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**Draft UNIDROIT/FAO/IFAD Legal Guide on
Agricultural Land Investment Contracts
(ALIC)
First Regional Consultation
Beijing, 9 July 2019**

UNIDROIT 2020
Study S80B – Doc. 7
Original: English
February 2020

**Report of the First Regional Consultation – Raising awareness and seeking
feedback from China and Asia**

(prepared by the UNIDROIT Secretariat)

1. As part of the elaboration process of the UNIDROIT/FAO/IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC), the ALIC Working Group, in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), agreed that a consolidated draft of the future Guide – the ALIC Zero Draft (UNIDROIT 2019 – S80B – Doc. 6) – should be submitted to broad and extended consultations to raise awareness of the Legal Guide and to seek further input from stakeholders, in order to ensure a high-quality product that responds to actual needs and complies with ascertained best practices. This course of action was endorsed by the Governing Council of UNIDROIT ([C.D. \(98\) 5\(a\) rev.](#)) at its 98th session (Rome, 8 – 10 May 2019). The consultations included regional events in Asia, Latin America, and Africa, as well as an open online consultation.

2. This document serves to summarise the presentations and discussions that took place during the first regional consultation workshop held in Beijing on 9 July 2019.

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I. OVERVIEW

3. As part of a high-level conference entitled “UNIDROIT and China: The Cape Town Convention, Investing in Agriculture and UPICC”, UNIDROIT delivered its first regional consultation on the ALIC Zero Draft in Beijing on 9 July 2019. The event was hosted by the [University of International Business and Economics \(UIBE\)](#) and co-sponsored by the United Nations Food and Agriculture Organization (FAO) and the International Fund for Agricultural Development (IFAD). The event brought together governmental representatives, academics, legal experts, international organisations and private sector stakeholders to examine the key issues addressed by the future Legal Guide.

4. Session 1 of the workshop focused on introducing the Guide, addressing issues relating to land tenure rights and responsible investments as founding principles and discussing the Chinese legal context of agriculture and land investment.

5. Session 2 further explored other key issues including the parties’ obligations, IFAD’s experience in the Asia Region, and remedies for non-performance and dispute resolution.

II. SUMMARY OF PRESENTATIONS

Welcome and Opening Remarks

6. *Mr. Zangchun Gan* (Vice President of China Law Society) opened the workshop on the ALIC Guide and recognised the importance of discussing the future Legal Guide in the context of China.

Session 1: The Draft UNIDROIT/FAO/IFAD Legal Guide on Agriculture Land Investment Contracts and China

7. *Mr. Ignacio Tirado* (Secretary-General of UNIDROIT) introduced the ALIC Guide as an innovative instrument with the potential to have a practical impact in the field. The Guide seeks to address legal challenges related to agriculture land investment by looking at both public and private law aspects. He explained the drafting process and gave a brief overview of the issues considered in each of the Guide’s chapters.

8. He emphasised that it is a contractual guide that deals with the risks for parties. He also explained the economic benefits, feasibility, and how UNIDROIT’s previous work ties into relevant issues explored in the ALIC Guide. He also highlighted that the Guide has involved many scholars, experts, and stakeholders from all over the world and expressed his hope the Guide will be finalized by 2020.

9. Mr. Tirado further explained the purposes, scope, and audience of the Guide, emphasizing it is intended to address land leases, as an alternative, for example, to the outright purchasing of land. It covers the rights of relevant parties, including local communities, and the contractual arrangements themselves. The Guide is mainly written for legal counsels to the parties involved in the transaction, however, government officials, legislators, and stakeholders may also find it helpful. He further presented several important sections of the Guide relating to due diligence, environmental protection, and grievance mechanisms. He concluded by outlining the various mechanisms in place to provide feedback to improve the draft ALIC Guide so that the final version could more adequately reflect the variety of circumstances found in different countries and regions.

10. *Mr. Vincent Martin* (FAO Representative in China and North Korea) gave a presentation on “Land Tenure and Responsible Investment as a Fundamental Principle”. He explained that the ALIC Guide does not establish new standards, but rather seeks to provide concrete guidance on how to implement existing international documents, notably the VGGT and the CFS-RAI Principles. He

underlined that the VGGT promotes guidance regarding legitimate tenure rights and that the CFS-RAI promotes small holders' rights as well as more concrete environmental, social and economic impact assessment. He emphasized that ALIC incorporates both instruments and aims to contribute to the Sustainable Development Goals (SDGs).

11. Ms. Jia Yao (Researcher at Institute of Law of the Chinese Academy of Social Sciences) provided an "Overview of the Legal Issues in Agricultural Land Investment in the Chinese Context". She explained that the legal framework regarding agricultural land is very complicated in China, noting it has already experienced major changes. A recent development saw "farmers' contracting rights" and "land managing rights" separated.¹ She further explained that the tenure rights contemplated by ALIC mainly relate to "the right to manage rural land" under Chinese law.

12. By referring to the Model Contract for the Transfer of Rural Land Contractual Management, she mentioned that there are documents in China providing contractual guidance similar to the ALIC Guide.²

13. Ms. Yao further explained the legal context of China, noting that certain legislative restrictions may apply when it comes to foreign agricultural investments in China. For example, foreign investors have limited access to corn and wheat seed production.³

14. Regarding customary law, she pointed out that the legitimate tenure rights addressed in the ALIC Guide are of great relevance to the Chinese reality. For example, in relation to gender equality, the issue of a woman having rights over land, as a local community member, is affected by local customary rules which can vary across China, especially in those cases of a marriage with a person who is not a member of the community.

15. In conclusion, she considered the ALIC Guide to be well-drafted and easy to read, however, she stressed that in terms of its application to China, further efforts shall be required to adapt the terms and concepts used in ALIC to the Chinese context.

16. During the discussion, Ms. Jingyun Qin (Assistant Researcher of the College of Agriculture and Rural Cadre Training, Ministry of Agriculture and Rural Affairs) summarised the three presenters' main points and agreed that the risks mentioned by Mr. Tirado are indeed those encountered by the Chinese government in agricultural practices. It is very difficult to have an international legal guide on agriculture issues because there is such a broad diversity of special regulations in national laws. She inquired about the further development of the ALIC Guide and whether it will be an instrument drawing up international principles or a general guide.

¹ In China, based on the eligibility of the right holder, there are three types of basic rights over rural land: ownership, farming contracting rights, and land managing rights. The ownership of rural land belongs to the community. The contracting rights belong to the farmers' family. Therefore, it is also called "farmers' contracting rights". Lastly, the managing rights of the land belong to whoever leases the land, referred to as "land managing rights". "Farmers' contracting rights" are inherent rights, with which the farmers can possess, use and benefit from the land, including from the construction of necessary agricultural production, ancillary and supporting facilities and leasing the land (subcontract). In a similar way, "land managing rights" include the right to possess, cultivate, and obtain corresponding income, however, within a certain period of time. The right holders can conduct agricultural production, improve the soil capacity, and even transfer the contracting rights under certain conditions. See <Opinions on Improving the Measures for the Separation of Ownership, Contracting Rights, and Management Rights of Rural Land>, State Council, 2016. This document is available in the [Chinese language](#).

