**Comments and observations from the Development Law Service (LEGN), Legal Office, FAO**

3) Good governance, enabling frameworks, and stewardship initiatives are needed to facilitate mainstreaming of biodiversity within and across agricultural sectors.

**GENERAL COMMENTS**

The thoughts and observations stated here are expressed from the perspective of those who work in FAO on development law i.e legislation, regulations etc, as enabling frameworks for food and agriculture and natural resources (land, forestry, water, fisheries etc.) for access and use and related management. It is vital to underscore the importance of explicit reference to legislation or legal frameworks in the context of mainstreaming biodiversity because when the question is asked of what “biodiversity mainstreaming” means, the working definition often cited is the one set out below, which omits the term “legislation” and “legal frameworks”:

“*Biodiversity mainstreaming is the process of embedding biodiversity considerations into* ***policies, strategies and practices*** *of key public and private actors that impact or rely on biodiversity, so that biodiversity is conserved, and sustainably used, both locally and globally*.” *(emphasis added*)

It may be argued by some that specific reference to legislation or legal frameworks in the definition cited above is not necessary as the term “policy frameworks” is inclusive and covers legal frameworks. However, while carefully thought-out global analyses or guidance documents (e.g. *STAP Advisory Document on mainstreaming biodiversity in practice* (Huntley, B.J. and Redford, K.H., 2014)) underscore the need for legislation as an enabling mechanism for biodiversity mainstreaming, most discussion on and development of strategies and initiatives, including through programmes and projects, only mention policy and rarely focus on legislation. An example of the lack of reference to law as a mechanism for mainstreaming biodiversity is observed in the text of the *Voluntary Guidelines for Mainstreaming Biodiversity into Policies, Programmes and National and Regional Plans of Action on Nutrition* (FAO 2016). Another written account of an initiative on biodiversity for food and agriculture[[1]](#footnote-1) mentioned legislation once and referred to regulations five times. If law or legislation is mentioned at all, it is normally done in the context of law being a complementary or as a secondary consideration.

LEGN believes that legislation or legal and regulatory frameworks are vital and are often core to efforts in mainstreaming biodiversity. Legal frameworks give legal force to policy in terms of creating legal obligations and enforceability of requirements. Legislation can drive change in approach, planning, decision making, management and behavior. It can secure the participation of stakeholders including gender participation and the input of the often marginalized peoples. Legislation can also establish appropriate institutions and mechanisms for these changes to occur. An important aspect of legislation is that it enables designated or interested parties to enforce the law or seek protection of or realization of rights that are accorded and violated.

Reviewing legal frameworks, enhancing existing laws and developing new legal frameworks must therefore be core of strategies or established programmes or projects for mainstreaming biodiversity or at least be a vital component of such programmes or projects. Appropriate resources should be allocated for these as well as implementing related capacity building, information and further research activities to plug gaps in knowledge or the understanding of the role that law can play in mainstreaming biodiversity. The need for legislation, in the context of mainstream biodiversity should “take center stage” rather than legislation being a secondary complement, a peripheral consideration or an after-thought - to be dealt with or pursued as an activity only if there is time or other resources are available.

* **Do you have any examples of such enabling factors and initiatives or the lack of it?** Examples could include Cross-sectoral land use planning; Macro-economic policy and public investment; Elimination, phasing out and reform of perverse incentives harmful to biodiversity; Product labelling and market certification schemes; Green finance and private investment or others

Currently, the main area of work of LEGN is in assisting Members of FAO (countries) at their request to review existing legal frameworks (i.e. identify gaps and legislative measures to address such gaps) or assisting countries in drafting legislation for food and agriculture and natural resources (e.g. forestry, land, fisheries) in the context of food and nutrition security. Most of the legislative review and drafting work is sector driven but biodiversity mainstreaming is embedded in drafts of these sectoral legislation as principles and management guidelines or as measures in operative provisions/texts. Examples of biodiversity mainstreaming can be seen in legislating for the ecosystem approach to fisheries (EAF) or the implementation of the VGGT and the Small Scale Fisheries Guidelines or measures to reduce or report by catch or catches of non-target and associated species in fishing operations in fisheries legal frameworks. REDD+ principles and best practices being embedded in forestry legislation is another example of biodiversity mainstreaming. The work on reviewing and developing such legislation is done in a multidisciplinary manner and in a participatory approach.

What is lacking however is the programmes and projects that targets biodiversity (conservation and management) as the core subject to be realized across sectors with a focus on enhanced legal frameworks as the driver for change. A few countries (examples to be provided on request) have experimented in overarching or framework biodiversity or environment legislation but whether this approach could be studied as best practice and replicated are activities that would require a programme or project which commits adequate resources to undertake the activities.

* **Which partners need to be involved in institutional frameworks, policies and processes for biodiversity mainstreaming to strengthen them?**

As many interested stakeholders or their representatives as possible should be involved in the review and development of legal frameworks for biodiversity mainstreaming whether through a sectoral opr multi-sectoral programme. After all, ensuring sound legislation is not only a matter of ensuring that its contents are comprehensive – it is also a matter of process – of ensuring that interested stakeholders and communities are consulted and contribute input into the drafting of legislation. These ensures buy-in and ownership of the process and product but also legitimacy of the law. This in turn might help in implementation and compliance with the law.

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1. Biodiversity for Food and Agriculture, Comtributing to food security and sustainability in a changing world, FAO 2011. [↑](#footnote-ref-1)