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# COMMITTEE ON FISHERIES

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## LEGAL FRAMEWORKS FOR SUSTAINABLE FISHERIES AND AQUACULTURE

### Executive Summary

Legal frameworks are essential for supporting food and agriculture and the effective management, sustainable use and conservation of natural resources, including fisheries and aquaculture. Sound legal frameworks underpin the rule of law and ultimately contribute to, and are key to enabling action towards achieving sustainable development.

National laws for the management of natural resource extraction and use, including fisheries and aquaculture legal frameworks, govern complex relations between the multiple actors in the sector. Such laws articulate the rights and responsibilities of the actors, how they can interact with one another and enables further regulation, facilitates implementation of international legally binding agreements and voluntary instruments, and ensures compliance and enforcement. This information paper:

- a) highlights relevant international instruments, global concerns and commitments, including the SDGs, as well as the current and emerging areas or aspects of fisheries and aquaculture which would require enhanced legal frameworks to implement or achieve them;
- b) emphasizes the importance of sound legal frameworks in support of sustainable food and agriculture and natural resource use, including fisheries and aquaculture, their subsectors and related aspects and the mandate of FAO in that regard. It also demonstrates and elaborates the need for providing legal assistance to Members to develop and strengthen national legal frameworks for fisheries and aquaculture through reference to FAO's landmark events, past and ongoing relatively small but high impact projects and programme-components; and,
- c) provide food for thought, including recommending the elaboration of initiatives and proposes options to pursue in order to address the highlighted needs in particular the need to develop relevant programmes to support FAO's work in assisting developing countries to improve their national legal frameworks for fisheries and aquaculture and related legal frameworks.

*Documents can be consulted on [www.fao.org](http://www.fao.org)*

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## I. INTRODUCTION

1. Legal frameworks are essential for supporting sustainable food and agriculture production and the effective management, sustainable use of natural resources, including fisheries and aquaculture. Sound national legal frameworks give effect to international instruments, underpin the rule of law and ultimately contribute to, and are key to enabling action towards achieving sustainable development. The business of natural resource extraction and use and the related supply value chain involves a multiplicity of actors with different interests and roles to play, thus creating a web of complex relations inter se and between the management and regulatory authority and other actors, collectively and individually. National laws for the management of natural resource extraction and use, including fisheries and aquaculture legal frameworks, govern these complex relations by articulating the rights and responsibilities of the actors, how they can interact with one another in the context of fisheries and aquaculture activities. They enable further regulation, facilitate implementation of international legally binding agreements and voluntary instruments, and ensure compliance and enforcement.

2. The need for comprehensive and practical national legal frameworks which implement international instruments and drive change in approaches and behaviour towards sustainable resource use, ensuring livelihoods, achieving food security and nutrition and alleviating poverty, is vital now more than ever in light of the related global concerns for, inter alia:

- ensuring sustainable use and conservation of biodiversity within and beyond areas of national jurisdiction;
- securing sustainable marine and inland fisheries including small scale fisheries (SSF);
- promoting sustainable aquaculture including ensuring biosecurity;
- addressing illegal, unreported and regulated (IUU) fishing;
- removing harmful subsidies in fisheries;
- promotion of the ecosystem approach to fisheries (EAF);
- securing safe and fair conditions of work for fishers and fish workers;
- ensuring fish food safety; and,
- promoting responsible, legal, traceable and sustainable trade in fish and fishery products.

The impetus for national legal frameworks that support actions to address these concerns is elevated in the context of the need to realise global and regional commitments relating to the crosscutting issues of human rights, gender and climate change and achieving the United Nations (UN) Sustainable Development Goals (SDG). Unforeseen disasters and emergencies such as the COVID-19 pandemic, which affects the continuity of food production, supply and access value chains, have also demonstrated the need for well-designed and implementable laws to underpin emergency responses.

3. Despite the substantive and central role of legal frameworks in addressing the various global concerns and supporting action towards achieving sustainable development and securing the rule of law, the level of targeted technical assistance and adequate resources for strengthening legal frameworks for sustainable food systems including fisheries and aquaculture have been a rare occurrence or comparatively negligible. There is also the challenge of securing the commitment of governments to prioritise such work and eventually enact drafts into legislation which is difficult if there is no investment of the appropriate level or resources and time to secure such commitment.

