for input (Part V).

II. The Need for Greater Investment in Agriculture and the Role of Agricultural Land Investment Contracts

Investment in agriculture is essential for achieving food security and adequate nutrition and for reducing poverty. The lack of such investment has resulted in low incomes, stagnant productivity, and inefficient food systems in many States around the world, giving rise to food crises and price volatility and presenting significant challenges for States seeking to address food insecurity, malnutrition and poverty. Greater investment is expected to increase growth, employment and incomes, and an estimated 140 billion USD in additional annual investment is required for agriculture and rural development in order to achieve Sustainable Development Goals 1 (No poverty) and 2 (Zero hunger).³

¹ The UNIDROIT Principles of International Commercial Contracts offer principles and commentary covering virtually all of the most important topics of general contract law (UNIDROIT, 2016b). The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming provides detailed guidance on contract farming relationships, including a discussion of legal issues and problems that may arise, in order to promote understanding and more stable and balanced relationships (UNIDROIT/FAO/IFAD, 2015). The Legal Guide on Contract Farming, for example, builds upon the UNIDROIT Principles, referring to more than a quarter of that instrument’s 211 Principles.

² Legitimate tenure rights are those rights that, while not currently protected by law, are considered to be socially legitimate in local societies. Tenure, as a general matter, is the way that land is held or owned by individuals, families, companies or groups and can encompass “bundles of rights” (e.g. the right to occupy, use, develop, enjoy and withdraw benefits from the land; the right to restrict others’ access to the land; or the right to manage, sell or bequeath the land) (FAO, 2016f, at p. 19).

³ The total amount of additional annual investments (including non-agricultural sectors and social protection) required to achieve SDGs 1 and 2 is an estimated 265 billion USD (FAO/WFP/IFAD, 2015 at p. iv).



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Investment in agriculture can take many different forms (e.g. contract farming and joint ventures) and intervene in different segments of agricultural value chains (e.g. inputs, production, aggregation, processing and distribution). Although often highly sought, agricultural investment can be problematic, having structural, contractual or other shortcomings, failing to generate expected economic benefits and causing significant negative impacts.

In seeking agricultural investment, some States have entered into agricultural land investment contracts transferring – in some instances by sale but more commonly by long-term lease – large-scale parcels of land to investors and granting them extensive tenure rights.⁴ Such contracts have given rise to intense debates. Some point out that their potential benefits (e.g. job creation, greater public revenues, technology transfer or infrastructure development) outweigh possible negative impacts. Others, however, criticise them as “land grabs” that do not generate those benefits, dispossess users of that land of their tenure rights, which might not be formally recognised by the law, and cause other negative impacts (e.g. on the environment, access to water or social aspects) (Mirza et al., 2014; Cotula et al., 2009).

Not all agricultural investments undermine tenure rights. There is a plethora of possible business models, ultimately with various contractual configurations (e.g. contract farming, management contracts, joint ventures and partnerships, sharecropping and cooperatives). Some models and configurations may pose less of a threat to tenure rights than others, and each of them have different advantages and disadvantages. The VGGT and CFS-RAI Principles promote, in particular, investments both by and with smallholder farmers, as well as partnerships with them and local communities.

Accordingly, business models and contractual configurations that pose less of a threat to existing tenure rights and are inclusive of such farmers and communities are to be preferred. Where possible, they are to be used as alternatives to agricultural land investment contracts involving the sale or lease of land or in conjunction with them. Indeed, the various models and contractual configurations are not necessarily mutually exclusive. A survey of agricultural investment projects, for example, found that a mixed model involving a nucleus estate and smallholders, in which an investment is made in a processing plant that has an adjoining farm coupled with outgrowers supplying raw material – in a variant of contract farming –

⁴ The term “large” is not an absolute one, and what may qualify as a “large-scale” land investment depends, *inter alia*, on the host-State and the context of that investment.



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could be a useful model for including smallholders and producing some industrial crops (Tyler, G. et al., 2013 at pp. 2-5).

In situations in which agricultural land investment contracts are being negotiated or already in place, such contracts may play an important role in ensuring responsible, inclusive and sustainable investment. Agricultural land investment contracts, however, are often negotiated or implemented in a way which fails to involve all holders of tenure rights or properly balance various policy goals (e.g. promoting food security, nutrition, and gender equality; safeguarding the rights of local communities; protecting the environment; and stimulating economic growth). Actions in the lead up to and during the initial phases of an investment, moreover, are critical to generating a positive outcome from that investment (Mirza et al., 2014).

To ensure that agricultural land investment contracts can play that important role and be consistent with the VGGT, CFS-RAI Principles and other international instruments, prospective or contracting parties have various issues to consider, including the following examples. In doing so, those parties can contemplate and, as needed, incorporate safeguards into the contract in order to enhance the likelihood that anticipated benefits are realised and that negative impacts are avoided or mitigated.

- *Legitimate tenure right holders:* Parties may not sufficiently consult or obtain consent from legitimate tenure right holders. In some instances, the host-State's law retains for the government the right to sell or lease land and does not adequately protect the rights of legitimate tenure right holders with respect to that land. Holders of such rights may be indigenous peoples, who might be governed by customary rules and systems of tenure. The failure to identify, consult and seek participation from any legitimate tenure right holders and, where applicable, obtain free, prior and informed consent (FPIC), is inconsistent with international principles and standards and may undermine the investment, those holders' rights, and even the tenure system itself, particularly when it is based on commons. The parties, instead, are to conduct the necessary due diligence and consultations in this regard, to involve legitimate tenure right holders in the preparations and to work in partnership with them, for example, by investing together with such holders or by sharing the investment's benefits with them.
- *Gaps in the legal framework:* Parties may not adequately assess and address gaps in the legal framework, which is generally made up of the host-State's domestic laws and



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regulations, international treaties and agreements (e.g. on human rights, trade, environment and investment) and the agricultural land investment contract itself. A host-State's law might not address a particular issue and, even if that issue is addressed, the law might not be implemented or it might fail to offer necessary protections. Environmental laws and regulations, for example, might lack provisions requiring impact assessments to be performed or water quality to be protected from agricultural runoff, including fertilisers, pesticides and livestock waste. Labour laws and regulations, as another example, might not adequately protect employees from poor working conditions or discrimination, such as gender or age discrimination. Optimally, there would not be any gaps in the host-State's law but, where gaps exist, the agricultural land investment contract may be a means to fill in some or all of those gaps.

