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منظمة
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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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Activities of the Development Law Branch - Information Report

I. Introduction

1. At its 99th Session in 2014, the Committee on Constitutional and Legal Matters (CCLM), recommended that it continue to be provided with information reports on the activities undertaken by the Development Law Branch of the Legal Office (LEGN) at its future sessions.
2. This paper outlines LEGN's planned activities in the 2018-19 biennium and, in particular, highlights three areas of activity where the Organization's earlier efforts at a higher policy level are now being transformed into concrete implementation activities.

II. Plans for the 2018-19 Biennium

3. In its planning for the 2018-19 biennium, LEGN has focussed on aligning its work objectives with the priorities identified by individual Members, the Organization's Reviewed Strategic Framework, and the approved Programme of Work and Budget 2018-19. Its planning has been undertaken in close consultation with the Strategic Programme Teams, decentralised offices and technical departments. During the biennium, LEGN intends to focus on the development of national and regional capacities to address the priorities and needs of Members. It will also focus on incorporating new legal methodologies and concepts (such as those related to climate change) in the delivery of its assistance. Many of the planned legal activities build on the outcomes of initiatives of the Members and the Secretariat of the past biennium.
4. LEGN's 2018-19 work plan thus includes a total of 105 activities, agreed with the Strategic Programme Teams, to be implemented in all regions. Some activities will be implemented on a global basis (e.g. the production of legal guidance documents to support implementation of international instruments related to sustainable agriculture, including forestry, other natural resources management and climate change). Others will be delivered on a regional or sub-regional basis (e.g. activities to support Asian region countries to increase their capacities to review and harmonise their AMR-related

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legislation). The vast majority of activities (66) will be implemented at the national level (e.g. collaboration governments through the provision of training on the implementation of the Port State Measures Agreement (PSMA) and the development of national legislation to support its implementation).

III. Highlights of activities to be conducted in 2018-19

A. Implementation of the Agreement on Port State Measures to Prevent Deter and Eliminate Illegal, Unreported and Unregulated Fishing and related international instruments

5. At the 102nd session of the CCLM, LEGN outlined the threat of illegal, unreported and unregulated (IUU) fishing to marine ecosystems and its negative long-term implications for the conservation and management of marine resources.¹ LEGN also reported on FAO's initiatives, and LEGN's contribution, in the fight against such fishing, including through implementation of the PSMA.

6. By implementing the PSMA, countries prohibit the entry into, and use of, ports by foreign vessels engaged in IUU fishing and, thus, preventing the introduction of their catch into national and international markets. By making it more difficult to market fish, the economic incentive to engage in IUU fishing would be reduced. However, whilst there is increasing political commitment to curb IUU fishing, the rate of adoption of port State measures is slow and implementation needs to be strengthened in most regions. To respond to this challenge, in 2017, FAO and its partners established an Umbrella Programme entitled: *Support for the implementation of the 2009 FAO Agreement on Port State Measures and complementary instruments to combat illegal, unreported and unregulated fishing*.² The Umbrella Programme provides a framework for delivery of technical assistance and capacity building interventions to developing coastal countries and Small Island Developing States (SIDS). Delivery will include a number of national, regional and global projects (co)financed by single or multiple donors, supporting a coordinated and programmatic approach to addressing IUU fishing. The Umbrella Programme will also enable FAO to support the development of programmatic regional approaches to combat IUU fishing through the Regional Fisheries Bodies (RFBs).

7. The Programme will build on the past work of LEGN (in collaboration with the Fisheries Technology and Operations Branch (FIAO) of the Fisheries and Aquaculture Department), transitioning its technical assistance and capacity building support to Member States from a demand-driven and *ad hoc* response to requests for assistance to a programmatic approach. The Programme is designed to initially focus on a limited number of countries (20 within four regions) within the 2018-19 biennium, eventually increasing (to 40) over a five-year period. The estimated cost of the first phase of the Programme is USD 10 million. Activities, and related budgets, would increase as other countries and/or partners join the Programme.

8. The Programme has two principal technical components: Strengthening national and regional governance; and, reinforcing Monitoring, Control, and Surveillance systems (MCS). It will be executed through informed and participatory processes, encompassing policy, legal and technical assistance and capacity-building/competency based training. FAO will facilitate South-South Cooperation, whereby beneficiary/partner countries with elevated capacities would assist countries with lesser capacities through technology and knowledge exchange. The Programme will support *inter alia*,

¹ CCLM 102/6. See <http://www.fao.org/3/a-mp815e.pdf>.

² PGM/MUL/2016-2021/PSMA.