4. This information paper:

- 1) highlights relevant international instruments, global concerns and commitments, including the SDGs and the current and emerging areas or aspects of fisheries and aquaculture which require enhanced national legal frameworks to implement or achieve them;
- 2) emphasizes the importance of sound legal frameworks in support of sustainable food and agriculture and natural resource use, including fisheries and aquaculture, their subsectors and related aspects and the mandate of FAO in that regard. It also demonstrates and elaborates the

- need for providing legal assistance to Members to develop and strengthen national legal frameworks for fisheries and aquaculture through reference to FAO's landmark events, past and ongoing relatively small but high impact projects and programme-components; and
- 3) provides food for thought, including recommending the elaboration of initiatives and proposes options to pursue in order to address the highlighted needs, in particular the need to develop relevant focused and resourced programmes to support FAO's work in assisting developing countries to improve their national legal frameworks in support of sustainable fisheries and aquaculture.

## **II. IMPLEMENTATION OF INTERNATIONAL AGREEMENT ON FISHERIES AND AQUACULTURE THROUGH NATIONAL LAWS**

5. An often overlooked principle of customary international law is that international law and commitments of a State, as stipulated in conventions and agreements, binds only that State vis-à-vis other States. Such commitments will not bind the nationals of that State, or apply in areas within national jurisdiction, unless they are recognised as binding by national laws or are reflected in enabling national legislation. For example, the requirement of a State party to the Compliance Agreement to record and license vessels flying its flag and requiring them to meet certain conditions cannot be imposed on the owners or operators of such vessels unless there is in place national legislation that has the same requirement. Domestic enabling legislation is also vital for non-binding instruments, such as the FAO Code of Conduct for Responsible Fisheries and the related International Plans of Action (IPOA), as national legislation can translate the calls for voluntary action into legal requirements by enforcing assigned rights and responsibilities and sanctioning non-compliance.

6. As part of the efforts to achieve global sustainable development in fisheries and aquaculture, the Development Law Branch (LEGN), in collaboration with the Fisheries Division (NFI), has been leading the implementation of legally binding and voluntary international instruments at the national level by providing general guidance as well as assistance to States to incorporate the requirements of such instruments through the revision of existing policies and legal frameworks or development of new policy and/or legislation. The international legally binding instruments directly relevant for fisheries which need implementation at the national level are:

- 1982 United Nations Convention on the Law of the Sea (LOSC);
- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement);
- 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA); and
- 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA).

7. Congruity of national legislation with the provisions of the LOSC and the related instruments named above is paramount. Certain aspects reflected in these international fisheries legal frameworks that particular attention is placed upon include:

- the rights, jurisdiction and duties of States within waters under national jurisdiction;
- monitoring, control and surveillance (MCS) and enforcement rights and duties within the exclusive economic zone (EEZ), contiguous zone, territorial sea, archipelagic waters and internal waters;
- jurisdiction over national and chartered vessels;
- navigation on the high seas and in waters under the jurisdiction of a coastal State;
- the implementation of rights and obligations related to fishing and fishing related activities (e.g. aquaculture, transshipping); and

- the implications of binding decisions of Regional Fisheries Management Organizations and/or Arrangements (RFMO/As).

8. Other international instruments can be added to the list of relevant binding instruments depending on the type of fisheries or thematic area of focus. For example, if there were an interest in deep sea fisheries in areas beyond national jurisdiction (ABNJ) and the requirements that apply to maritime shipping, the environment and conservation of biodiversity or safety of life and conditions of work at sea, the following binding instruments would also be relevant:

- International Convention for the Prevention of Pollution from Ships (MARPOL);
- Convention on Biological Diversity (CBD);
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- Convention on the Conservation of Migratory Species of Wild Animals (CMS);
- Agreement on the Conservation of Albatrosses and Petrels (ACAP);
- 2012 Cape Town Agreement on the Implementation of the Provisions of The 1993 Torremolinos Protocol Relating to the 1977 International Convention for the Safety of Fishing Vessels;
- the ILO C188 – Work in Fishing Convention 2007;
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst forms of Chile Labour.

9. Additional legally binding instruments become relevant as well if, for example, the implementation of global fisheries agreements by regional fishery bodies (RFBs) in particular RFMO/As is an issue. RFBs are established and recognized within the framework of the LOSC and emphasised by the UNFSA. In accordance with their functions and management competence, RFMO/As elaborate for their area of competence, the provisions of the Convention, including but not limited to provisions relating to straddling fish stocks, highly migratory fish stocks, discrete high seas fish stocks, anadromous fish stocks, and catadromous fish stocks. Specific legally binding decisions of RFMO/As build upon the provisions of the Convention and are implemented by those States Parties or cooperating non-parties, which have accepted such decisions, through their national legislative frameworks.