² This model contract was developed in 2018 by the Guizhou Provincial Government of China, under the auspices of the Ministry of Agriculture of the People's Republic of China (PRC) for the [model contract](#) is only available in Chinese.

³ For more information on the new special administrative measures, adopted by the Chinese government on June 30, 2019, which limit foreign investment in certain areas, see the "[Negative List of Foreign Investment Admissions](#)" (subscription required).

17. *Mr. Haicong Zuo* (Professor and Dean of Nankai University School of Law) envisaged the important role that the ALIC Guide can play in the global efforts towards the elimination of poverty and recommended that the Working Group draw lessons from the Chinese experience in this regard.

18. At the end of the first session, *Mr. Zangchun Gan*, appreciated the fact that the ALIC Guide covers the public law dimension of agriculture land investment, which usually receives less attention (i.e. it isn't just a private contract, but also raises a combination of human rights, public law and private law issues). He noted that in China, studies in this field have been conducted more often from an economic or a private law perspective, overlooking the public law dimension. In his view, several obstacles remain in seeking to formulate a harmonized/uniform contract law in this field, notably because of the differences between the legal systems. In the context of China, he noted that the term "tenure" comes from the Common law system and explained that an equivalent term could not be found in the Chinese legal context. He therefore suggested a more precise translation of legal terms in ALIC in Chinese.

19. In response, *Mr. Tirado* explained that due to the strong public law components, this Guide would probably not become an UNIDROIT-Principles type of instrument but would rather be more akin to a general guidance instrument which can serve as the basis for further implementation in domestic laws.

Session 2: Drafting and Implementing Responsible Agricultural Land Investment Contracts – A Review of Key Issues

20. Introducing this Session, *Ms. Hongliu Gong* (Associate Professor and Depute Dean of University of International Business and Economics) emphasized that this may be the more difficult one as it aims to examine the key issues of drafting and implementing the ALIC Guide. He introduced the three speakers, their topics, and the discussant.

21. *Mr. Virgilio de los Reyes* (Professor and Deputy Dean of De La Salle University School of Law) spoke about the obligations of the two main parties involved in these kinds of investment contracts, namely the grantor and the investor. He noted the grantor refers to the legal tenure rights holder, as recognized by the local law. Hence, the first issue that may appear relates to the identification of who is the grantor. The grantor can be national or local governments and local communities can be represented by smallholders with tenure rights or indigenous peoples' communities recognized by the government.

22. However, he underlined that it is not enough to only look at the legal tenure rights holders and drew attention to the need to also consider legitimate tenure rights holders. They may not necessarily have the ownership rights but are on the site and their interests may potentially be affected by the contracts signed between the grantor and the investor. Sometimes, their rights may not even be recognized by the local law.

23. He highlighted the issue of double hatting of host state governments, acting both as a grantor and as a regulator of land policies making it even more complicated to define who the parties to the contract are. The ALIC Guide does not define who is the grantor but it draws attention to this crucial question by encouraging legal counsels to ask themselves who is the grantor according to domestic laws.

24. *Mr. de los Reyes* highlighted that investors also need to look at the authority of the representatives of the local communities to grant land rights. He explained that in the case of the Philippines, the law on indigenous peoples was passed in 1998 and the boundaries of their authority and rights are still not clear under domestic laws. He believed this problem might exist in other countries too.

25. Regarding the boundary of regulations, whatever land regulations exist, the investor needs to consider whether the grantor is the government or the local community. When the grantor is the government, it may hold the legal title to the land, but the actual control of the land may be with the local community. Issues faced by local communities and legitimate tenure rights holders surrounding a particular parcel of land may also include, for instance, issues related to water access and use.

26. When governments enter into a land lease contract, it is the same body regulating market access and export matters. In this case, the governments also have two hats, both as a grantor and as a regulator, and this becomes really complicated. Governments as regulators have their own targets for job creation and social agenda setting. This is therefore one of the main messages that the ALIC Legal Guide should flag to the investors, and at the same time, remind the governments of their undertakings and obligations that they may have and that are prevailing under soft law. Investors may have dual roles considering their obligations under soft law and operational policy, as ethical investment funds. Finally, Mr. de los Reyes mentioned that the ALIC Guide highlights important methods to monitor, keep transparency in monitoring, and to define confidential information.

27. *Mr. Matteo Marchisio* (IFAD representative in China, Mongolia and North Korea, and Head of the East Asia Regional Center and South-South Cooperation Center) shared his views on the potential uses of the ALIC Guide. He believed that the legal guide can enhance people's understanding of various investment models, promote the unification of international standards, and protect tenure rights. He considered the ALIC Guide as an "innovation to achieve SDGs 1 and 2". He noted that current financial commitments to achieve the SDGs by 2030 are insufficient and that further commitments will undoubtedly be required.

28. Through the Guide, he hopes to raise awareness of alternative investment laws, provide legal guidance on international standards, and help ensure that the leases of agriculture land are done responsibly by protecting the tenure right holders. He mentioned that, in IFAD projects, the Guide will find immediate operational uses to provide guidance to the government it lends to and to deal with the legal rights regarding land and other environmental resources. He drew attention to women being at the core of IFAD's target group, explaining that women represent less than 15% of the landowners and are less likely to have legal land rights.

29. *Ms. Qingying Ho* (Professor from National University of Singapore School of Law) spoke on the topic of remedies for non-performance and dispute resolution. She first introduced the functioning of the Working Group and then walked the audience through Chapters 4 and 6 of the draft Guide; explaining the excuses for non-performance found in the former and remedies for breach of contract provided in the latter.

30. During the discussion, *Ms. Yongmin Bian* (Professor from University of International Business and Economics) emphasised that the ALIC Guide promotes responsible agriculture. However, Chinese scholars have discussed for years what is responsible agriculture and how to be responsible. She summarised the major points of previous speakers and proposed her own questions. First, Chinese domestic law does not feature the concept of land tenure, and even the Chinese translation of the very concept is still under discussion. Further, she was afraid that the ALIC Guide might sometimes be in conflict with domestic norms. She remarked that the Guide needs to be adapted to the Chinese legal context and address these differences using compatible terminology otherwise there may be a problem with persuading legal counsels in China to apply this Guide.

31. She shared three remarks regarding the linkage between the ALIC Guide and existing domestic standards. First, she suggested the adoption of more detailed guidelines for the implementation of topics where there is already some existing guidance. For example, regarding

environmental impact assessment, while each country may have its own standards and guidance, people may still not know how to conduct them or find the concept problematic.

32. Second, regarding the protection of indigenous people, Chinese law only contemplates minority groups and is not concerned with indigenous people. It may therefore take time for legal counsels to understand what the differences between indigenous peoples and minority groups are.

33. Lastly, regarding transparency and disclosure, while the ALIC Guide promotes transparency, documents containing certain types of information, even though not confidential, may nevertheless be subject to protection under domestic law and an investor may not be in a position to disclose them, especially when a state-owned enterprise is involved. She thus advised that the ALIC Guide take account of the local context and make adaptations accordingly.