- *Transparency:* The parties' negotiation or implementation of an agricultural land investment contract might not be sufficiently transparent. The parties may fail to share information between themselves or to disclose to stakeholders any information regarding the negotiations, the resulting contract or its implementation, even though confidential information could be protected in that process. This lack of transparency can generate mistrust between the parties and among stakeholders and fuel corruption concerns, and the parties should share information and disclose contractual terms.
- *Grievance mechanisms:* The parties may not contemplate or establish sufficient mechanisms for concerns of those who are affected by the agricultural land investment contract, but not a party to it. A host-State's judicial system and its domestic law, as well as the agricultural land investment contract itself, might not provide adequate mechanisms. A well-functioning and effective grievance mechanism facilitates consultation and handling of employee or local community concerns in a timely manner, absent which tension and other risks could arise, and the parties should ensure access to such a mechanism.
- *Dispute resolution:* Similarly, the parties may not contemplate or establish sufficient dispute resolution mechanisms for resolving disputes that arise. A well-functioning dispute resolution procedure can help to ensure that any disputes are resolved in a fair and timely manner, absent which the leased land might lie fallow and employees might be out of work.



The examples above are illustrative, both of common issues which can arise under agricultural land investment contracts and the important role that such contracts can play as part of the applicable legal framework. Preparing, negotiating and implementing the contracts in a responsible, inclusive and sustainable way, in particular by incorporating necessary safeguards, can support the realisation of benefits and avoidance or mitigation of negative impacts. At the same time, it is essential to recognise that agricultural investment and land tenure issues are complex, not only technically but also socio-politically. It might not be possible, for example, to fill some gaps in the legal framework with contractual provisions. Accordingly, there may be some issues that prospective and contracting parties cannot adequately address through agricultural land investment contracts and, in these instances, careful consideration should be given to whether a particular investment should proceed.

III. The Future Instrument on Agricultural Land Investment Contracts

The UNIDROIT Working Group on agricultural land investment contracts is currently developing an instrument to support the preparation, negotiation and implementation of such contracts so that those contracts address issues that may arise in a manner that is consistent with the VGGT, CFS-RAI Principles and other international instruments. This part describes the future instrument – as currently envisioned by the Working Group – and provides an overview of it in the following four respects: (a) scope; (b) approach; (c) target audience; and (d) form and content.

A. Scope

As described in Part II above, agricultural land investment contracts can vary significantly and have differing levels of complexity. The future instrument is to address agricultural land investment contracts involving land leases, various contracting parties and diverse contractual arrangements.

Land leases: The future instrument is to address agricultural land investment contracts involving leases of land and not those involving sales of land, for at least two reasons. First, leases are known to be more common than sales. Some States prohibit foreign investors from owning land generally or agricultural land specifically, and these prohibitions account in part for the greater prevalence of leases. Second, unlike sales, leases entail ongoing obligations between the host-State, legitimate tenure right holders, local communities or private landowners that grant the tenure and related rights, and the investors that receive those rights in exchange for payment and other obligations. These ongoing obligations allow for the incorporation of contractual safeguards and for the monitoring of them.



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Parties: The parties to agricultural land investment contracts may include – depending upon the applicable law and the particular context – investors, host-States, legitimate tenure right holders, local communities, and private landowners. Investors are primarily private sector entities, such as general investment or holding companies or specialised agribusinesses, but also include public sector entities such as sovereign wealth funds and other State-owned enterprises. They may have complicated financial and management structures and, in many States, investors are required to establish a domestic entity in order to be able to lease land.

For host-State governments, the authority or authorities within the government that serve as a party or parties to the agricultural land investment contract may differ from State to State. Government authorities involved in leasing agricultural land and authorised to sign such leases can include, for example, the presidency or ministries of agriculture, land, environment, trade, economy, industry and foreign affairs, as well as investment promotion entities. The role and power of such authorities varies from State to State and can range from facilitating contact and arrangements between investors, legitimate tenure right holders, local communities and private parties, to being able to mandate the allocation of land to investors.

Local communities – which may be represented by customary authorities such as a traditional leader or groups of leaders or other forms of authority (e.g. community associations or cooperatives) – may also be parties to agricultural land investment contracts, entered into either directly with investors or together with investors and the host-State government. These communities may be legal or legitimate tenure right holders themselves or representatives of such holders. If the authorities are distinct from the legitimate tenure right holders, those holders might be a party to the contract as well.

Of the various possible parties, the future instrument is to focus on agricultural land investment contracts between investors and host-State governments, as well as covering those involving local communities and legitimate tenure right holders, including as possible parties or as stakeholders to be consulted.

The future instrument's guidance, in addition, may be applicable to agricultural land investment contracts involving land leased from private landowners. As a general matter, such contracts might not require safeguards if the land is leased through the market by a private owner, the parties are informed and not coerced, and there are no other holders of tenure rights with respect to that land (FAO, 2015 at p. 41). Where assessment indicates, for example, that there are legitimate tenure right holders that might be affected by the lease of land from a private owner, the future instrument's guidance – although generally



tailored to contracts between investors, host-States, legitimate tenure right holders and local communities – could prove to be useful, in particular with respect to possible contractual safeguards.

Contractual arrangements: In addressing land leases and various possible parties to them, the future instrument is to cover diverse contractual arrangements. An agricultural land investment contract, for example, might entail a single contract or a series of contracts. In the latter situation, the contracts may relate to various steps in the investment process, generally in sequence (e.g. memorandum of understanding, establishment convention or investment contract, land lease, water convention, etc.).

In promoting business models that are inclusive for use either as an alternative to leasing agricultural land or in conjunction with such leases, the future instrument is to cover those possible models to the extent feasible. Such models include, for example, contract farming, joint ventures and various types of partnerships.