10. In providing legislative assistance, FAO also ensures that obligations and requirements of relevant RFMO/As are incorporated in national legislation. For example, if tuna RFMO/As are the subject of interest, the following constituting agreements or conventions of the tuna RFMO/As would be relevant:

- Convention for the Conservation of Southern Bluefin Tuna;
- International Convention for the Conservation of Atlantic Tunas;
- Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States Of America and The Republic of Costa Rica (the Antigua Convention);
- Agreement for the Establishment of the Indian Ocean Tuna Commission; and
- Convention on the Conservation and Management of High Migratory Fish Stocks in the Western and Central Pacific Ocean.

11. The voluntary international instruments relevant for fisheries and aquaculture which require national legislation to translate voluntary commitments at the global level to legally binding obligations for individuals at the national level include:

- FAO Code of Conduct for Responsible Fisheries (CCRF);
- FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU);

- FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas (Deep-sea Fisheries Guidelines);
- FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks);
- FAO International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity);
- FAO Voluntary Guidelines for Flag State Performance (Flag State Guidelines);
- FAO International Guidelines on Bycatch Management and Reduction of Discards (Bycatch Guidelines);
- FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines);
- FAO Voluntary Guidelines on the Marking of Fishing Gears;
- FAO Voluntary Guidelines for Catch Documentation Scheme;
- Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem;
- CITES Resolutions relevant for international trade in CITES-listed commercially-exploited aquatic species, such as those resolutions concerning introduction from the sea, non-detriment findings and legal acquisition findings (CITES Resolutions); and
- United Nations General Assembly Resolutions (UNGA Resolutions) in particular those relating to oceans and the law of the sea and fisheries.

12. Although such soft law instruments are non-binding by nature, it should be noted that they are based on the provisions of the Law of the Sea Convention, and are binding to the extent that they restate or reflect the Convention or when incorporated in binding measures adopted by RFMO/As or in national legislation. The essential role of national legal frameworks to implement these voluntary instruments highlights the corresponding and equally vital need for legal assistance to review, update or develop the relevant national legislation.

13. The UN 2030 Agenda for Sustainable Development and the related SDGs underscore the need for legal assistance and national legislation to be the medium that promotes behavioural changes for the realization of the SDGs as well as indicators of action by States to that end. SDG 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development, is relevant. Four of the targets under SDG 14 are under the custodianship of FAO. These targets are:

- 14.4.1 Proportion of fish stocks within biologically sustainable levels;
- 14.6.1 Progress by countries in the degree of implementation of international instruments aiming to combat illegal, unreported and unregulated fishing;
- 14.7.1 Sustainable fisheries as a percentage of GDP in Small Island Developing States, least-developed countries and all countries; and
- 14.b.1 Progress by countries in adopting and implementing a legal/regulatory/policy/institutional framework which recognizes and protects access rights for small-scale fisheries.<sup>1</sup>

14. All the targets under the custodianship of FAO will require implementation at the national level through policy and legal frameworks. Target 14.6.1 and 14.b.1 in particular require national legislation, not only as an indicator but also as an essential means to realise the targets. COFI documents, COFI/2020/7 and COFI/2020/6, report on FAO's assistance to States, linking legal assistance to work towards the achievement of SDG targets 14.6.1 and 14.b.1.

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<sup>1</sup> See FAO SDG website, Indicator 14.b.1 - Degree of application of a legal/regulatory/policy/institutional framework which recognizes and protects access rights for small-scale fisheries:<http://www.fao.org/sustainable-development-goals/indicators/14b1/en/>

### **III. THE IMPORTANCE OF LEGAL FRAMEWORKS FOR SUSTAINABLE FISHERIES AND AQUACULTURE: THE ROLE OF FAO IN PROVIDING LEGAL ASSISTANCE**

15. The Constitution of FAO (i.e. Art. I. and XIV) foresaw a major role for the Organization as a neutral forum for Members to negotiate international instruments. This core function, which is restated consistently in FAO's Programme of Work and Budget (PWB) every biennium, facilitates and supports governments' efforts in the development of regional and international instruments and in the implementation of their resulting national obligations. Stemming from the activities of its own statutory bodies or at the request of other intergovernmental organizations, in particular the World Trade Organization (WTO), setting norms, standards and voluntary guidelines is also a major tool with which FAO seeks to respond to the priorities of its Members.