34. Regarding how to adapt the Guide to local and regional situations, Ms. Bian mentioned that people have different understandings of certain issues. For example, the gender of the main labour force is different in each country. She suggested compiling best practices to help people to understand how this Guide would work in different regions and states.

35. Her final point concerned the section covering grievance mechanisms, which she highlighted as an efficient and inexpensive way to solve problems before they amount to disputes, and she was glad to see some sections devoted to grievance mechanisms in the ALIC Guide. She considered it advisable to include some concrete case studies/examples to illustrate and promote grievance mechanisms by showing what works in specific cultures and countries. She believed that the ALIC Guide should take a stronger stand on the legal issues and give direct recommendations.

36. In response to Ms. Bian's last point, *Ms. Ho* explained that the Working Group decided not to give concrete recommendations nor to include case studies after much deliberation, in order to maintain a neutral approach and avoid the perception of favouring one option over the others. She explained these choices shall be made by the contracting parties and added that the ALIC Guide provides guidance and recommendations in a more subtle way by highlighting some issues that probably require further attention.

37. *Ms. Jingxia Shi* (Professor and Dean of University of International Business and Economics) joined the discussion and expressed her concern that for a legal guide such as the ALIC Guide, at least in China, if there are no recommendations included, this instrument might only be of interest to academics and not to the legislators nor the parties.

38. Further on this point, *Ms. Ho* stated that the Working Group is constrained by their mandate. Mr. de los Reyes shared the Filipino experience on contract farming noting that to adapt the Legal Guide on Contract Farming to the local situation in the Philippines they adapted it to Filipino laws.

39. *Ms. Hongrui Chen* (Professor from Xi'an Jiaotong University School of Law) raised two issues: first, whether or not public consultations should be required at the stage of contract drafting, and second, how stakeholder rights would be protected in arbitrations that are conducted in private.

40. In response to the first issue, *Ms. Ho* considered it sufficient to consult only relevant stakeholders for the purpose of contract drafting, instead of holding a broad public consultation; and to the second issue, she believed that most investor-state disputes are public thanks to information platforms, such as the Investment Arbitration Reporter and the Global Arbitration Review.

41. *Mr. Yuhua Li* (Assistant Professor at the University of International Business and Economics Law) posed a question on the double hatting of the host state when a dispute arises from non-performance of a contract by the state, and whether or not its roles should be distinguished while not performing the contract, and to which extent it would affect the outcome of the case. In response,

Mr. de los Reyes mentioned that the choices are given by Ms. Ho, tracing a link from the chapter on state obligations to the chapter on dispute resolution.

III. SUMMARY OF RECOMMENDATIONS FOR THE ALIC ZERO DRAFT

42. The topics listed below reflect the main recommendations that the Working Group may wish to consider when reviewing the ALIC Zero Draft. The ALIC Guide could:

Insert language

- i. to cover the “elimination of poverty” in the purpose of the Guide (see above, para. 17);
- ii. to provide a more precise translation for legal terms which may not exist in the domestic context. For example, in the Chinese legal context, terms such as “tenure” and “indigenous peoples” do not exist. Scholars have provided similar terms: “tenure rights” may be similar to “the right to manage rural land” in Chinese legal context, and the term “indigenous peoples” may be similar to “minorities” in Chinese legal context (see above, paras. 11 and 30);

Further clarify

- iii. that women are less likely to have legal rights over land in China and address the issue of women’s customary rights to land, especially after marriage with a non-community member (see above, paras. 14 and 28);
- iv. investors' dual roles: obligations under soft law and authority to adopt operational policy (see above, para. 26);
- v. the issue of double hatting of host state governments when acting as both the grantor and the regulator of land policies and market access of agriculture products (see above, para. 23);
- vi. the challenges when governments are the grantor, but the actual control of the land may be with the local community (see above, para. 25);
- vii. that boundaries concerning the authority and rights of the representatives of the local community may not be clear under domestic laws (see above, para. 24);
- viii. non-confidential information that is subject to protection according to domestic law (see above, para. 33);
- ix. to refer to case studies/examples that illustrate what works in specific cultures and countries (see above, para. 35);

Provide more guidance

- x. on topics treated in the Guide where there already are existing standards and guidance at the domestic level. For example, regarding environmental impact assessment, while each country may have its own standards, people may still not know how to conduct them or find the concept problematic (see above, para. 31);
- xi. on methods to ensure transparency in monitoring (see above, para. 26);
- xii. on best practices to help people understand how a contract should be drafted and how this Guide would work in different regions and states (see above, para. 34);
- xiii. on whether public consultations should be required at the stage of contract drafting and how to protect stakeholders' rights in arbitrations that are conducted in private (see above, para. 39);
- xiv. on whether the function of the host state as grantor or regulator should be distinguished in a dispute and to which extent this may affect the outcome of the case (see above, para. 41).

ANNEX I

PROGRAMME

III. Conference Agenda 三、会议议程

UNIDROIT and China:
The Cape Town Convention, Investing in Agriculture and UPICC
“商法统一化：国际发展及中国回应”国际研讨会



Agenda 议程

8-9 July 2019
2019年7月8日-9日

China University of International Business & Economics (UIBE) Beijing
对外经济贸易大学，北京

III. Conference Agenda

三、会议议程

8:30 – 9:00 Registration

8:30 – 9:00 签到

DAY 1 - Monday 8 July

第一天 2019年7月8日

UNIDROIT – SECURED TRANSACTIONS and AGRICULTURE LAND
INVESTMENT CONTRACT

国际统一私法协会：担保交易与农业用地投资合同

9:00 – 9:30 Opening session

Moderator: Prof. Shi Jingxia, Dean, UIBE Law School

主持人：石静遐教授，对外经济贸易大学法学院院长

1. Prof. Ignacio Tirado, Secretary General, UNIDROIT

Ignacio Tirado教授，国际统一私法协会秘书长

2. Mr. Ye Jun, Department of Law and Treaties, MOFCOM

叶军，商务部条法司副巡视员

3. Mr. Yin Baohu, Director, Center for Chinese Legal Exchange, China Law Society

尹宝虎，中国法学学术交流中心主任

Group photo 合影

9:30 – 15:15 The Cape Town Convention, Rail Protocol, MAC protocol and its Potential benefits to China

9:30 – 15:15 《开普敦公约》和《铁路议定书》、《MAC议定书》及其对中国的潜在利益

9:30 – 10:45 SESSION 1 - UNIDROIT's instruments to facilitate the financing of high value mobile equipment – A focus on the Rail Protocol

9:30 – 10:45 第一单元：国际统一私法协会“便利高价值移动设备融资的国际公约”——聚焦《铁路议定书》

A session intended to present the Cape Town Convention on International Interests on Mobile Equipment, with particular regard to its Rail Protocol, which is designed to facilitate financing of railway rolling stock. With the Rail Protocol likely to enter into force in the near future, this session will discuss its potential benefits for China including a perspective from the industry. For more information: <https://unidroit.org/secured-transactions> and <https://www.railworkinggroup.org/>.