- a. the formulation or review of relevant fisheries policies and laws;
 - b. the strengthening of MCS institutions and systems;
 - c. the enhancement of capacity to improve flag State performance and to perform inspections in port;
 - d. the implementation of market access measures, such as catch documentation and traceability schemes;
 - e. strengthening capacities to prosecute persons or entities engaged in IUU fishing.
9. Where feasible, the Umbrella Programme will seek to complement relevant work of other concerned parties, RFBs, programmes and projects. Where fully functioning Regional Fisheries Management Organisations and Arrangements (RFMO/As) exist, they will be invited to collaborate as partners, collaborators or facilitators. Where regional management and governance regimes are weakened due to a lack of capacity, the Programme will support the strengthening of the regional implementation of the PSMA and complementary instruments through the relevant regional frameworks with the full participation of the countries concerned. Collaboration and coordination with relevant intergovernmental organisations – including the United Nations Office on Drugs and Crime (UNODC), the International Maritime Organization (IMO), and the International Labour Organization (ILO) – will be sought.
10. During the 2018-19 biennium, activities will be undertaken in Africa, Asia, Latin America and the Caribbean, targeting Small Island Developing States (SIDS) and developing countries that are either parties or non-parties to the PSMA which have specifically requested assistance or were identified under a precursor technical assistance project TCP/INT/3603 (Precursor TCP Project). So far Indonesia, Madagascar and Namibia have indicated that they wish to receive assistance under the Programme. Gabon, Guinea, Myanmar, Thailand, South Africa and Sudan (all parties to the PSMA) were identified under the Precursor TCP Project as countries that may be interested in receiving additional support. Cabo Verde, Ghana, Kenya, Senegal and Papua New Guinea are also being considered for assistance.
11. In the countries which will eventually be given technical assistance, a range of legal activities will be undertaken, including the development of strategic plans for implementation of the PSMA, the conduct of capacity building workshops and other activities for Government legal officers and fisheries inspectors to assist them in the review and development of regulatory frameworks, seminars for enforcement agencies and judicial institutions to enhance capacity to implement and enforce the PSMA. The development and delivery of special residential programmes with the academic institutions of sister UN institutions will also be undertaken. LEGN will also prepare studies to provide guidance to policy makers and legislative drafters. With a view to broadening the reach of the Programme and the sustainability of its outputs, steps are being taken to develop modules for e-learning on various legal elements of relevance to the PSMA which would, ultimately, be made available in two or three of the FAO official languages.
12. It is considered that these activities will support the Members concerned to achieve SDG 14,³ as well as SO 2.⁴

B. Antimicrobial Resistance (AMR)

13. At the 104th Session of the CCLM, LEGN outlined initiatives of FAO, the UN General Assembly, and the World Health Organization to address antimicrobial resistance (AMR) and the

³ SDG 14 - Conserve and sustainably use the oceans, seas and marine resources for sustainable development.

⁴ SO 2 - Make agriculture, forestry and fisheries more productive and sustainable.

threat it presents to public health, food safety and security, as well as to livelihoods, animal production and economic and agricultural development.⁵

14. FAO has been assisting more than 25 countries in Latin America, sub-Saharan Africa, Eastern Europe, Central Asia and Southeast Asia to support the development and implementation of their One Health AMR National Action Plans. Efforts at the regional level are also ongoing to engage additional countries.

15. One of the four main pillars of the FAO Action Plan for AMR is “governance”, including legislation.⁶ Legislation is intended, in particular, to enhance coordination among major actors such as health, agriculture and environment authorities, all of which are affected by AMR. The cross-cutting nature of AMR raises complex issues in the context of regulatory frameworks. For example, restrictions on the prescription and use of animal vaccines, or quality standards for animal feed, will have implications on food and water safety for humans, as well as on the environment as a whole.

16. LEGN is supporting delivery of the legal components of two AMR projects. This support, provided at the request of the Governments concerned and included in LEG’s work plan for 2018-19, will be undertaken in Ethiopia, Ghana, Kenya, Tanzania, Zambia and Zimbabwe, as well as in Bangladesh, Cambodia and Lao under a project for the Africa and Asian regions.⁷ It will also include technical support to five countries in Central Asia (Armenia, Belarus, Kazakhstan, Kyrgyz Republic, and Tajikistan).⁸

17. As a starting point, national legislation is being analysed by LEGN, with a view to alignment with good regulatory practices based on the international guidance developed, *inter alia*, by FAO, the FAO-WHO Codex Alimentarius Commission and the OIE. This analysis will not only support collaboration with individual Members but will also generate guidance and information for other related activities. For example, it will facilitate the deliberations in regional workshops on AMR, which are intended to provide a forum for policy makers and regulators to discuss the main elements of AMR-related legislation and to propose regulatory choices to help countries to curb AMR and its effects.