16. From a technical point of view, FAO has a core function of developing and implementing internationally recognised instruments, standards and action plans, and ensuring that Members satisfy requirements of such instruments including those arising from agreements negotiated outside the framework of FAO. Such external agreements include the LOSC and its implementing agreements, the WTO Agreements and the relevant agreements of the International Maritime Organization (IMO). The support provided by the Secretariat to the development and implementation of external agreements normally includes the sharing of technical information and best practices and preparing draft standards for negotiation at the intergovernmental level. The core function requires FAO to meet substantial demands for advice in drafting and subsequent enactment of pertinent national legislation (basic framework laws and regulatory instruments), also bearing in mind the need for public administration and private sector to cooperate in a mutually beneficial manner.

17. Fisheries and aquaculture legal frameworks are vital to the implementation of legally binding and voluntary international instruments, in order to render enforceable at the national level, the responsibilities and commitments made by States through such instruments. The provisions of national fisheries and aquaculture legislation implement national policy, define the scope of application of principles, establish management measures and ensure compliance. Such legislation also defines inter alia management responsibilities, recognises and regulates the interests of fishers and other stakeholders and determines the relationship between them to facilitate the attainment of management objectives. Fisheries and aquaculture legislation guarantees that the terms and conditions under which fisheries and aquaculture are managed, monitored and controlled, and the mechanisms that regulate conflict are enforced through established processes for compliance and enforcement of assigned rights and duties in a judicial or other fora such as courts or administrative enforcement mechanisms or processes<sup>2</sup>.

18. The recognition in FAO's Constitution and elaboration of the crucial role of legal frameworks for implementation of international instruments through national legislation as a core function in the PWB are reflected in FAO's Administrative Manual, specifically Section 107.3.3 which mandates LEGN to lead FAO's work in this area. The Administrative Manual stipulates that LEGN shall advise the Organization and its Members on legal and institutional means to promote and regulate national development and international cooperation in the food and agriculture sector, through law reform activities, legal research, data collection and capacity building in the areas of land, water, fisheries and aquaculture, plants, animals, food, forestry, wildlife, biodiversity and the environment as well as other issues related to food and agriculture including trade and biotechnology. In this regard, LEGN of the Legal Office has been working closely with the technical departments of FAO and the Members in

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<sup>2</sup> FAO 2009, A Fishery Manager's Guidebook 2nd Ed edited by Cochrane K L and Garcia S.M, 2009 544p

dispensing its mandate in providing technical assistance in the review and drafting of legislation to support food and agriculture and related aspects.

19. LEGN, through a limited and fluctuating number of programmes and projects, has been working closely with development partners, fisheries officers and experts of NFI and in decentralised offices, to provide technical assistance and advice to Members, in developing and implementing global fisheries agreements, codes of conduct, international plans of action and guidelines. There has also been a lot of collaboration on related training and capacity building on developing and using assessment tools for reviewing fisheries and aquaculture legal frameworks and substantive engagement with fisheries ministries, administrations and stakeholders in drafting relevant legislation and ensuring compliance and enforcement.

20. FAO's Technical Cooperation Programme (TCP), established in 1976<sup>3</sup>, has been the main source of funding for LEGN legal assistance for the drafting of legislation and capacity building on legal aspects of food and agriculture over the last four decades. Although legal assistance was not the primary focus for countries in addressing food insecurity and the alleviation of poverty, LEGN, in collaboration with decentralised officers and technical departments, was still able to formulate projects and draw on TCP funding to provide legal assistance to Members upon their request. However, this flexibility and timeliness of response to requests, in particular request for legal assistance, was lost when TCP funds were pre-allocated to countries through FAO decentralised offices. This is because: legal frameworks for food and agriculture is not often seen as the first, practical and direct means of response compared to technical assistance; and, FAO development law legal officers are not part of the multidisciplinary teams in the decentralised offices so as to influence where to direct FAO's support. Funding for legal assistance from TCP and extra budgetary funding was still available to countries but mobilisation of such funding for legal assistance was often ad hoc or incorporated into projects as an afterthought.

21. However, there have been periods when specific attention was accorded to the provision of legal assistance to FAO Members. The highpoint periods for resource mobilisation and focus on legal aspects of fisheries occurred in the 1980s and early 1990s beginning with the establishment of the FAO/Norway EEZ programme (1982-1989) with three sub-programmes (i) policy and planning missions, (ii) MCS, and (iii) fisheries law advisory services. This was followed by the establishment of FIMLAP (1989 -1992) as the successor Programme to FAO/Norway EZZ Programme with the support of the Norwegian Agency for Development Cooperation (NORAD).

22. Another wave of funding support for legal work related to MCS was initiated in 1995 under FishCode: FAO's Programme of Global Partnerships for Implementation of the Code of Conduct for Responsible Fisheries<sup>4</sup>. The FishCode Programme is distinguished for its coverage across subsectors and support to work in marine and inland fisheries and aquaculture. Although the FishCode programme continues today, its support for the provision of legal advice and assistance to Members has waned.