本环节旨在讨论《开普敦移动设备国际利益公约》，特别是关注该公约的《铁路议定书》，其被设计用于便利铁路轨道融资。鉴于《铁路议定书》很可能在近期生效，本环节将讨论其对中国的潜在利益，包括实务界对该问题的观点。关于本环节讨论对象的更多信息，请参见：<https://unidroit.org/secured-transactions> 和 <https://www.railworkinggroup.org/>

Moderator: Ms. Liu Hong, Department of Law and Treaties, MOFCOM

刘红处长，商务部条法司流通处

Speaker 1 - The Cape Town Convention System: An overview

《开普敦公约》体系：概览

Prof. Anna Veneziano, Deputy Secretary-General, UNIDROIT

Anna Veneziano教授，国际统一私法协会副秘书长

Speaker 2 - The Luxembourg Rail Protocol: Its expected benefits for China

UNIDROIT《卢森堡铁路议定书》：对中国的预期利益

Mr. Howard Rosen, Chair of the Rail Working Group

Howard Rosen, UNIDROIT《铁路议定书》工作组主席

Speaker 3 - International Interests under the Cape Town Convention and the Luxembourg

Rail Protocol: Comparing with Chinese Substantive Law

《开普敦公约》及《铁路议定书》构建的权利体系——兼与我国实体法的比较

Prof. Gao Shengping, School of Law, Renmin University of China (RUC)

高圣平教授，中国人民大学法学院

Discussant: 与谈人

Ms. Duan Jin, Deputy Division Director, National Bureau of Railway Administration

段瑾，国家铁路局科技与法制司法规处副处长

Q&A (15-20 Minutes)

提问交流 (15-20分钟)

III. Conference Agenda

三、会议议程

10:45 – 11:00	Coffee break (茶歇)
<p>11:00 – 12:30 SESSION 2 - UNIDROIT's instruments to facilitate the financing of high value mobile equipment – The MAC Protocol – Legal Operation and Economic Benefits</p> <p>11:00 – 12:30 第二单元：国际统一私法协会关于便利高价值移动设备融资的法律文件： 《采矿、农业及建筑设备议定书》—法律运作及经济利益</p> <p>A session intended to explain the legal operation of the draft MAC Protocol, focusing on the major innovations in the MAC Protocol, as compared with the existing Protocols. This session would also look at broader issues, including the independent economic assessment of the MAC Protocol (https://www.unidroit.org/english/documents/2018/study72k/1808-final-mac-protocol-ea.pdf) and how the private sector has been involved in negotiations. For more information: https://www.unidroit.org/work-in-progress/mac-protocol.</p> <p>本环节旨在解释《采矿、农业及建筑设备议定书》的法律体系及运作，集中于该议定书与现有议定书相比的主要创新方面。本环节也将涉及更广泛的法律问题，包括对该议定书的独立经济利益评估参见：https://www.unidroit.org/english/documents/2018/study72k/1808-final-mac-protocol-ea.pdf 以及私有行业在该议定书谈判中的参与。关于更多信息，请参见：https://www.unidroit.org/work-in-progress/mac-protocol</p> <p>Moderator: Prof. Zhang Yuejiao 主持人：张月姣教授，清华大学法学院</p> <p>Speaker 1 - The MAC Protocol: An overview 《采矿、农业及建筑设备议定书》：概览 Prof. Megumi Hara, Gakushuin University, Japan Megumi Hara教授，日本学习院大学</p> <p>Speaker 2 - The economic benefits of adopting the MAC Protocol 采纳《采矿、农业及建筑设备议定书》的经济利益 Prof. Ignacio Tirado, Secretary-General, UNIDROIT Ignacio Tirado教授，国际统一私法协会秘书长</p> <p>Speaker 3 - Private sector views on the MAC Protocol 私人部门关于《采矿、农业及建筑设备议定书》的看法 Mr. Phil Durham, Secretary-General, MAC Working Group Phil Durham，《采矿、农业及建筑设备议定书》工作组秘书长</p> <p>Discussant: 与谈人 Pan Limei, Division Director, Department of Law, China Banking and Insurance Regulatory Commission (CBIRC) 潘李美，中国银行保险监督管理委员会法律部备案审查处处长</p> <p>Q&A (15-20 Minutes) 提问交流 (15-20分钟)</p>	

III. Conference Agenda 三、会议议程

12:30 – 13:30	Lunch (午餐)
<p>13:30 – 15:00 SESSION 3 - UNIDROIT's instruments to facilitate the financing of high value mobile equipment – The MAC Protocol – Benefits for China and preparations for the Diplomatic Conference</p> <p>13:30 – 15:00 第三单元：国际统一私法协会关于便利高价值移动设备融资的法律文件——《采矿、农业及建筑设备议定书》对中国的利益及南非外交大会的准备</p> <p>A session focused on the MAC Protocol's relevance in China, and how both the MAC Protocol and Rail Protocol might support the Belt and Road Initiative. The purpose of this session would be to concentrate on China-specific issues, as well as provide guidance for China as it prepares to participate in the MAC Protocol Diplomatic Conference in November 2019.</p> <p>本环节集中讨论《采矿、农业及建筑设备议定书》对中国的意义，以及该议定书和《铁路议定书》如何共同支持中国的“一带一路”倡议。本单元的目的是集中讨论与中国相关的议题，同时为中国准备参加的将于2019年11月于南非开普敦举行的《采矿、农业及建筑设备议定书》外交大会提供建议。</p> <p>Moderator: Fu Jun, Professor, UIBE Law School 主持人：伏军，对外经济贸易大学法学院教授</p> <p>Speaker 1 – Preparations for the MAC Protocol Diplomatic Conference and beyond 《采矿、农业和建筑设备议定书》外交大会的准备及后续工作 Mr. Will Brydie-Watson, Senior Legal Officer, UNIDROIT Will Brydie-Watson先生，国际统一私法协会高级法律官员</p> <p>Speaker 2 – The Cape Town Convention System and its relevance for the Belt and Road Initiative 《开普敦公约》体系及其与“一带一路”倡议的关联性 Liu Yang, Associate Director, Corporate Finance, Price water house Coopers Consultants (Shenzhen) Limited, Beijing Branch 刘洋，普华永道咨询(深圳)有限公司北京分公司企业融资与并购部副主任</p> <p>Speaker 3 – The MAC Protocol: expected benefits for China 《采矿、农业及建筑设备议定书》：对中国的预期利益 Ms. Zhang Zhiping, Filong Law Firm 张稚萍律师，汇融律师事务所主任</p> <p>Discussant: 与谈人 Li Yaning, Associate Professor, China Academy of Civil Aviation Science and Technology 李亚凝，中国民航科学技术研究院，副研究员</p> <p>Q&A (15-20 Minutes) 提问交流 (15-20分钟)</p>	