The future instrument is also to cover arrangements that share the investment's benefits with legitimate tenure right holders and local communities, whether as provisions in the agricultural land investment contract or in linked agreements. They include community development agreements or trusts, local employment provisions, content or procurement requirements, as well as outgrower schemes in which, as a general matter, farmers on or next to the leased land engage in contract farming with the investors.

B. Approach

Drawing upon UNIDROIT's private law expertise, in particular in the area of contract law, and FAO and IFAD's legal and policy expertise in the areas of land tenure and agricultural investment, the future instrument's legal guidance and analysis is to follow a concrete approach based upon contract principles and practices and actual investment operations. Mandatory and default rules which may be applicable are to be illustrated to the extent possible, but the future instrument is not intended to provide a comprehensive comparative law analysis. Consistent with UNIDROIT's practice, however, the future instrument is to identify in a general manner models or practices that are useful examples or possible solutions arising under domestic contract law, contract types which may be directly applicable or by analogy, relevant legislation and industry standards.

In taking a concrete approach, the future instrument is to maintain a certain level of generality regarding the various issues that might arise in contractual practice. Indeed, agricultural land investment contracts depend upon numerous factors (e.g. applicable laws and regulations, including whether they are



implemented or sufficient; the nature of the tenure holder(s) concluding the contract; and location of the land and the agricultural commodity to be produced). There are many options to consider, and no contract contains the same provisions or addresses all issues in an identical fashion.

As an editorial and policy choice, the future instrument is to refrain from making specific references to countries, identifying particular domestic legislation, citing case studies or quoting contract clauses. Instead, the future instrument is to refer to international instruments (e.g. the VGGT, the CFS-RAI Principles, the UN Guiding Principles on Business and Human Rights; the UNIDROIT Principles of International Commercial Contracts and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming), as well as related guidance documents promulgated by international Organisations (e.g. the FAO Governance of Tenure Technical Guides). In making these references, the instrument is to be comprehensive, yet at the same time shall avoid duplicating existing guidance.

C. Target Audience

The future instrument is to be targeted to legal counsel involved in the preparation, negotiation and implementation of agricultural land investment contracts, including legal professionals working for investors, host-States, legitimate tenure right holders, local communities or other stakeholders. The future instrument might also be useful for other actors and in other settings, including by legislators, policymakers, judges, arbitrators, notaries, public-interest legal service organisations, community organisations, law societies and international development organisations.

The future instrument's guidance is not to interfere with mandatory domestic rules, nor is it intended to provide a model for, or encourage the adoption of, special legislation by host-State governments. To the extent that the future instrument identifies problems and offers possible solutions, however, it could provide useful information to be considered when adopting regulatory or legislative provisions dealing with agricultural land leases and related aspects. It could also help to address capacity constraints of host-State governments, raise awareness of the rights of legitimate tenure holders and other stakeholders, and support protection of those rights by host-State governments and respect of those rights by investors.

D. Form and Content

As set out in the draft in-progress outline in Annex 1, the future instrument is to take the form of a guidance document, containing various chapters addressing important aspects of agricultural land



investment contracts and identifying checklists of issues to be considered. The following provides a brief overview of those chapters.

The legal framework: The future instrument is to set out various domestic sources of law (e.g. legislation, judicial decisions, regulations and, in some instances, customary rules) and various international sources (e.g. international human rights treaties, investment treaties or soft law instruments) that make up the applicable legal framework, together with the agricultural land investment contract. The legal guidance is to assist with the evaluation of the applicable legal framework and the identification of gaps in that framework, as well as the understanding of customary systems and rules.

Parties, formation and form: As there are numerous stakeholders that could be affected by agricultural land investment contracts, difficult tasks for prospective investors could include: (a) identifying both the holders of legal title to the land and any holders of legitimate tenure rights with respect to that land; (b) consulting with those various holders, including in customary settings in which the roles of various authorities might not be clearly defined; and (c) conducting detailed feasibility studies and rigorous impact assessments, with respect to possible tenure, social and environmental impacts. The legal guidance is to assist with the identification of all tenure right holders (including both legal and legitimate right holders), determination of the contractual arrangements for taking into account those holders and the assessment of any possible impacts for which contractual safeguards would be needed. In so doing, the guidance is to pay particular attention to gender issues.

Obligations and rights of the parties: The agricultural land investment contract can set out provisions addressing not only the particular tenure rights that are granted by the lease, but also necessary safeguards to ameliorate gaps in the host State's law and possible impacts of the investment. The legal guidance is to assist with the negotiation of provisions in various areas (e.g. land tenure; human rights, including food security, gender and youth; social obligations; the environment; finance; investment protection and regulatory autonomy of host States; and transparency, contract monitoring and implementation). Particular emphasis is to be placed upon possible safeguards, such as mechanisms for ensuring compliance with environmental requirements and for sharing the benefits arising from the leased agricultural land with legitimate tenure right holders and local communities.

Contractual non-performance: As leases of agricultural land usually involve long-term contractual relationships, it is important to understand the risks inherent in a particular investment and to promote cooperation between the parties and stakeholders. The legal guidance is to analyse possible excuses and



remedies for non-performance, thereby helping to ensure a more balanced and sustainable contract and to prevent conflicts.

Transfer and return: The transfer of leased agricultural land from one investor to another can raise various concerns, including whether the granted tenure rights are actually transferable, the transfer complies with any contractual limitations, and such transfer is disclosed to the public. The return of leased agricultural land can also raise various concerns, including with respect to the condition in which the land is to be returned and whether there are any replanting obligations. The legal guidance is to flag issues in this regard and analyse possible contractual provisions for addressing them.

Dispute resolution: Understanding the types of grievances and disputes that commonly arise under agricultural land investment contracts and the various mechanisms for resolving them can also create a more balanced and sustainable contract. Such mechanisms include grievance mechanisms, expert determinations, negotiation, mediation, conciliation, arbitration and litigation. The legal guidance is to assist with understanding various grievance and dispute resolution possibilities and setting them out in the contract.