23. Varying levels of resources to support legal assistance by LEGN to Members, albeit in focused thematic areas and as components of larger technical programmes, is currently provided under the following major initiatives:

- FAO's Common Oceans ABNJ Program funded by the Global Environment Facility (GEF);
- FAO's multi-funded Global Capacity Development Programme to support the implementation of the PSMA and complementary international instruments and regional mechanisms to combat IUU fishing;

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<sup>3</sup> See [www.fao.org/UNFAO/histo-e.htm](http://www.fao.org/UNFAO/histo-e.htm) . See also <http://www.fao.org/3/ac621e/ac621e03.htm>

<sup>4</sup> See [www.fao.org/fishery/fishcode/about/en](http://www.fao.org/fishery/fishcode/about/en)

- NORAD-funded Projects for Supporting the Application of the Ecosystem Approach to Fisheries Management Considering Climate and Pollution Impacts, under the EAF-Nansen Programme);
- The Project for Improving Biosecurity Governance and Legal Framework for Efficient and Sustainable Aquaculture Production also funded by Norway;
- The Coastal Fisheries Initiative funded by the Global Environment Facility which will focus on delivering sustainable environmental, social and economic benefits in West Africa through good governance, correct incentives and innovation; and,
- FAO Umbrella Programme in Support of the Implementation of the SSF Guidelines - Enhancing the contribution of small-scale fisheries to food security and sustainable livelihoods.

24. The focus on improving legal frameworks for specific themes in fisheries and aquaculture and on an ad hoc basis is not sustainable. Typically, legal frameworks for fisheries and aquaculture should be reviewed as a whole to improve provisions of the law relating to the common core components of relevant primary legislation. These core components include objectives, principles, institutional or administrative aspects, fisheries management, planning and conservation, including regulation of fishing effort and total allowable catch (TAC), participatory approaches, aquaculture management and development, trade in fish and fishery products, MCS, enforcement and penalties and regulations.

#### **IV. HIGHLIGHTS OF LEGAL ASSISTANCE PROVIDED BY FAO TO MEMBERS AT THE GLOBAL, REGIONAL AND NATIONAL LEVELS**

25. Although many important global developments and initiatives can underscore the importance of legal frameworks for sustainable fisheries and aquaculture such as the adoption and entry into force of the LOSC and the UNFSA, the following non-exhaustive list of FAO-related landmark events and initiatives demonstrate the substantive collaboration on this issue between Members and FAO, with the support of the Legal Office, FI, partners and stakeholders:

- The establishment of the General Fisheries Commission for the Mediterranean (GFCM) in 1949 as regional fishery body under Article XIV of the FAO Constitution;
- The establishment of the Comprehensive Programme of Assistance in the Management and Development of Fisheries in Economic Zones (the FAO/Norway EEZ Programme (1982-1985));
- The establishment in 1989 of the FAO/Norway Fisheries and Law Advisory Programme (FIMLAP);
- The negotiation from 1992 to 1993 of the Compliance Agreement and its adoption in 1993;
- The establishment in 1993 of the Indian Ocean Tuna Commission as a regional fishery body under Article XIV of the FAO Constitution;
- The negotiation from 1992 to 1995 of the CCRF and its adoption in 1995;
- The participation at the Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem in 2001 which resulted in the adoption of the respective Reykjavik Declaration;
- The negotiation from 2000 to 2001 of the IPOA-IUU and its adoption in 2001;
- The signing of a Memorandum of Understanding with the CITES Secretariat to formalise the collaboration on strengthening the capacity of developing countries to ensure the sustainability, legality and traceability of international trade in CITES-listed species, focusing on commercially-exploited aquatic species;
- The negotiation from 2006 to 2008 of the Deep Sea Fisheries Guidelines and its adoption in 2008;
- The negotiation from 2009 to 2010 of the International Guidelines on Bycatch Management and Reduction of Discards and its adoption in 2010;
- The negotiation from 2006 to 2009 of the PSMA and its adoption in 2009;

- The establishment of the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission (CACFish) in 2010;
- The negotiation from 2011 to 2013 of the Voluntary Guidelines for Flag State Performance and their adoption in 2014;
- The establishment and delivery of the Global sustainable fisheries management and biodiversity conservation in the ABNJ Program (Common Oceans ABNJ Program);
- The negotiation from 2011 to 2014 of the SSF Guidelines and their adoption in 2014;
- The establishment in 2016 of the five-year global Programme - Support for the implementation of the 2009 FAO Agreement on Port State Measures and complementary instruments to combat illegal, unreported and unregulated fishing;
- The First Meeting of the Parties to the PSMA in 2017;
- The negotiation and adoption in 2017 of the Voluntary Guidelines for Catch Documentation Scheme;
- The negotiation and adoption in 2018 of the Voluntary Guidelines on the Marking of Fishing Gear; and
- The Second Meeting of the Parties to the PSMA in 2019.