III. Conference Agenda

三、会议议程

15:00 – 15:30	Coffee break (茶歇)
<p>15:30-18:00 Consultation on the Forthcoming UNIDROIT—FAO—IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC)</p> <p>15:30-18:00 针对“国际统一私法协会—世界粮农组织—国际农业发展基金组织”共同制定中的《农业用地投资合同立法指南》咨询会议</p> <p>15:30-16:45 SESSION 4 – The forthcoming UNIDROIT-FAO-IFAD Legal Guide on Agricultural land investment contracts and China</p> <p>15:30 – 16:45 第四单元：拟定中的国际统一私法协会—世界粮农组织—国际农业发展基金组织《关于农业用地投资合同立法指南》与中国</p> <p>A session intended to disseminate UNIDROIT - in partnership with FAO and IFAD - work of preparation of a Legal Guide on Agricultural Land Investment Contracts (for more information, see https://unidroit.org/work-in-progress/agricultural-land-investment) now in its final stage of elaboration, and to receive inputs regarding practical and legal issues raised by such contracts from a Chinese perspective.</p> <p>本环节旨在发布关于国际统一私法协会 - 与世界粮农组织和国际农业发展基金组织合作制定的《关于农业用地投资合同立法指南》的相关信息并征求意见。关于该立法指南的更多信息，请参见：https://unidroit.org/work-in-progress/agricultural-land-investment</p> <p>该《立法指南》目前处于最后的考虑阶段，希望收到基于中国立场和观点对此类合同引发的实务和法律问题的相关意见和反馈。</p> <p>Moderator: Gan Zangchun, Vice President, China Law Society 主持人：甘藏春，中国法学会副会长</p> <p>Speaker 1 – An introduction to the future UNIDROIT FAO IFAD Legal Guide on agricultural land investment contracts 对未来UNIDROIT-FAO-IFAD 关于农业用地投资合同立法指南》的介绍 Prof. Ignacio Tirado, Secretary-General, UNIDROIT Ignacio Tirado教授，国际统一私法协会秘书长</p> <p>Speaker 2 – Land tenure rights and responsible investments as founding principles 作为基本原则的土地保有权和负责任的投资 Mr. Vincent Martin, FAO Representative in China and DPR Korea Vincent Martin, 世界粮农组织驻中国和朝鲜代表</p> <p>Speaker 3 – Setting the scene from a Chinese perspective: an overview of legal issues regarding agricultural land investments 基于中国观点的背景设定：有关农业土地投资的法律问题概览 Prof. Yao Jia (Chinese Academy of Social Science, Institute of Law) 姚佳，中国社会科学院法学研究所研究员</p> <p>Discussant: 与谈人 Qin Jingyun, Assistant Professor, Administration and Management Institute, Ministry of Agriculture and Rural Affairs 秦静云，农业农村部管理干部学院助理研究员</p> <p>Q&A (15-20 minutes) 提问交流</p>	

III. Conference Agenda 三、会议议程

16:45 – 18:00 SESSION 5 – Drafting and implementing responsible agricultural land investment contracts – A review of key issues
16:45 – 18:00 第五单元 – 草拟及实施负责任的农业土地投资合同：关键问题概览

A session intended to receive inputs on the ALIC Zero Draft (access the online consultation webpage at <https://unidroit.org/work-in-progress/agricultural-land-investment/online-consultation> with a link to the full text of the ALIC Zero Draft) with an overview of key issues in drafting and implementing responsible agricultural land investment contracts in China and in the Asian region, and a discussion from the practitioners' perspective.

本环节旨在接受对于国际统一私法协会正在拟定中的《农业用地投资合同》(ALIC) 的示范指南草案(该草案的完整版本内容请参见: <https://unidroit.org/work-in-progress/agricultural-land-investment/online-consultation>) 的反馈意见。本环节将对起草该指南以及在中国和亚洲地区实施负责任的农业用地投资合同的主要问题进行讨论, 包括产学研界的相关观点。

Moderator: Associate Professor Gong Hongliu, Depute Dean, UIBE Law School

主持人: 龚红柳副教授, 对外经济贸易大学法学院副院长

Speaker 1 – Parties' obligations

当事方的义务

Prof. Virgilio de los Reyes, Associate Dean, De la Salle University, the Philippines

Virgilio de los Reyes教授, 菲律宾德拉萨大学法学院, 副院长

Speaker 2 – IFAD's experience in the Asian Region

国际农业发展基金组织在亚洲地区的经验

Mr. Matteo Marchisio, Country Director and Representative (China, Mongolia, DPRK)

Head of East Asia Regional Hub and South-South Cooperation Center

Matteo Marchisio 先生, 国际农业发展基金组织驻中国、蒙古和朝鲜代表、

东亚区域中心和南南合作中心负责人

Speaker 3 – Remedies for non-performance and dispute resolution

不履行义务的救济措施和争端解决

Prof. Ho Qing Ying, Faculty of Law, National University of Singapore

Ho Qing Ying教授, 新加坡国立大学法学院

Discussant: 与谈人

Prof. Gao Shengping, School of Law, Renmin University of China (RUC)

高圣平教授, 中国人民大学法学院

Q&A (15-20 minutes)

提问交流

18:30 – 20:00

Dinner (晚餐)

III. Conference Agenda 三、会议议程

<p>12:05–12:15 The release of Chinese version of UPICC (2016) UNIDROIT and Donation to UIBE Law School 12:05–12:15 《国际商事合同通则》第四版中文版发布及向贸大法学院赠书仪式</p> <p>Speaker 1: Mr. Guo Zhouming, President of the Commerce and Trade Press, Chief Editor of "International Trade" 郭周明, 中国商务出版社社长, 《国际贸易》杂志社社长兼主编</p> <p>Speaker 2: Prof. Zhang Yuqing, China University of Politics and Science (CUPL) 张玉卿教授, 中国政法大学国际法学院, 曾任UPICC工作组专家</p>	
<p>Closing Remarks: (12:15 - 12:30) 闭幕致辞</p> <p>1. Prof. Ignacio Tirado, Secretary-General, UNIDROIT Ignacio Tirado教授, 国际统一私法协会秘书长</p> <p>2. Prof. Shi Jingxia, Dean, UIBE Law School 石静璇教授, 对外经济贸易大学法学院院长</p>	
12:30 – 14:00	Lunch (午餐)

Note

1. The symposium will be conducted both in English and Chinese. Simultaneous translation between Chinese and English will be provided.
2. The registration is free for this conference. Meals will be only provided to those special invited speakers and guests.
3. The UNIDROIT materials can be downloaded at the following website:
<https://pan.baidu.com/s/1O0Ka9Da2eJ2L8M9MWWFPqg>, password: r270

会议提醒事项

1. 会议语言为中英文, 提供中英同声传译。
2. 本次会议免收会务费。仅向特邀演讲人和参会嘉宾提供餐饮。
3. 会议所涉及的UNIDROIT文件, 可在以下网址下载:
<https://pan.baidu.com/s/1O0Ka9Da2eJ2L8M9MWWFPqg>, 提取码: r270

ANNEX II

PRESENTATIONS



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

Private Law and Agricultural Development: Draft Legal Guide on Agricultural Land Investment Contracts



Prof. Ignacio Tirado
Secretary-General
UNIDROIT

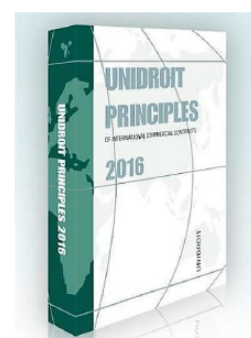


INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Background: Private law and agricultural development

UNIDROIT Principles of International Commercial Contracts:

- Prepared by a group of eminent experts in the field of international contract law representing all major legal systems and geo-political regions of the world
- Identify principles and offer commentary for virtually all important topics in contract law (e.g. formation, agency, validity, interpretation, content, third-party rights, conditions, performance, non-performance, transfer of rights, limitation periods)
- For use, *inter alia*, by parties in negotiating contracts or resolving disputes
- Fourth edition released in 2016, with additional provisions addressing long-term contracts





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Background: Private law and agricultural development

- **Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects”** (8-10 November 2011), focused on the following potential areas of work:

- title to land;
- contracts for investment in agricultural land;
- legal structure of agricultural enterprises;
- contract farming; and
- the financing of agriculture.