IV. Development of the Future Instrument

This part discusses the ongoing development of the future instrument. First, it briefly describes UNIDROIT and its mandate. Second, it provides an overview of the process by which the future instrument has been developed thus far. Third, it briefly describes the way forward.

A. UNIDROIT and its Mandate

UNIDROIT is an independent intergovernmental Organisation, with its seat in Rome. Established in 1926 as an auxiliary organ of the League of Nations, the Institute was, following the League's demise, re-established in 1940 on the basis of a multilateral agreement known as the UNIDROIT Statute. Membership is restricted to States acceding to the Statute, and UNIDROIT has 63 member States, drawn from five continents and representing various legal, economic and political systems.

UNIDROIT's mandate is to study needs and methods for modernising, harmonising and coordinating private law, in particular commercial law, between States and to formulate uniform law instruments, principles and rules. To fulfil that mandate, UNIDROIT has a three-tier institutional structure, including (a) the General Assembly, which is made up of a representative from each member State and is the ultimate decision-making organ; (b) the Governing Council, which is made up of the President of UNIDROIT and 25



elected members (e.g. academics and practitioners), supervises all policy aspects of the means by which UNIDROIT's mandate is to be achieved and adopts the soft law instruments that are developed; and (c) the Secretariat, which is led by the Secretary-General – who is assisted by a small team of international civil servants and support staff – and carries out UNIDROIT's work on a daily basis.

In fulfillment of its mandate, UNIDROIT has conducted studies and developed instruments in various areas of law. Such areas include commercial contracts, international sales, security interests, capital markets, cultural property and, more recently, agricultural development.

B. The Process Thus Far

UNIDROIT's work in the area of private law and agricultural development and its collaboration with FAO and IFAD traces its origins to a Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects” (Rome, 8-10 November 2011). That Colloquium explored the nature of the contribution that UNIDROIT might make to global food security efforts, taking into account UNIDROIT's specific mandate and building upon its existing instruments (e.g. the UNIDROIT Principles of International Commercial Contracts),⁵ in synergy with the multilateral organisations working for agricultural development. The Colloquium focused on the following potential areas of work: (a) title to land; (b) contracts for investment in agricultural land; (c) legal structure of agricultural enterprises; (d) contract farming; and (e) the financing of agriculture.⁶

Arising from that Colloquium, the UNIDROIT Governing Council, in consultation with FAO and IFAD, decided to develop as a matter of priority an instrument on contract farming. The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, which was ultimately adopted at the Governing Council's 94th session (Rome, 6-8 May 2015), provides detailed guidance on that investment model, which is – as a policy matter – a preferred one because it does not entail the transfer of tenure rights and promotes inclusive investments by and with smallholders.⁷

Following the Legal Guide on Contract Farming's adoption at that session, the Governing Council requested that the Secretariat study the feasibility of conducting work in the area of contracts for investment in agricultural land. At its 95th session (Rome, 18-20 May 2016), the Governing Council considered the

⁵ See note 1.

⁶ The Acts of the Colloquium were published in the *UNIFORM LAW REVIEW*, XVII UNIF. L. REV. (2012-1/2).

⁷ See note 1.



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Secretariat's feasibility study (UNIDROIT, 2016a) and took note of it, ultimately recommending that work on an international guidance document on agricultural land investment contracts in the UNIDROIT Work Programme for the triennium 2017-2019 with a high level of priority. The General Assembly then endorsed that recommendation at its 75th session (Rome, 1 December 2016).

Consistent with the high level of priority, the Working Group on agricultural land investment contracts was constituted – with experts, international Organisation representatives and stakeholders – and held two meetings in 2017.⁸ At its first meeting (Rome, 3-5 May 2017), the Working Group began by discussing various general matters, including UNIDROIT and its work on private law and agricultural development; alignment of the work with existing initiatives, in particular the VGGT and CFS-RAI Principles; co-operation with the UN agricultural development agencies, non-governmental organisations, civil society, the private sector and other stakeholders; and the possible scope, structure and target audience of the future instrument. Following those general discussions, the Working Group reviewed a preliminary draft outline of the future instrument on agricultural land investment contracts, which had been prepared by the UNIDROIT Secretariat for discussion purposes. The Group amended and provided expert input on that initial outline, which would be subject to ongoing review.

At the Working Group's second meeting (Rome, 13-15 September 2017), the Working Group discussed recent developments and general considerations in relation to the work, in particular with respect to the future instrument's scope and target audience and its alignment to existing initiatives. In this regard, the Working Group recommended that, subject to ongoing review, the future instrument should be a guide focusing on leases of agricultural land and that the guidance should be targeted to legal counsel for the various parties and stakeholders involved in those contracts. The Working Group then examined in detail an updated draft outline of the future instrument and initial draft contributions for certain chapters. Regarding the organisation of future work, the Working Group considered possible events and other means for raising awareness about the work, consulting stakeholders and seeking their input.

In addition, the Secretariat held – in collaboration with FAO and IFAD – two informal meetings with experts and interested stakeholders at FAO on 20 October 2016 during the CFS' 43rd plenary session and on 11 October 2017 during the CFS' 44th plenary session respectively. At the first informal meeting, participants discussed the scope, content and form of the future instrument, and the input received during

⁸ Meeting reports, including summaries of the Working Group's deliberations and lists of participants, are available on UNIDROIT's website for the project on agricultural land investment contracts at <https://www.unidroit.org/work-in-progress/agricultural-land-investment>.



the meeting was taken into consideration in the formation of the Working Group and provided to that Group once constituted. At the second meeting, participants reviewed and commented on the draft in-progress outline, and the input received during the meeting was provided to the Working Group for its consideration in preparing the various chapter drafts.

C. The Way Forward

The Working Group's next meeting is to be held on 25-27 April 2018, at which the Group is expected to review in detail initial drafts for all of the chapters and sections identified in the draft outline contained in Annex 1. Following that meeting, the Working Group, with the assistance of the Secretariat, is to revise the draft of the future instrument in accordance with the input received, both from the meeting and from outreach to stakeholders.