26. The following are selected examples from the numerous cases available which demonstrate directional change or concrete results in terms of improvement in fisheries and aquaculture management and development at the global, regional and national levels that occurred as a result of well-funded and targeted legal advice and assistance projects over the last three decades (1990 to 2020):

- 1992 – Report for the Governments of the Organisation of the Eastern Caribbean States (OECS) on the Implementation of Harmonised Fisheries Legislation in the OECS Region leading to the development of new harmonised provisions to be included in legislation. The harmonised provisions led to the enactment of similar legislation across the membership of the OECS.<sup>5</sup>
- 1993 – Report to the Governments of the Pacific Forum Fisheries Agency (FFA) presenting the Regional Compendium of Fisheries Legislation (Western Pacific Region).<sup>6</sup> The compendium was later used to compile FISHLEX – a subset electronic database of FAOLEX on the main legal requirements (terms and conditions) for fishing access by foreign fishing vessels in developing countries.
- 1998 to 1999 – Legal support to the UNDP/GEF Lake Tanganyika Biodiversity Project which led to the finalization of a draft convention and eventual adoption of the Convention on Sustainable Management of Lake Tanganyika.<sup>7</sup>
- 1999 to 2002 – Sustained technical assistance provided to the Government of Tonga which led to the drafting of a Fisheries Management Bill in 2000 and its enactment into law in 2002 and the preparation of the Aquaculture Management Bill in 2002 (and its enactment into Law in 2003).<sup>8</sup>

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<sup>5</sup> FAO 1992, Report prepared for the Governments of the Organization of Eastern Caribbean States (OECS) on the Implementation of Harmonized Fisheries Legislation in the OECS Region, Rome 1992, 79p. Available at: [www.fao.org/3/a-br465e.pdf](http://www.fao.org/3/a-br465e.pdf)

<sup>6</sup> FAO1993, Regional Compendium of Fisheries Legislation, Volume II, Edited by Bill Campell and Michael Lodge, Rome, 1993, 537p. Available at: <http://www.fao.org/3/a-v2566e.pdf>

<sup>7</sup> Cacaud, P, Report for the Governments of Burundi, Tanzania, Zaire and Zambia on Institutional Choices for cooperation in fisheries management and conservation on Lake Tanganyika, Rome, 1996 26p. Available at: [www.fao.org/3/a-w3170e.pdf](http://www.fao.org/3/a-w3170e.pdf)

<sup>8</sup> Participatory law review and development of fisheries legislation in Tonga. Available at: [www.fao.org/3/a-av176e.pdf](http://www.fao.org/3/a-av176e.pdf)

- 2004 – Legal study on community based fisheries management and customary marine tenure in the Pacific.<sup>9</sup>
- 2008 – Intensive technical support to LAO PDR to review its fisheries and aquaculture law. A draft fisheries and Aquaculture law for Lao PDR was produced and passed as law in 2009.<sup>10</sup>
- 2008 to 2009 – Support to the regional intergovernmental meeting to establish a Central Asian Region Fisheries Organization leading to the negotiation, drafting and adoption in 2009 of the Agreement on the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission.<sup>11</sup>
- 2015 to 2016 – Sustained legal support to Thailand in developing subsidiary legislation for its new fisheries legislation, the Royal Ordinance on Fisheries B.E 2558 (2015), in order to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing. The support led to the preparation of eight draft notifications (subsidiary legislation) which were submitted by FAO to the Government of Thailand for its consideration.<sup>12</sup>
- 2016 – A How-to Guide on legislating for an ecosystem approach to fisheries (EAF) was published to support legal practitioners, policy makers and fisheries managers on implementing an EAF through policy and legal frameworks.
- 2017 to 2019 – Sustained assistance to Sri Lanka for capacity building in fisheries law and management leading to over 75 percent of all judicial officers in Sri Lanka trained in fisheries law, port State measures and the efforts to fight IUU fishing.
- 2017 to 2019 - Legal assistance to Trinidad and Tobago to review and develop a new fisheries management bill which was laid before the Parliament by the Prime Minister for adoption on 12 June 2020.<sup>13</sup>
- 2017 to 2020 – Assistance to develop a legal guide on how to align national policy and legal framework with the SSF Guidelines and to develop a diagnostic tool which helps the user in identifying the national policy and legal framework that reflects the requirements, and assessing the implementation, of the SSF Guidelines. The legal guide and diagnostic tool will be published in 2020.
- 2018 to 2020 – Assistance to develop a legal checklist tool to facilitate the assessment diagnosis of an EAF in a country’s national policy and legal framework.
- 2019 to 2020 – Assistance to develop guidelines for implementing CITES through national fisheries legal frameworks. A legal study and a guide to implement CITES has been developed and will be published in 2020.