- The Acts of the Colloquium were published in the *Uniform Law Review*. See XVII UNIF. L. REV. (2012-1/2).



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GOVERNING COUNCIL
85th session
Rome, 10 - 12 May 2010

EN
October 2010
C.O. (99) 17
Original: English
November 2010

REPORT

(prepared by the Secretariat)

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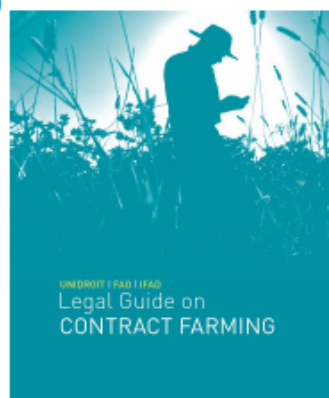
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Background: Private law and agricultural development

- 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.
 - Preface and Introduction
 - The Legal Framework
 - Parties, Formation and Form
 - Obligations of the Parties
 - Excuses for Non-Performance
 - Remedies for Breach
 - Duration, Renewal and Termination
 - Dispute Resolution
- 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.



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Agricultural Land Investment Contracts: Process

Following the adoption of the Legal Guide on Contract Farming, the Secretariat prepared a **feasibility study** regarding possible work on agricultural land investment contracts:

- taking stock of the present situation, in particular existing initiatives relevant to agricultural land investment contracts (e.g. VGGT, CFS-RAI Principles, UN Guiding Principles on Business and Human Rights, IFC Performance Standards);
- examining whether a possible UNIDROIT instrument would be of additional benefit in this field; and
- ultimately concluding with the recommendation that UNIDROIT undertake work to provide legal guidance on private law aspects of such contracts.

UNIDROIT 2016 – C.D. (95) 7(b) 5



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Agricultural Land Investment Contracts: Process (continued)

- Work on agricultural land investment contracts was approved in 2016, with a high level of priority.
- The Working Group on Agricultural Land Investment Contracts was constituted in early 2017 and has since held four meetings: (1) 3-5 May 2017; (2) 13-15 September 2017; (3) 25-27 April 2018; and (4) 9-11 October 2018.
- Outreach activities have included a Side Event and two informal meetings held at CFS 45, CFS 44 and CFS 43 respectively, as well as participation in various conferences to raise awareness about the work and seek expert and stakeholder input.
- Progress thus far has resulted in an initial consolidated draft of the Legal Guide which has been made available on UNIDROIT's website in May 2019.

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Future Legal Guide: Purpose

- To offer contractual guidance that is consistent with the UN Guiding Principles, VGGT, CFS-RAI Principles and other international instruments in order to promote greater and more responsible agricultural investment
- In doing so, the Guide does not seek to promote large-scale land acquisitions. In acknowledging that such acquisitions continue to occur, however, it raises awareness about alternative investment models (e.g. contract farming) and helps to ensure that leases of agricultural land are done responsibly and that stakeholders' rights, particularly those of legitimate tenure right holders, are protected and respected.

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Future Legal Guide: Scope

- **Land leases:** Agricultural land investment contracts involving grants of tenure and related rights for a specified time (e.g. investment contracts, concessions, leases) and not those involving sales.
 - Leases are currently known to be more common than sales.
 - Leases entail ongoing obligations, which allows for use of contractual safeguards and for monitoring of the parties' obligations.
- **Possible parties and stakeholders:** Investors, governments, local communities, legitimate tenure right holders and private landowners.
- **Contractual arrangements:** Diverse contractual arrangements to be covered (e.g. different types of contracts, mixed business models, community development agreements).

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Future Legal Guide: Target Audience and Approach

- **Target audience:** Legal counsel involved in the preparation, negotiation and implementation of agricultural land investment contracts.
- **Approach:** To follow a concrete approach based upon contract principles and practices and actual investment operations.
 - The draft Legal Guide refers to international instruments (e.g. the VGGT, the CFS-RAI Principles, the UN Guiding Principles, UNIDROIT instruments), as well as related guidance documents promulgated by inter-governmental Organisations (e.g. the FAO Governance of Tenure Technical Guides).
 - In making these references, it seeks to be comprehensive, while avoiding duplication of existing guidance.

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Future Legal Guide: Content

Preface and Introduction:

- To set out the purpose and approach, to introduce agricultural land investment contracts and other key terms, and to define the Legal Guide's scope.

Chapter 1 - The Legal Framework:

- To assist with the evaluation of the applicable legal framework, including understanding of customary systems and rules, and the identification of gaps in that framework for which contractual safeguards might be needed.

Chapter 2 - Parties, Contractual Arrangements, Due Diligence and Formation:

- 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 might be needed.

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Future Legal Guide: Content (continued)

Chapter 3 - Rights and Obligations of the Parties:

- To assist with the negotiation of provisions in various areas (e.g. land tenure; social and economic issues, including food security, gender and youth; environment; investment protection and regulatory autonomy; and monitoring and implementation).
- Particular emphasis is 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.

Chapter 4 - Contractual Non-Performance and Remedies:

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

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Future Legal Guide: Content (continued)

Chapter 5 - Transfer and Return:

- To flag issues that might arise – regarding the transfer of leased land from one investor to another or the return of the land at the end of the lease – and to analyse possible contractual provisions for addressing those issues.

Chapter 6 - Grievance Mechanisms and Dispute Resolution:

- To assist with understanding various grievance and dispute resolution possibilities and setting them out in the contract in order to create a more balanced and sustainable contract.

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Next Steps and Request for Input

- **Summer 2019:** Open Internet consultation, as well as regional consultation events held around the world, in coordination with Working Group experts, to seek further input on the draft Guide from stakeholders.
- **Fall 2019 – Spring 2020:** The Secretariat, in coordination with the Working Group, is to revise the draft Guide for submission to the UNIDROIT Governing Council for adoption.
- The Working Group would welcome any input that interested stakeholders may wish to submit to the UNIDROIT Secretariat at info@unidroit.org.
- More information about the project is available at <https://www.unidroit.org/work-in-progress/agricultural-land-investment>.
- For comments to the Zero ALIC draft: <https://www.unidroit.org/work-in-progress/agricultural-land-investment/online-consultation>

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Thank you for your attention!





