Globally Important Agricultural Heritage Systems
An examination of their context in existing multilateral instruments
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The report analyses the international legal and policy matrix to assess the level of existing support for GIAHS and to ascertain the gaps in that support. This summary comprises a drastic paraphrase of the parent document.

1. Conservation

Many international legal and policy instruments deal with the protection of biodiversity and heritage in terms that could include GIAHS operations. There has been a noticeable trend during the last 15-20 years to protect and preserve traditional practices that conserve biodiversity. This is not just evident in new instruments but the trend has also been incorporated in the functioning of older conventions, such as RAMSAR, that are now developing guidelines and making policy decisions in this area. Therefore, it is possible to construe general support for GIAHS within these instruments.

Policy Instruments

Some paraphrased examples of policy support include:

Agenda 21

Support is evident in a number of clauses throughout the chapters. A pertinent example is Chapter 32 which, \textit{inter alia}, acknowledges indigenous and other rural families as stewards of natural resources.

Forest Principles

The principles urge support for indigenous peoples living in forests, the provision of an economic stake in forest use, the establishment of appropriate land tenure arrangements and equitable benefit sharing in relation to traditional knowledge.

Johannesburg Declaration on Sustainable Development

General support is extensive throughout the declaration. Paragraph 40(r) is particularly relevant to GIAHS in that it promotes the conservation, sustainable use and management of traditional and indigenous agricultural systems and \textit{[the strengthening of]} indigenous models of agricultural production.

International law

The conventions that are relevant in this field also provide extensive, potential support: some are referred to herein.

The Convention on Biological Diversity

Articles 8(j) and 10(c) of the CBD include the following mandates:

\ldots Respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity... (8(j)) and Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements \(10(c))

These provisions would seem to directly support GIAHS. Indeed, there is potential for the GIAHS concept to be specifically established in a protocol developed pursuant to these clauses. However, whereas GIAHS examples do support biodiversity they also support agricultural biodiversity. At times there can be conflicts that arise between the mandate to preserve pristine biodiversity and human-influenced biodiversity (and the appurtenant culture, heritage and traditions that are linked thereto) especially where they subsist in close proximity and can thus be seen to be in conflict. (As with the close proximity of primary and secondary forest biodiversity in shifting cultivation systems prevalent in many key rainforest zones.)

RAMSAR Convention

The convention refers to the human relationship with the environment only in its preamble. However, it has developed \textit{Guidelines for establishing and strengthening local communities’ and indigenous people’s participation in the management of wetlands} and \textit{Guiding principles for taking into account the cultural values of wetlands for the effective management of sites}. Both these documents would, to an extent, support GIAHS examples in wetland areas.

World Heritage Convention

The WHC’s Operating Guidelines were amended in 1992 to permit the inclusion of \textit{World Heritage Cultural landscapes} on the World Heritage List and increasingly the nominations for this category include agricultural sites. A number of examples of these types of landscapes would also be GIAHS candidates. However, the need for \textit{outstanding universal
value, in the context of the WHC criteria could limit the GIAHS sites that can be protected within the WHC. Further, it must be borne in mind that the volition and mandates that drive the WHC are not the same as the purposes of GIAHS.

UNESCO’s Man and Biosphere Programme

MAB is not based on the foundation of a treaty or a convention, nevertheless it appears to operate from a comparable point of strength. It seeks to preserve, inter alia: ingenious land-use practices which do not deplete the natural resources in Biosphere Reserves which are described by MAB as areas where such peoples can maintain their traditions, as well as improving their economic well-being through the use of culturally and environmentally appropriate technologies.

The potential for support of the GIAHS concept is thus evident. Further, the system of zoning deployed would lend itself well to the GIAHS concept particularly where there are conflicts between the volition to protect human influenced and “natural” biodiversity. However, the emphasis in GIAHS is different in that the central core zone will always be the place in which the human interaction with the environment is emphasised. Whereas MAB biosphere reserves tend to operate with a core zone in which human interference is more or less eradicated.

Other instruments

GIAHS is also supported from the perspective of land use and conservation by incidentally related instruments such as: The Convention to Combat Desertification and The international Treaty on Plant Genetic Resources for Food and Agriculture.