It is anticipated that a substantially complete draft of the future instrument is to be ready for further review and input in the summer of 2018. As currently contemplated, there is to be a fourth Working Group meeting in the fall of 2018 to review that draft and a side event during the CFS' 45th plenary session to seek further input on it from stakeholders, as well as an open Internet consultation by which the draft is to be made publicly available on UNIDROIT's website for review and submission of comments. In addition, it is expected that the draft is to be considered at regional consultation events held around the world, in coordination with Working Group experts at the end of 2018 and in early 2019.

The input received from the CFS side event, the open Internet consultation and the regional consultation events is to be incorporated by the Secretariat in coordination with the Working Group. Following that consultation, review and revision process, the Secretariat is to prepare the draft instrument for submission to the UNIDROIT Governing Council for adoption.

V. Conclusion and Request for Input

The future instrument is meant to respond to the need for greater investment in agriculture for food security and nutrition and to support responsible agricultural investment, which incorporates necessary safeguards to protect legitimate tenure right holders, human rights, livelihoods, food security and the environment. It promises to provide, building upon UNIDROIT's private law expertise, legal guidance on the leasing of agricultural land that is consistent not only with the VGGT and CFS-RAI Principles, but also



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with the UN Sustainable Development Goals and the UN Guiding Principles for Business and Human Rights.

The Working Group on agricultural land investment contracts welcomes any input that interested stakeholders may wish to submit for its consideration in connection with the development of the future instrument. Such input – including with respect to this paper, the draft in-progress outline in Annex 1, the references in Annex 2 and other reports and materials made available on UNIDROIT’s webpage for the project (<https://www.unidroit.org/work-in-progress/agricultural-land-investment>) – may be submitted to the UNIDROIT Secretariat at info@unidroit.org.



Annex 1: Draft In-Progress Outline
for the Future Instrument on Agricultural Land Investment Contracts

PREFACE [see, e.g., Legal Guide on Contract Farming, Preface]

I. Overview and purpose

A. Brief summary of the Guide

B. Statement that the Guide seeks, *inter alia*, to:

- Respond to the need for greater investment in agriculture for food security and nutrition [CFS-RAI Principle 1];
- Support responsible agricultural investment, which incorporates necessary safeguards to protect legitimate tenure right holders, human rights, livelihoods, food security and the environment and is consistent with the objectives of social and economic growth and sustainable human development [VGGT, para. 7.1 et seq., 12.1 et seq.; CFS-RAI Principles 2-10];
- Respond to capacity constraints of host-State governments and the balance of power between investors and host-State governments; and
- Support tenure holders' knowledge of their rights, protection of those rights by host-State governments and respect of those rights by investors.

II. Approach and how to use the Guide

- A. Approach is for UNIDROIT – in light of its particular private law expertise and in collaboration with FAO and IFAD – to provide legal guidance on agricultural land investment contracts, incorporating necessary safeguards into them, and implementing and monitoring them in six stages (i.e. the legal framework; parties, formation and form;



obligations and rights of the parties; contractual non-performance; transfer and return; and dispute resolution)

- B. Guide is to further the implementation of the VGGT and CFS-RAI Principles by serving as a reference tool for legal counsel and is to contain references to practical operations, contract practices and international instruments (e.g. VGGT; CFS-RAI Principles; UPICC)

INTRODUCTION [see, e.g., Legal Guide on Contract Farming, Introduction]

I. General introduction to agricultural land investment contracts

- A. The notion of agricultural land investment contracts, including why such contracts are important and being treated in the Guide
- B. Issues that have been identified with respect to such contracts
 - Tenure rights in general [see, e.g., Munro-Faure and Palmer, An Overview of the Voluntary Guidelines on the Governance of Tenure, LAND TENURE JOURNAL (2012)]
 - Rights of legitimate tenure right holders not being protected by host-State governments or respected by investors, including difficulties in identifying such holders
 - Gaps and difficulties in the implementation of domestic laws

II. Scope of the Guide

- A. Description of various agricultural land investment contracts in practice, such as leases, concessions/investment agreements, purchases (i.e. a more technical discussion than in Part I.A above)
 - Various possible parties and contractual arrangements (including JVs, PPPs, etc.)
 - Briefly highlight complexities in such arrangements



- B. Identification of those contracts falling within the Guide's scope, specifically leases and concessions/investment agreements for agricultural land
- Identifying, with examples, what falls within the scope of the Guide
 - Setting out key definitions [agricultural land investment contract, investor, host-State government, legal tenure right holder, legitimate tenure right holder – with cross-reference to glossary]

CHAPTER 1 – THE LEGAL FRAMEWORK

I. Introduction

A. Freedom of contract

B. Limitations on that freedom for agricultural land investment contracts

- Mandatory rules from various sources – domestic and foreign
- Relevant areas

II. Sources

A. Domestic sources [VGGT Technical Guide No. 4 at 33 et seq.]

- Rules and principles of law (e.g. from legislation, judicial decisions or regulations)
- Customary rules and usages

B. International sources

- International treaties (e.g. ICCPR, ICESCR, CERD, CEDAW, CRC, ICRMW or bilateral/multilateral investment treaties binding for the respective State Parties) [VGGT Technical Guide No. 4 at 32]
- Soft law instruments (e.g. VGGT; CFS-RAI Principles; UPICC)



- Guidance documents (including standards documents) [e.g. OECD-FAO Guidance for Responsible Agricultural Supply Chains]

III. Relevant areas of law and regulation

- Land tenure/administration
- Human rights (including food security, gender and labour)
- [Social obligations / Protecting and respecting rights]
- Environment (including water)
- Finance (e.g. tax, accounting rules and anticorruption measures)
- Protection of investment (including national investment codes and IIAs) and regulatory autonomy
- Transparency, compliance and monitoring (including tendering process [CFS-RAI Principle 9; VGGT Technical Guide No. 4 at 47 et seq., 61 et seq.]
 1. Need for a competitive, inclusive and transparent process involving all stakeholders
 2. Draft contract publication/disclosure [VGGT, para. 11.7; UN Principles for responsible contracts, no. 10; IISD Model Contract, para. 12.0]