PARTIES' OBLIGATIONS in Agricultural Land Investment Contracts

VIRGILIO RAMOS DE LOS REYES

Acting Dean

College of Law

De La Salle University

Manila, Philippines

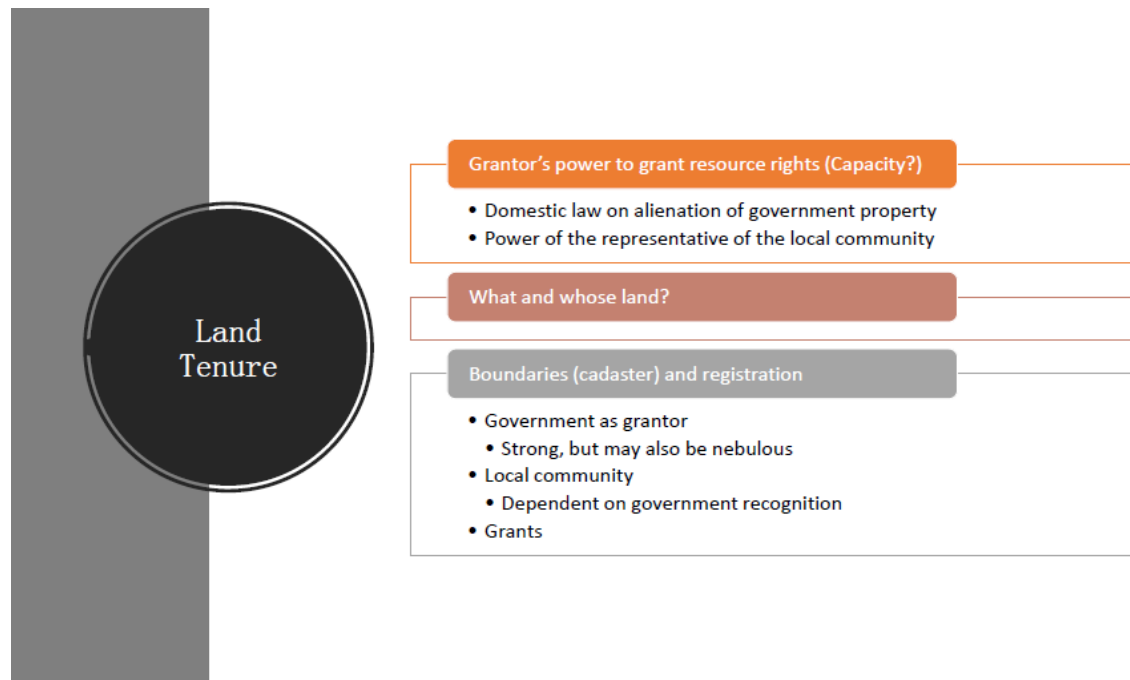
PARTIES

Legal Guide on Contract Farming – production of agricultural products

- Agricultural producer
- Contractor
- Other parties

Legal Guide on Agricultural Land Investment Contracts – use of land

- PARTIES
 - **Grantor** [Government (various levels) or Local Community]
 - Legal Tenure Right Holder (LgLTRH) recognized by local law
 - **Investor**
 - Seeks to obtain use of the land (resource rights)
 - Legitimate Tenure Rights Holder (LegTRH)
 - On-site
 - Affected by the contract between INVESTOR and GRANTOR
 - May or may not be recognized by local law
 - Other stakeholders
 - Generally outside the boundaries of the land, but affected



Land Tenure

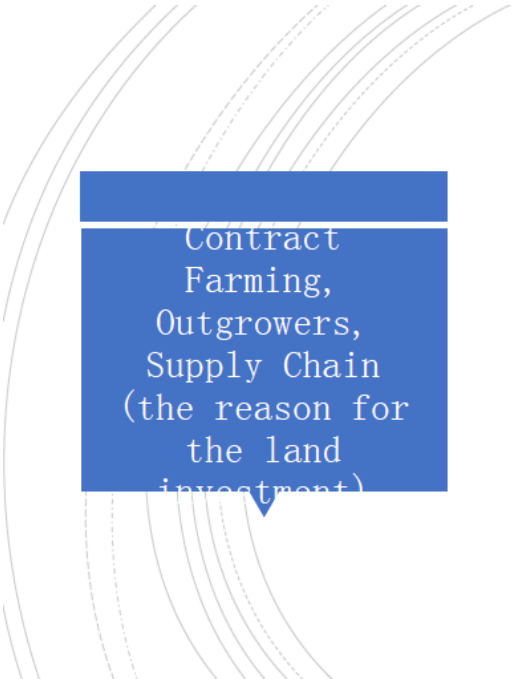
- Ancillary issues (affects LegTRH and other stakeholders)
 - Water
 - Access
 - Infrastructure (and its maintenance)
 - Government (grantor) as builder of public goods
 - Investor as builder
 - Agricultural produce
 - Exportation
 - Market access
 - Government as regulator (and grantor)
 - Importation of inputs
 - Government as regulator (and grantor)

Land Tenure

- Monitoring Compliance with covenants (undertakings)
 - Targets (as it affects LegTRH, other stakeholders + citizens)
 - Duration of grants (limitations in domestic law)

Social and Economic Issues


- Gain by grantor (timing)
 - Direct (revenue – payment for use)
 - Straight revenue
 - Or thru a state-owned enterprise (or partially owned enterprise)
 - Indirect (benefit to other stakeholders (measuring????))
 - Increase in revenue (direct and indirect tax) collection
 - Job creation (local hires + training programs)
 - Other social agenda (gender, occupational safety standards)
 - Stimulating satellite industries (local content, sourcing, or mere increase in economic activity)



Contract Farming, Outgrowers, Supply Chain (the reason for the land investment)

- **CONTRACT FARMING:** “a particular form of supply chain governance adopted by firms to secure access to agricultural products, raw materials and supplies meeting desired quality, quantity, location and timing specifications. Contracting is an intermediate mode of coordination, whereby the conditions of exchange are specifically set among transaction partners by some form of legally enforceable, binding agreement. The specifications can be more or less detailed, covering provisions regarding production technology, price discovery, risk sharing and other product and transaction attributes”

[Da Silva, C.A., The Growing Role of Contract Farming in Agri-food Systems Development: Drivers, Theory and Practice. (Rome: Agricultural Management, Marketing and Finance Service, FAO, 2005). Cited in the UNIDROIT – FAO - IFAD Legal Guide to Contract Farming (2015)]



Contract Farming

- VGGT – large scale transfer of tenure rights
- See: (UNIDROIT –FAO-IFAD)Legal Guide on Contract Farming – 2015
- TWO GUIDES as ONE
- **CAVEAT**(warning)
 - Power asymmetry (imbalance of the negotiating powers)
 - Risk allocation among contracting parties (+ grantor of land)

(protecting
the) ENVIRONMENT

- Dual role of government as grantor
 - Grantor
 - Regulator [with responsibilities under domestic and international (+ soft) law]
 - May require compliance in the contract
- Investor's obligation under (soft) law or corporate policy (investment funds)