Multi protection

Many protected areas are protected by more than one regime. Some existing potential GIAHS sites may already possess a level of protection from WHC, MAB and also RAMSAR. There may be a need for GIAHS to establish joint ventures with these institutions to jointly designate and create management plans for such sites.

General

Support is extensive within conservation instruments but the emphasis of GIAHS is on agricultural biodiversity and heritage. In some cases biodiversity preservation initiatives would work in tandem with the GIAHS objectives but in others there could be conflicts especially in areas where the traditional perspective has been to exclude human activities from core protected areas. GIAHS cannot be restricted to secondary buffer zones. To do so would compromise the importance of these agricultural systems. The concept perceives the GIAHS operations as paramount and a GIAHS protected area would secure that the main, active interface of humans and the environment would take place in the core zone itself.

Therefore, to establish GIAHS effectively, and give it equal strength to existing institutions, it needs to be supported by a policy or legal instrument.

2. Land Tenure, the laws of indigenous and rural communities and Human Rights

Customary laws

The customary laws of GIAHS communities assist to support the GIAHS operations and are embedded within the culture and heritage that constitute fundamental components of GIAHS. A number of instruments support the persistence of these laws subject to fundamental protections for community members in the field of human rights. The most important instrument in this field is the International Labour Organisation Convention 169. Article 8 asserts the right of the peoples affected by the convention to retain their laws and institutions so long as these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights.

Land Tenure

GIAHS land practices invariably involve indigenous or rural communities working in a traditional manner often in ancestral lands. Clearly there will be a need for national law to protect the sites on which GIAHS takes place through designations to limit the activities thereon and through gradations of protection in zones (core zone, other traditional use zones and a surrounding protective buffer zone). On a more controversial note, there may also be a need to robustly deal with land tenure issues in respect of GIAHS lands in order to permit the practices to continue in a dynamic manner both in the directly cultivated areas and in the transitional zones that support the GIAHS communities. This is a complex and sensitive subject often avoided by existing laws dealing with conservation and
protected areas. Article 8(j) CBD, by example, confirms the need to involve indigenous peoples as stakeholders in conservation issues. However, it avoids committing to the unequivocal return of ownership in ancestral lands to indigenous peoples. There are obvious reasons why the CBD does not deal directly with the issue. There are difficulties resulting from the conflicting interests in range states between indigenous claims, the claims of other stakeholders and also governmental interests in mineral, forestry, fisheries and other natural resources in and on ancestral territories.

Further, in terms of biodiversity preservation the trend is often to exclude humans from protected areas whereas the reverse will be true for GIAHS sites making it all more the more important to address land tenure. Other instruments involved with the rights of indigenous peoples go much further but still may in some respects fall short of the grant of full tenure partly because the rights recognised by indigenous peoples may not conform to contemporary legal rights as defined by the prevailing regime within the range state. However, ILO 169 is relatively forthright. Article 14.1 states that the rights of ownership… of [GIAHS communities] over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken … to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Access to Natural Resources

In relation to access to natural resources the convention protects the rights of some GIAHS communities in their ancestral territories:

The rights of the peoples concerned to the natural resources pertaining to their [ancestral GIAHS] lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. (15.1)

However states may retain…

... the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands. (e.g. Oil, coal, timber, etc.) (15.2)

Right to development

Finally ILO 169 ensures that indigenous and traditional peoples in GIAHS communities are not restricted by the GIAHS designation in that Article 7.1 ensures that GIAHS communities have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use. In response to this a GIAHS instrument would need to deal with both the admission of sites and communities to the GIAHS designation and also the manner in which designation may be removed. In so doing the instrument would need to deal with the disentangling of obligations relating to ownership of traditional knowledge and other matters.

A fundamental issue also arises in this context. Article 7.1 ILO 169 permits traditional peoples to determine how they wish to accommodate the possibilities that development might bring to them. However, the concept of GIAHS imputes some preservation of tradition. Balancing the drastic metamorphoses that development might bring with this need to preserve and maintain knowledge can produce conflicting mandates. Consequently there is an urgent need to clarify the extent to which GIAHS as a concept is able to support different levels of change. Whereas all traditional knowledge is dynamic, and change itself has been the prime creator of the ingenious aspects of the practices, there is a point at which change is no longer an evolutionary dynamic but has become a force with a volition of its own capable of eroding the practices completely. GIAHS must address the dilemmas that come with development before embarking on the construction of detailed regulatory engineering.