18. A Legislative Study on regulatory frameworks for AMR will be developed, addressing practices in multiple sectors, e.g. veterinary medicinal products, animal health and production, feed, aquaculture, food safety, environmental protection, waste management and water. The Study is intended to serve as a guide to Members on the legislative mechanisms they could employ to address AMR.

19. Finally, a new ‘tag’ for the FAOLEX database has been developed. This will facilitate access for national authorities and others to examples of national legislation and policies that may support their efforts to address AMR.

20. It is anticipated that these activities will assist the countries concerned to achieve SO 2, SO 4 and SO 5, and priorities set out in their Country Programming Frameworks.⁹ It will also directly

⁵ CCLM 104/4. See <http://www.fao.org/3/a-ms567e.pdf>.

⁶ <http://www.fao.org/3/a-i5996e.pdf>

⁷ GCP/GLO/710/UK: Engaging the food and agriculture sectors in sub-Saharan Africa and South and South-east Asia in the global efforts to combat antimicrobial resistance using a One Health approach.

⁸ GCP/RER/057/RUS: Reducing the advance of Antimicrobial Resistance (AMR) in food and agriculture.

⁹ SO 2 - Make Agriculture, Forestry and Fisheries more Productive and Sustainable; SO 4 - Enable Inclusive and Efficient Agricultural and Food Systems; SO 5 - Increase the resilience of livelihoods to threats and crises.

contribute to their achievement of the SDGs related to health, agriculture, animals, the environment and food.¹⁰ It would also support Members' efforts in respect of SDG 17.¹¹

C. Sustainable Wildlife Management

21. At the 104th Session of CCLM, LEGN first reported on the Sustainable Wildlife Management (SWM) Programme.¹² It highlighted the implication of the depletion of wildlife including, *inter alia*, the impact on essential ecological functions (e.g., seed dispersion and nutrient cycling) and the consequences for nutrition, livelihoods and cultural identities of rural families.

22. The Programme – implemented by a consortium comprising FAO, the Centre de coopération internationale en recherche agronomique pour le développement (CIRAD), the Center for International Forestry Research (CIFOR) and the Wildlife Conservation Society (WCS) – aims at reconciling wildlife conservation issues with those of food security in a set of key (forested and savannah) socio-ecosystems. The intention is to promote sustainable and legal exploitation of resilient wildlife populations, as well as to adjust the supply of proteins for consumption by both rural and urban populations. The SWM is now in its inception phase and the implementation of activities will begin in March 2018.

23. FAO, specifically LEGN, is responsible for the component aimed at strengthening legal and institutional frameworks to support the sustainable exploitation of “wildlife species resilient to hunting and fishing” and to safeguard protected and/or endangered species (“Result 1”).

24. LEGN will be responsible for ensuring the integration of FAO methodologies during the implementation of Result 1 activities across sites located in the African, Caribbean, and Pacific (ACP) countries covered by the project. Activities will include, *inter alia*, using gender and Free Prior and Informed Consent (FPIC) methodologies to carry out a participatory mapping of all the actors and rights holders present at each site, a *de jure* and *de facto* assessment of the legal framework pertaining to the wild meat value chain to identify obstacles to the implementation of the law, and the formulation of recommendations to address them. These activities are reflected in LEGN's own work plan for the biennium.

25. Programme activities will, in particular, be undertaken with Central African countries, which LEGN will support in the revision of existing legislation and, as needed, the drafting of new laws. LEGN will provide expert legal technical assistance including developing or strengthening legal mechanisms to secure tenure rights, protect wildlife, and regulate related markets and trade. The activities will also address animal health and food safety measures at national and regional level. Relevant legislation will also be made available through an *ad hoc* online portal to facilitate access to information by all stakeholders.

26. It is considered that the implementation of the Programme will support achievement of SO 2 and SO 3.¹³ It is also considered that it will also support Members to achieve SDG 2 and 15.¹⁴

¹⁰ SDG 2 - End hunger, achieve food security and improved nutrition and promote sustainable agriculture; SDG3 - Ensure healthy lives and promote well-being for all at all ages; SDG 6 - Ensure availability and sustainable management of water and sanitation for all; SDG 14 - Conserve and sustainably use the oceans, seas and marine resources for sustainable development ; SDG - 15 Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

¹¹ Strengthen the means of implementation and revitalize the global partnership for sustainable development.

¹² CCLM 104/4. See <http://www.fao.org/3/a-ms567e.pdf>.

¹³ For SO 2, see note 10 above. SO 3 - Reduce rural poverty.

¹⁴ See note 10 above.

IV. Suggested action by the Committee

27. The CCLM is invited to consider the information in this document and make such comments as it deems appropriate.