Protection
of
Investment
&
Regulatory
Autonomy

- Balancing act of government as grantor and regulator (again!!)
- Promoting investments
 - Investment (promotion) codes
 - International investment agreements (added protection)
 - Specific measures to protect agricultural investors
 - + contractual provisions for stability (*caveat – undue influence*)
 - Protection against expropriation + compensation (land expropriation – a different situation)

MONITORING and IMPLEMENTATION

- Land investment contracts have long periods (WARNING - several administrations of government officials)
- Needs monitoring (for the protection of the government officials and the investor) to ensure compliance
- OUTCOMES (benchmarks) and IMPACT
- MONITOR:
 - Access to land in exchange for QUANTIFIABLE obligations (fees, profit share, infrastructure)
 - Social obligations [to LegTRH, local community, contract growing (supply chain) partners, other social targets]
 - Environmental obligations
 - Physical security obligations (negative impact)

MONITORING and IMPLEMENTATION



Methods of monitoring

(transparent) Reporting and monitoring mechanisms

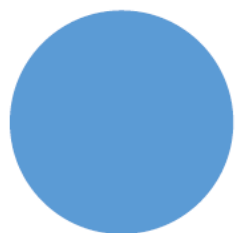
- (clear and measurable) Performance standards
- Bonds for performance



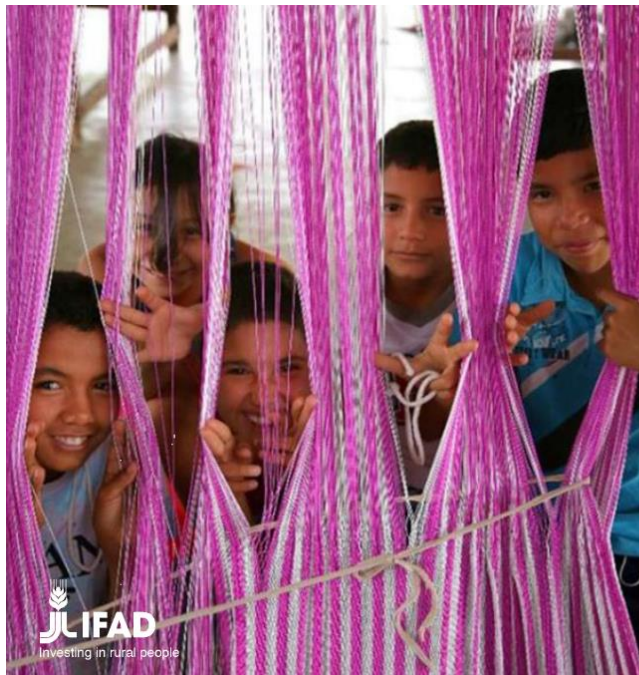
Confidential information

Defining at inception stage

Process for settling disputes on definition



END



UNIDROIT and China: The Cape Town Convention
Investing in Agriculture and UPICC
商法统一化: 国际发展及中国回应”学术研讨会

IFAD's Experience in the Asian Region

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July 2019

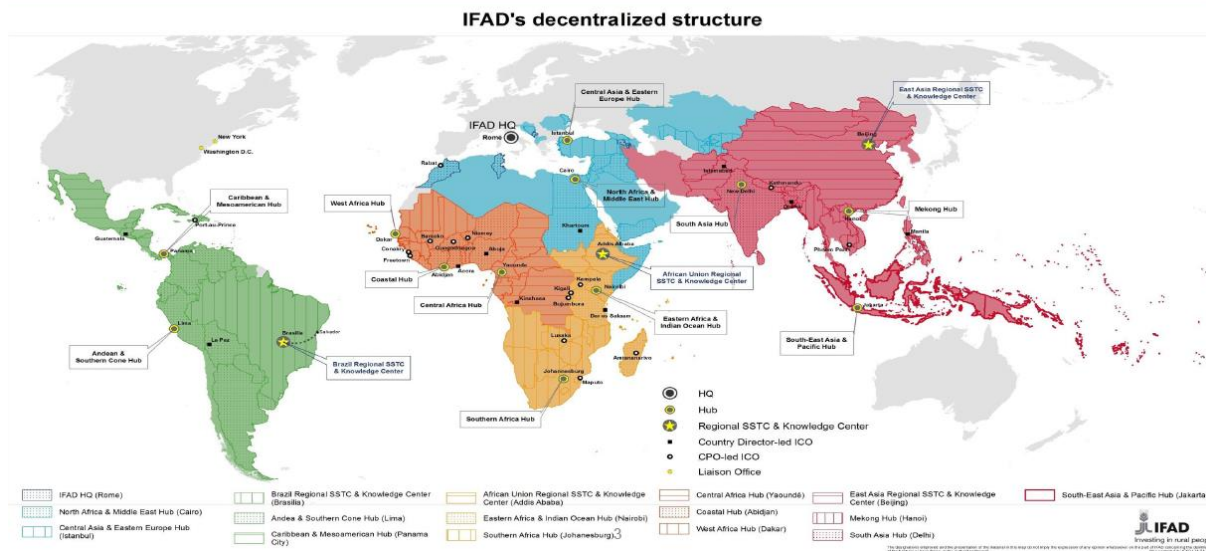


INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

IFAD has a **unique mandate** and **unmatched experience** working in **remote areas** where others don't go, and where **poverty is most entrenched**.



IFAD WORKS GLOBALLY IN 96 COUNTRIES



IFAD IN ASIA





Rural people face lack of food, lack of resources, lack of finance, lack of infrastructure and lack of options.

With increased investment, small farmers can raise production, connect to markets and improve their livelihoods.

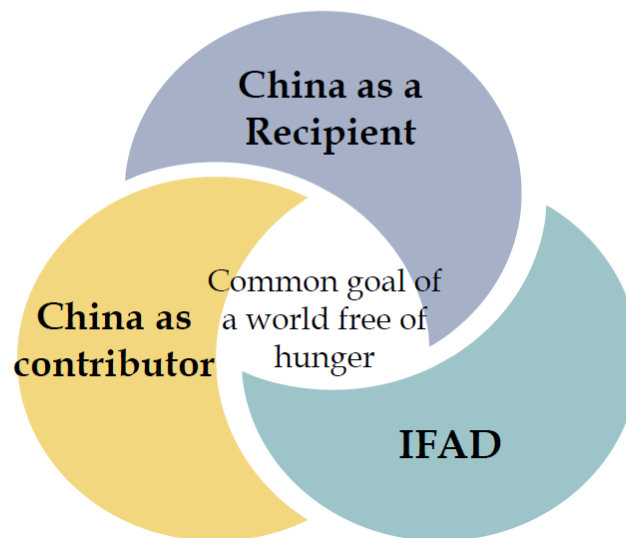
Agriculture is the main route out of poverty for rural people.

Food production will have to rise **60%** by 2050



About 40% of the 244 million international migrants are from rural areas

IFAD in China



Legal Guide

**1. Unequal Rights
to Land & Water**

**2. Alternative
investment
models**



**3. Cross-cutting
themes**

**4. Innovation to
achieve SDGs 1
and 2**

Thank you!