3. Intellectual Property Rights/Traditional Knowledge

The issue of the relationship between traditional knowledge (TK) and intellectual property rights is well documented and there are no special characteristics of GIAHS TK that would differentiate it from the general issue. Certain points have been underlined in the analysis.

Archiving

Traditional languages and cultures, the vehicles of TK, are disappearing rapidly. In order to provide a solid foundation for GIAHS it would be wise to systematically organise the archiving of GIAHS TK in both the language of origin and in appropriate contemporary languages. The dynamic nature of TK will require that the process of archiving is ongoing. By reducing oral GIAHS knowledge to formal media a basis for controlled knowledge sharing is available.
Further, attempts to patent TK, in jurisdictions where oral prior art is not recognised can be frustrated.

Article 8(j) CBD supports this whole process, in its reference inter alia, to the obligation to preserve and maintain knowledge.

**Access to genetic resources/TK**

Article 15 CBD re-affirms that control over access to genetic resources rests with the range state and requires that access to genetic resources shall be subject to the *prior informed consent of the Contracting Party providing such resources*.

The convention does not go beyond the veil of the state and require that peoples within also play a part in the granting of such access. However, many of the national laws implementing this provision are providing for the stakeholders in such resources and appurtenant knowledge to participate in the process of granting access. In respect of GIAHS communities it is imperative that they are expressly and primarily empowered to grant or refuse such consent in relation to GIAHS knowledge and the resources.

**Benefit Sharing**

The principle of equitable benefit sharing in relation to the use if genetic resources/TK is well established in Article 15 CBD and elsewhere. For GIAHS it is recommended that the lead in paragraph 44(o) of the Johannesburg Declaration on Sustainable Development is followed whereby states are urged to: *negotiate ..... within the framework of the Convention on Biological Diversity, bearing in mind the [Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation] an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources.*

**The International Treaty on Plant Genetic Resources for Food and Agriculture**

The PGRFA prescribes measures to protect Farmers’ Rights including protection of traditional knowledge in genetic resources and participation in equitable benefit sharing for agricultural/food use. To an extent GIAHS TK could be protected by the provisions of this treaty. In addition it prescribes a system for sharing of TK, with concomitant benefit sharing through, inter alia, the device of the standard material transfer agreement. The system would, in part, provide a useful vehicle for the pooling and sharing of GIAHS TK.

**TRIPS/The conflict between TRIPS and CBD**

To enable TK to be protected, and counteract what has been termed *bio-piracy*, differential treatment of knowledge/intellectual property holders may need to take place. The framework-based principles in the CBD aim to assist in this, however, they do not necessarily conform to the precise provisions in the WTO’s TRIPS agreement. The difficulties are also compounded by the strength of the non-traditional intellectual property regime deployed in industrialised societies against the comparative weakness of societies operating along traditional lines. The matter encompasses GIAHS TK but also many other interests. It is being examined in the context of The Committee on Trade and Environment and pursuant to the Doha Declaration (within the TRIPS Council). One way in which matters can move forward is a further and constructive development of the provisions in Article 27.3(b) TRIPS which permits WTO members to operate a *sui generis* system to protect plant varieties (although some TK relates to animal use). It is recommended that the GIAHS project retains a watching brief on these discussions and seeks to be represented, perhaps through a proxy organisation, within the debates.