## **V. CONCLUSION - FUTURE LEGAL ASSISTANCE IN FISHERIES AND AQUACULTURE**

27. Legal frameworks are essential for supporting food and agriculture and the effective management, sustainable use and conservation of natural resources, including fisheries and aquaculture. Sound legal frameworks underpin the rule of law and are key to enabling action towards, achieving sustainable development. Fisheries and aquaculture legal frameworks are not only key

<sup>9</sup> Kuemlangan, B. Creating legal space for community-based fisheries and customary marine tenure in the Pacific: issues and opportunities. FishCode Review. No. 7(En). Rome, FAO. 2004. 65p.

<sup>10</sup> Cacaud, P. & Latdavong, P., (2009). Fisheries and aquaculture in the Lao PDR – a legislative review. FAO Regional Office for Asia and the Pacific, Bangkok, Thailand. RAP Publication 2009/05, 71 pp.

<sup>11</sup> FAO 2009, Report of the Regional Intergovernmental Meeting to Initiate the Establishment of a Central Asian Fisheries Organization, Dushanbe, Tajikistan, 10–12 November 2008, FAO Fisheries and Aquaculture Report No.887, Rome 2009 161p

<sup>12</sup> FAO 2016, Report of TCP/THA/3501 – Fishery Legal Support to Thailand Third and Final Mission Report - Drafting of Subsidiary Legislation to Prevent, Deter and Eliminate Illegal Unreported and UN regulated Fishing (unpublished).

<sup>13</sup> See - [www.news.gov.tt/content/fisheries-management-bill-2020#.Xud6V0UzaUm](http://www.news.gov.tt/content/fisheries-management-bill-2020#.Xud6V0UzaUm)

performance indicators for implementation of relevant international instruments which are adopted to address global issues such as IUU fishing but are also the prescribed means towards achieving many of the SDGs.

28. Legislation also ensures that there is enforcement action where rights are abused or where relevant authorities fail to fulfil their duties and responsibilities stated in the law. Seen from this perspective, fisheries and aquaculture legal frameworks can be considered the beginning and continuum of effective sustainable management, development and conservation of fisheries and aquaculture. Therefore, initiatives to improve fisheries and aquaculture governance for sustainable development in any country should ensure that the review and enhancement of laws is a major component of such initiatives in terms of output and allocation of resources, including adequate time to ensure meaningful engagement with the sector and its stakeholders.

### **Addressing emergencies and emerging issues**

29. The COVID-19 pandemic and other disasters have shown that governments rely on emergency laws, which vest extraordinary powers in government authorities to regulate behaviour during emergencies. Unfortunately, as stated in the policy brief<sup>14</sup> jointly produced by the FI and the Legal Office of FAO, and other similar briefs<sup>15</sup>, emergency laws can have negative and unintended consequences, which affect access to food and threatens food and nutrition security generally. Emergency laws which do not recognise fishers and other fish workers as essential workers or which impose lengthy closures of fishing areas or seasons without scientific basis are examples which calls for anticipatory policies and laws which provide guidance for appropriate government action in future emergencies.

30. As attention turns towards the need to address the global concern on the protection of fishing vessel personnel, improvement of fishing vessel safety and combating forced labour in fishing and related industries, there should also be commitment to legislating, implementing and ensuring compliance and enforcement of relevant international agreements. In this regard, the designers of programme and projects should heed the call by the UNGA Resolution 74/19 for States to become parties to and implement:

- relevant ILO treaties in particular the Work in Fishing Convention 2007 (No.188); and
- relevant IMO Conventions including the Maritime Labour Convention 2006 and the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

31. The need for economic sustainability and trade and awareness of broader societal issues such as food security and social equity with the concern that they be reflected in national legal frameworks, in line with the interconnected nature of the SDGs and the ‘leave no one behind’ principles, would provide the drive for ensuring that fisheries and aquaculture legal frameworks are equally aligned. The global normative framework and work is available to not only inform and support such alignment of national fisheries and aquaculture legal frameworks but also provide incentive for their implementation and enforcement.