CHAPTER 2 – PARTIES, FORMATION AND FORM

- I. Identification of the possible parties to the contract and relevant stakeholders (including processes for doing so)
 - A. Types of parties and relevant stakeholders [CFS-RAI Principle 5; VGGT para. 12.1 et seq.; UN Principles for responsible contracts, nos. 1-2, 7; VGGT Technical Guide No. 5 at 20 et seq.; VGGT Technical Guide No. 7 at 38; ISLP/CCSI Guide, part 2.2]



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- Investor(s)
 - Transparency in the identity and nationality of each party, including issue of beneficial ownership
 - Corporate organisation [GCAP Model Lease, Section 16]
 - Need for due diligence and FPIC (including cross references to Parts II and III below)
 - Legal tenure right holder(s) (e.g. host-State government, community, private individual)
 - Legitimate tenure right holder(s) [VGGT, paras. 3.2, 9.1]
 - Other possible parties or relevant stakeholders (e.g. local officials or public notaries)
- B. Types of contracts or options (including with respect to third parties and an introduction to community development agreements [cross-reference to Chapter 3.IV.G below])
- II. Feasibility studies [GCAP Model Lease, Appendix 1; IISD Model Contract, para. 6.1]
- A. Suitable land availability (including access to necessary resources) and valuation [VGGT, para. 18.1 et seq.; VGGT Technical Guide No. 4 at 37; VGGT Technical Guide on valuation (forthcoming)]
- B. Development of a business plan
- III. Impact assessments [CFS-RAI Principle 10; VGGT paras. 3.2, 12.10; IFC Performance Standard 1; Right to Food Guidelines, para 17.2; VGGT Technical Guide No. 4 at 56 et seq.; VGGT Technical Guide No. 7, parts 2-3, 6; IISD Model Contract, para. 6.2]
- A. Land tenure (including legitimate tenure rights)
- B. Human rights and social aspects (including food security [CFS-RAI Principles 1-2; VGGT, paras. 12.1, 12.4, 12.12], gender and labour)



- C. Environment [GCAP Model Lease, Appendix 2] (including impacts on water and other natural resources and access to those resources [CFS-RAI Principles 5-6])
- IV. Contract formation and form [Legal Guide on Contract Farming at 57; UPICC, Chapter 2]
- A. Capacity and consent
 - B. Role of those who intervene or assist in contract negotiation
 - C. Required contract form and content and consequences for breach of such requirements, as well as any formalities for leases of agricultural land

CHAPTER 3 – OBLIGATIONS AND RIGHTS OF THE PARTIES

- I. Introductory section
 - A. Recognising that not all agricultural land investment contracts (which might actually be a single contract or a series of contracts) would require or include clauses on all of the topics identified below, depending on the type of contact, the parties to that contact, and other circumstances
 - B. Recognising that the topics might not be addressed in this order
 - C. Introducing the key parameters and themes from Chapter 1.III above (i.e. land tenure/administration; human rights (including food security, gender and labour); [social obligations / protecting and respecting rights]; environment (including water); finance; protection of investment and regulatory autonomy; and transparency, compliance and monitoring)
- II. Land tenure
 - A. Location/description of the land [GCAP Model Lease, Section 3; ISLP/CCSI Guide, part 2.4]
 - Identification (e.g. total size; boundaries; geospatial data)
 - Option for additional land and right of first refusal for such land



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B. Tenure rights [GCAP Model Lease, Section 5; IISD Model Contract, para. 5.1; ISLP/CCSI Guide, part 2.5]

- Identification of rights (cross-reference to Chapter II) and highlighting the importance of the issue

Grant of tenure rights

- Rights of use (e.g. land; water, including specification of water commitments and drought events; and underground resources)
- Rights of entry and control (e.g. who owns improvements; fixtures; etc.) [UNCITRAL PFIP Guide at 108 et seq.]
- Rights withheld (e.g. limitations on exclusivity/use; rights of way; continued access, etc.) [UNCITRAL PFIP Guide at 111 et seq.]

Grant of related rights

- Right to access and use utilities [GCAP Model Lease, Section 11]
- Rights to import (e.g. supplies; equipment)
- Rights to market, transport and export (e.g. agricultural production)

C. Duration and renewal [GCAP Model Lease, Section 4; IISD Model Contract, para. 5.1]

- Start and end dates
- Drawbacks of limitations on period [UNCITRAL PFIP Guide at 151 et seq.]
- Renewal and renegotiation (e.g. terms for extension/renewal of the lease, including key performance indicators and incentives for renewal) [GCAP Model Lease, Section 4]

D. Conditions [UPICC, Chapter 5.3]



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- Overview, including suspensive and resolutive conditions [ISLP/CCSI Guide, part 2.3]
 - Permits and licenses [GCAP Model Lease, Sections 5, 14]
- E. Purpose of the investment/Land management issues [VGGT Technical Guide No. 4 at 87]
- Identification of use
 - Indicative business plan
- F. Land development obligations [GCAP Model Lease, Section 11]
- Introduction: Investments that are not duly implemented can frustrate hopes for jobs, public revenues and social infrastructure (as applicable), and more generally create opportunity costs (other land users could have better developed the land). In some contexts, authorities choose to regulate land use activities (e.g. crop choice, processing) in order to pursue certain goals (e.g. meet domestic demand for a given commodity, or promote in-country processing). So, multiple policy considerations may be involved, depending on the context: (a) discourage speculative acquisitions; (b) timely implementation; or (c) promote specific land use activities.
 - Development plans and related clauses
 - Land use provisions (e.g. specifying forms of land use, and the investor cannot make material changes to the land use envisaged in the contract without prior authorisation in writing from the other party, sometimes with the clarification that the authorisation cannot be unreasonably withheld)
 - Local processing (i.e. provisions to encourage local processing, including via incentives, or to require the investor to explore feasibility of local processing at least in part)
 - Contract monitoring (with cross reference to transparency and monitoring below)
- G. Infrastructure [ISLP/CCSI Guide, part 2.7]