**WIPO and Traditional Knowledge**

*In relation to technical intellectual property matters Paragraph 44(p) of the Johannesburg Declaration on Sustainable Development encourages the successful conclusion of existing processes under consideration by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization. WIPO is perfectly placed to deal with all the other issues equitably and in a manner that should promise a holistic solution. It is a forum that could provide the solution to the problems faced by GIAHS and other TK.*

**4. International Trade Regulation**

International Trade is relevant to GIAHS in a number of respects. Where species traded or purported to be traded are listed on CITES appendices their treatment within CITES requires examination and beyond that the wider implications of the multilateral trade regime operated by the WTO are relevant.
**CITES**

In order to support sustainable projects which nevertheless deal in the international sale of otherwise endangered species CITES has been developing split-listing regimes based on sustainably ranched species. Thus the wild species may be in Appendix 1 and not in trade but designated ranched groups of that species may be in Appendix II where strictly controlled trade is permitted. It is recommended that CITES should be approached, where relevant to GIAHS communities, in order that similar benefits may be extended to GIAHS trade. Support for this is evident in CITES debates thus Practical principle 12 of CITES' Addis Ababa principles and guidelines states that *The needs of indigenous and local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation and sustainable use, should be reflected in the equitable distribution of the benefits from the use of those resources.*

**International Trade in GIAHS products and the WTO**

Measures designed to enhance the competitiveness of specific GIAHS products through beneficial tariff systems and state approved ecolabelling will have WTO implications. Such measures might create a distortion of trade in favour of the GIAHS example that would breach the free-trade provisions operated by the WTO.

Two types of products are relevant

**Unique products from GIAHS communities that receive state assistance applied either at export or import** The debate in this respect concerns Article XX GATT'47 and the exemptions therein to the general free-trade provisions operated by the WTO. To date the dispute panel decisions, deploying arguments concerning the chapeau to Article XX, have not been favourable to those conservation initiatives examined; usually because of their *unilateral* nature. For GIAHS, therefore, Article XX would be best fulfilled by *multilateral* consensus (through legal or policy instrument).

**GIAHS products that have no integral difference to similar non-GIAHS products may similarly receive special treatment (non-product related PPMs)** In order to assist GIAHS products state supported ecolabels may be applied to distinguish them from non-sustainable competing products. In theory this approach is contrary to the general free-trade provisions operated by the WTO. However, the Technical Barriers to Trade Agreement permits some trade distortion of this nature in restricted circumstances which include the application of international standards as criteria for such labelling. Thus GIAHS standards could be established as parameters to enable some products to bear the GIAHS label.

In general it should be noted that an ongoing review is being made by the WTO's Committee on Trade and Environment and elsewhere in the sub-institutions within the WTO to examine the way in which sustainable development can be integrated fully into the multilateral trade regime. The GIAHS project could maintain a watching brief in this respect but, for the moment, any instrument designed to further the interests of the GIAHS concept should consider establishing multilateral consensus based arrangements to protect GIAHS trade interests.

5. Way Forward

Whereas a multilateral convention would be the ideal solution to securely establish the GIAHS concept; it seems unlikely that this would be feasible having regard to the time it would take to negotiate and put in place. Further, there are some very sensitive areas of regulation to deal with such as trade and land tenure. Without a sensitive long-term strategy, these topics alone could frustrate the progress of an endeavour to achieve a complex regulatory instrument.

A policy document reiterating the objectives of the project and its connections with other ventures; adding in as many of the potential components of a
convention as possible may be a more practical solution as a medium term goal. The MAB programme is a good example of a soft regime that nevertheless appears to operate with the strength of a convention. Although, the GIAHS concept differs dramatically from the MAB regime in that humans operate their practices within the central core zone in any protected area, GIAHS could consider emulating this general approach within a policy instrument.

GIAHS is clearly a concept that falls into the remit of the FAO and this institution should retain control of its progression to ensure that its sustainable agricultural element remains a primary goal. In terms of the steps that should be taken it would be best to aim high but with sensitivity and caution. Whereas the ultimate goal might be a convention or a sophisticated policy framework, the first step could be a simple supportive policy declaration detailing the concept, reciting both its benefits and the manner in which GIAHS would fulfil not only the FAO’s objectives but also many of the other current key global aspirations.

This declaration could be made by the FAO itself although either COAG or CGRFA might constitute a more practical choice. The first step would probably coincide with a campaign to publicly raise the profile of the GIAHS “brand”. This way forward would enable GIAHS as a project to proceed with a programme of pilot site work and, in time, develop a comprehensive policy or convention instrument to fully regulate the concept. Within that period it could also develop its relationship with other institutions and establish specific joint ventures with organisations sharing potentially relevant protected areas.