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<sup>14</sup> FAO. 2020. Legal considerations in responses to COVID-19 to mitigate the risk of disruption to fisheries and aquaculture food systems. Rome. Available at: [www.fao.org/3/ca9421en/CA9421EN.pdf](http://www.fao.org/3/ca9421en/CA9421EN.pdf)

<sup>15</sup> FAO. 2020. Legal mechanisms to contribute to safe and secured food supply chains in times of COVID-19. Rome available at: [www.fao.org/3/ca9121en/CA9121EN.pdf](http://www.fao.org/3/ca9121en/CA9121EN.pdf), and, FAO. 2020. Legal considerations in the context of responses to COVID-19 to mitigate the risk of food insecurity. Rome. Available at: [www.fao.org/3/ca8615en/CA8615EN.pdf](http://www.fao.org/3/ca8615en/CA8615EN.pdf)

## Designing future programmes and projects dedicated to law review, implementation, compliance and enforcement

32. As demonstrated above, well resourced, targeted and sustained legal assistance including allowing time for meaningful participation of all relevant stakeholders in the law review and reform processes, lead to substantive transformational results in terms of adoption of forward looking comprehensive fisheries and aquaculture legislation that can be implemented and enforced. Better results are achieved when effort is put into ensuring that legal assistance supports the review and drafting of legislation, which adopts a participatory approach, ensuring that Government stakeholders engage with fishers and fishing communities, from the small-scale to the large-scale fishery, and other actors in the sector to appreciate their views and seek their input. Such engagement will foster ownership of the outcomes and leads to better implementation provided that adequate resources are allocated and there is capacity to implement the new law.

33. The preferable outcome is that laws for sustainable development should not only be nice looking text on paper but for such laws to be implemented once they are enacted. These point to the need to ensure that programmes and projects for legal assistance address implementation, compliance and enforcement capacity needs. It is no longer enough for dedicated law reform programmes or projects with substantive law reform components to focus on review and drafting of the principal fisheries and aquaculture legislation within a short project timeframe. More effort should be put into ensuring that there is a commitment to providing meaningful resources in terms of funding support and capacity building and that an adequate timeframe is allocated during the design of programmes and projects on the review, reform and implementation and enforcement of laws, including fisheries and aquaculture legal frameworks. Such programmes could focus specifically on providing assistance in enhancing legal frameworks with dedicated areas of activities. These activities may include studies on issues and compilation of best legislative practice to emulate, development and use of law review assessment, development and implementation tools, training and capacity building in particular for implementation, ensuring compliance and the enforcement of laws and the provision of drafting assistance to specific regions and countries on request. Such programmes and projects for enhancement of laws could be modelled on programmes such as:

- FAO's "Global Capacity Development Programme to support the implementation of the PSMA and complementary international instruments and regional mechanisms to combat IUU fishing"<sup>16</sup>, and related projects;
- the Sustainable Wildlife Management Programme<sup>17</sup>; and/or
- UNEP's Montevideo Programme: a decade of action on environmental law<sup>18</sup>.

34. Indeed, any initiative to focus on delivering on the recurring core function of the Organization, "normative work"<sup>19</sup>, which is essential for the effective implementation of the Strategic Framework requires that one of its major components or outcomes should be the strengthening of national legal frameworks to implement international instruments relating to food and agriculture and the sustainable use of natural resources including fisheries and aquaculture, supported by a sustained and well-resourced technical assistance programme. To ensure completeness whoever, such assistance programme should ensure that there is also adequate support for building capacity for implementation and enforcement beyond the formulation of forward looking and fit-for-purpose national legislation.

<sup>16</sup> See [www.fao.org/port-state-measures/capacity-development/ongoing-capacity-building-efforts/en/](http://www.fao.org/port-state-measures/capacity-development/ongoing-capacity-building-efforts/en/)

<sup>17</sup> See [www.fao.org/forestry/wildlife/95602/en/](http://www.fao.org/forestry/wildlife/95602/en/)

<sup>18</sup> See [www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-1](http://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-1)

<sup>19</sup> See for example the Director General's Medium Term Plan 2018-21 and Programme of Work and Budget 2018-19, FAO 2017 - [www.fao.org/3/a-ms278e.pdf](http://www.fao.org/3/a-ms278e.pdf) and the Director General's Medium Term Plan 2018-21 and Programme of Work and Budget 2018-19 (reviewed), FAO 2019 - [www.fao.org/3/my734en/my734en.pdf](http://www.fao.org/3/my734en/my734en.pdf)