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- III. Finance/Financial obligations [GCAP Model Lease, Section 6; IISD Model Contract, para. 7.0 et seq.; ISLP/CCSI Guide, part 2.11]
 - A. Introduction: Public revenues are an important way in which the host country can benefit from investments. They can influence a government's ability to provide public services, and ultimately to contribute to inclusive sustainable development. Important role of national legislation (tax law). Agricultural land investment contracts often include provisions on public revenues. These govern issues such as types of revenue streams, applicable rates, monitoring arrangements.
 - B. Types of public revenues (e.g. land rental fees; water fees; corporate income tax (charged on the company's profits); royalties (based on the value of production, or more rarely on production volume); withholding tax (tax deducted from payments made by the company to other persons located outside the country); dividends (in joint ventures))
 - C. Policy choices
 - D. Fixed income versus revenue sharing models
 - E. Other contractual issues (e.g. timing and form of monetary payments, and interest accrual on late payments; mechanisms for periodic revisions; and capitalisation)
- IV. [Social obligations / Protecting and respecting rights] [GCAP Model Lease, Section 7; ISLP/CCSI Guide, part 2.13]
 - A. Introduction (e.g. widely recognised that community relations are an important factor in the project's ultimate success; "social license to operate" debate; at the same time, relations with communities often one of the most difficult issues in agricultural land investments; developments in contractual practice to address these challenges)
 - B. Local/domestic food security [CFS-RAI Principles 1-2; VGGT, para. 12.12]
 - C. Land acquisition
 - Provisions aimed at minimising extent of land acquisition



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- Provisions on compensation (conceptually distinct from benefit sharing and including compensable items (e.g. land, crops, structures or other items existing on the land), compensation rates, mechanisms, and timing; role of national law, for example, in defining compensable items and applicable rates; however, national law may fall short of international law (e.g. as reflected in human rights law jurisprudence) and international standards)
 - Provisions on continued access to land and resources for local stakeholders insofar as not inconsistent with project activities (with cross-reference to Chapter 3.B above)
- D. Employment [CFS-RAI Principles 2-4; GCAP Model Lease, Section 7; IISD Model Contract, para. 8.1 et seq.]
- Quality and quantity of jobs created through the project
 - Access to employment (i.e. contract provisions establishing priority or even exclusivity for local nationals in relation to specified roles (e.g. unskilled labour) and priority or sliding scales for hiring of local nationals in relation to other roles (e.g. technical, managerial))
 - Capacity support commitments on the part of the investor may be needed in order to achieve these targets (e.g. training for local nationals so they can take up technical or managerial roles)
 - Gender aspects, including possible mechanisms to handle gender segregation in agricultural labour force and promote women's access to skilled positions, as well as youth aspects
 - Monitoring mechanisms and reporting requirements
- E. Local content (e.g. provisions that require the company to prioritise domestic suppliers when sourcing goods and/or services for the agricultural investment) [CFS-RAI Principle 2; IISD Model Contract, para. 8.4]



F. Outgrower schemes [CFS-RAI Principles 1-2, 8; GCAP Model Lease, Section 7; IISD Model Contract, para. 8.2]

- Contractual arrangements whereby small-scale farmers grow crop around the nucleus plantation to supply the commercial operation
- Contractual practice with provisions requiring investor to develop an outgrower scheme where this responds to local development priorities (and arrangements for community engagement in the development of the scheme)
- Basic terms of company-farmer relations (e.g. pricing formulae (possibly linked to international price indices where available), lending arrangements; tenure aspects (outgrowers farming own or company land; if the latter, farmers' tenure security on company land); gender issues (e.g. in outgrower selection, especially where growers farm company land))
- Reporting requirements and monitoring arrangements

G. Community development funds or social infrastructure [CFS-RAI Principle 9; GCAP Model Lease, Sections 8-9; IISD Model Contract, para. 8.5]

- Investor obligations in relation to establishing and financing a community development fund, or to provide social infrastructure (e.g. schools, clinics).
- Policy choices at stake
- Mechanisms to identify local priorities and translate them into contractualised action, including relevance of community-development agreements (between company and community) and relation / cross-referencing with main investment contract
- Community development funds
- Reporting requirements and monitoring arrangements

H. Protecting and respecting cultural heritage [CFS-RAI Principle 7]



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- V. Environment [CFS-RAI Principle 6; IFC Performance Standard 6; GCAP Model Lease, Section 14; IISD Model Contract, para. 9.0 et seq.; ISLP/CCSI Guide, part 2.12]
- A. Introduction
- Agricultural land investments often associated with environmental risks and impacts
 - Key role of national law in setting rules, institutions and processes (e.g. specialised agencies dealing with environmental aspects; impact assessment requirements in many jurisdictions; terms of environmental liabilities, and who can activate them (e.g. administrative sanctions/penalties vs tort liability for damage suffered by private actors))
 - In some contexts, national law not in line with international standards and, in these cases, the contract can provide an opportunity to complement national legislation
- B. Impact assessment and management plans
- C. Applicable standards
- D. Water, including terms for water abstraction (quantity, timing, payments)
- E. Waste management
- F. Project closure
- G. Monitoring, sanctioning and remediation
- VI. Protection of investment and regulatory autonomy
- A. Expropriation and respect for regulatory space [placeholder for resettlement]
- B. Physical security [UN Principles for responsible contracts, no. 6; GCAP Model Lease, Section 12; IISD Model Contract, para. 5.4; ISLP/CCSI Guide, part 2.8]



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- C. Stabilisation and security of rights, including the importance of legal security for bankability and respect for regulatory space [UN Principles for responsible contracts, no. 4; IISD Model Contract, para. 10.0; ISLP/CCSI Guide, part 2.19]
- VII. Transparency, compliance and monitoring [GCAP Model Lease, Sections 11-12; ISLP/CCSI Guide, part 2.6]
- A. Insurance
 - B. Recordkeeping and audits [IISD Model Contract, para. 5.3]
 - C. Circumstances under which the lessor can enter the property to inspect the investor's activities and monitor compliance [IISD Model Contract, para. 5.3]
 - D. Conservation of premises
 - E. Monitoring [UN Principles for responsible contracts, no. 8; VGGT Technical Guide No. 4 at 70 et seq.; VGGT Technical Guide No. 7 at 68-69; GCAP Model Lease, Section 13; ISLP/CCSI Guide, part 2.14]
 - Performance guarantees [UNCITRAL PFIP Guide at 136-140]
 - Environmental performance bonds
 - Reporting requirements and access to information / disclosure, transparency / revenue transparency [VGGT, paras. 6.9, 11.7; UN Principles for responsible contracts, no. 10; VGGT Technical Guide No. 7 at 45 et seq.; IISD Model Contract, para. 12.0, 16.0 et seq.; ISLP/CCSI Guide, part 2.18]
 - Between the parties
 - Between the parties and the public
 - Protection of confidential information
 - Delivery of notices [GCAP Model Lease, Section 21; ISLP/CCSI Guide, part 2.25]



- F. Amendments and periodic review (e.g. every 5 years, variations of certain indexes) [GCAP Model Lease, Section 18; IISD Model Contract, para. 13.0; ISLP/CCSI Guide, part 2.26]

CHAPTER 4 – CONTRACTUAL NON-PERFORMANCE

- I. Excuses for non-performance [Legal Guide on Contract Farming, Chapter 4]
- A. Particular importance in long-term contracts and underlying legal issues
- Force majeure versus change of circumstances
 - Anticipating the risk (e.g. contractual allocation of risks through force majeure clauses; price revision clauses and price adjustment mechanisms; types of clauses (adverse factors/adverse events))
 - Insurance and other risk mitigation schemes
- B. Force majeure [UPICC, art. 7.1.7; GCAP Model Lease, Section 20; ISLP/CCSI Guide, part 2.21]
- General notion
 - Qualifying events and burden of proof, including natural events (e.g. storm, fire, epidemics), governmental acts impeding fulfilment of obligations and other disturbances
 - Consequences
- C. Changes of circumstances in general/risks [UPICC, Chapter 6.2; UNCITRAL PFIP Guide at 140 et seq.; VGGT Technical Guide No. 7 at VIII-X; Equator Principle 1]
- General notion
 - Qualifying events, including possible link to renegotiations and periodic review
 - Consequences



- D. Additional considerations for host-State governments
- II. Remedies for breach [Legal Guide on Contract Farming, Chapter 5]
- A. Types of breach and types of contractual clauses on remedies
- Breach by the investor (Legal right holder, Legitimate tenure right holder)
 - Interference by the other party [UPICC, art. 7.1.2]
 - Contractual clauses on remedies (exemption clauses; penalty clauses [UPICC, art. 7.4.13])
- B. Overview of remedies
- Remedies in kind (performance, corrective actions)
 - Withholding performance [UPICC, art. 7.1.3]
 - Termination and restitution [UPICC, Chapter 7.3; GCAP Model Lease, Section 19; IISD Model Contract, para. 15.0; ISLP/CCSI Guide, part 2.23]
 - Damages [UPICC, Chapter 7.4], including full compensation and foreseeability
 - Interests and late payments
- C. The role of the aggrieved party's conduct (e.g. price reduction or additional period for performance) [UPICC, art. 7.1.5]
- D. The breaching party's right to cure and cure by non-performing party [UPICC, art. 7.1.4]
- E. Renegotiation, including co-operation between the parties [UPICC, art. 5.1.3]
- F. Additional considerations for host-State governments

CHAPTER 5 – TRANSFER AND RETURN [Legal Guide on Contract Farming, Chapter 6]



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- I. Transfer of obligations and rights / assignment [UPICC, Chapter 9; VGGT Technical Guide No. 4 at 75; GCAP Model Lease, Section 17; IISD Model Contract, para. 14.0; ISLP/CCSI Guide, part 2.16]
 - A. Transferability of obligations and rights (including change of control [ISLP/CCSI Guide, part 2.17])
 - B. Legality of transfer
 - C. Limitations on transfer
 - D. Importance of disclosure
- II. Return [UNCITRAL PFIP Guide at 168 et seq.; ISLP/CCSI Guide, part 2.24]
 - A. Stipulation of the condition in which land is to be returned, including replanting obligations (e.g. maintenance of tree crops, subject to or in line with the business plan)
 - B. Liabilities for deterioration

CHAPTER 6 – DISPUTE RESOLUTION [CFS-RAI Principle 9; VGGT, paras. 3.2, 21.1-21.6; Legal Guide on Contract Farming, Chapter 7; VGGT Technical Guide No. 4 at 72-74; VGGT Technical Guide No. 5 at 87 et seq.; VGGT Technical Guide No. 7 at 39 et seq.; GCAP Model Lease, Section 15; IISD Model Contract 11.0 et seq.; ISLP/CCSI Guide, part 2.20]

- I. Disputes arising under agricultural land investment contracts
 - A. The importance of access to justice
 - B. The provision of access to justice
- II. Non-judicial dispute resolution
 - A. Grievance mechanisms, including for local communities and employees [CFS-RAI Principle 9; UN Principles for responsible contracts, no. 9]



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- B. Expert determination (e.g. price of processing or of crops, in the event that the project involves processing or an outgrower arrangement respectively)
- C. Negotiation and mediation
- D. Conciliation
- E. Arbitration (e.g. factors to consider, such as what investors might seek and what host States might oppose; considerations with respect to governing law and transparency of proceedings) [GCAP Model Lease, Section 22; ISLP/CCSI Guide, part 2.27]

III. Judicial dispute resolution

- A. Domestic courts
- B. International courts

IV. Enforcement of settlements or decisions resolving a dispute

[POSSIBLE ANNEXES OR FUTURE STEPS (e.g. checklist of issues, model provisions, detailed guidance on community development agreements or local supply contracts, etc.)]



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