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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) was presented with information on the activities of the Development Law Branch (LEGN) of the Legal Office and, in the report for that Session, the CCLM recommended that it continue to be provided with information reports on the activities undertaken by LEGN at its future sessions. Consistent with this recommendation, the present Note provides information on some of the activities undertaken by LEGN since it last reported to the CCLM at its 102nd Session in 2016.

II. Activities and Initiatives since the 102nd Session of the CCLM

2. LEGN has undertaken a broad range of activities since its last report to the CCLM in March 2016. This paper highlights LEGN's new areas of work.

A. Indicators relating to the Sustainable Development Goals

1. Background

3. Food and agriculture are included, as enablers of sustainable development, in the 2030 Agenda for Sustainable Development ("the 2030 Agenda"). The Targets relating to FAO's mandate go far beyond Sustainable Development Goal 2 ("SDG 2"), "*End hunger, achieve food security and improved nutrition, and promote sustainable agriculture*", touching upon practically all 17 Sustainable Development Goals ("SDGs").

4. Acting under a mandate from the UN General Assembly, in March 2016 the UN Statistical Commission agreed upon a global indicator framework comprising a provisional 230 indicators to monitor progress towards achieving the 169 Targets associated with the 17 SDGs. FAO is the "custodian" UN agency for 21 of the 230 indicators (relating to SDGs 2, 5, 6, 12, 14 and 15) and contributing agency for four more, highlighting the centrality of food and agriculture to the 2030

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Agenda. LEGN is supporting the measurement of two of these indicators: (a) gender equality in land ownership; and, (b) the conservation and sustainable use of the oceans and their resources.

2. SDG 5 - Indicator 5.a.2 (Gender equality in land ownership and control)

a. Introduction

5. Goal 5 (“SDG 5”) is to “*achieve gender equality and empower all women and girls*”. Target 5.a aims to “*give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.*” It is measured by progress on two indicators:

Indicator 5.a.1:

“(a) Percentage of people with ownership or secure rights over agricultural land (out of total agricultural population), by sex; and

(b) Share of women among owners or rights-bearers of agricultural land, by type of tenure.”

Indicator, 5.a.2:

“Percentage of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control.”

6. Indicator 5.a.2 builds on the FAO Legal Assessment Tool (“LAT”) for gender-equitable land tenure. The LAT consists of 30 indicators measuring the development of various legislative measures that are considered to promote *de jure* equality between men and women with regard to land tenure. The LAT draws on, in particular, the Convention on the Elimination of all forms of Discrimination Against Women, and the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (“VGGT”).

7. States will not be requested to report on all 30 indicators of the LAT. FAO is developing proxies that are designed to capture special measures and key reforms that promote the equal enjoyment of land tenure rights by women and men. The proxies that States will be requested to report on cover the following five dimensions:

- Budgetary commitments to strengthen equal rights for women regarding the ownership and/or control of land;
- Protection of women’s rights in customary land tenure systems;
- Joint titling;
- Spouse or partner consent prior to the sale or transfer of property; and
- Gender equality in inheritance.

8. A key legal challenge with the Indicator is the inclusion of customary law. By its very nature, customary law is uncodified and is not uniform within any given country. The approach to be taken, which draws upon the LAT, will be to consider statutory recognition of customary laws and whether such recognition provides protection for women’s land interests.

9. At the time of writing, it is uncertain how progress will be recorded under Indicator 5.a.2, for instance, whether progress needs to be made by a State on all proxies or a majority. The precise formulation of the proxies is in progress and will be submitted to the UN Statistical Commission in early 2017 for decision, along with the proposed reporting methodology.

b. LEGN’s role and technical assistance

10. LEGN has supported the development of the LAT, Indicator 5.a.2 and the proxies, as well as related methodologies. It will technically support field testing of the methodologies and the

preparation of capacity development materials. Progress on indicator 5.a.2 is expected to improve women's rights in practice as measured by indicator 5.a.1.

c. Partners / Collaboration

11. LEGN is working closely with the Gender and Land Rights Database team in the Social Development and Rural Institutions Division (ESP), the team that initiated the LAT and advocated for the inclusion of a women's land rights indicator in the SDG process.

12. In the context of the SDGs, LEGN works also closely with the Statistics Division (ESS) and the Land Tenure team in the Office for Advocacy, Partnerships and Capacity Development (OPCL).

3. SDG 14 – Indicator 14.6.1 (Implementation of international instruments to combat IUU fishing) and Indicator 14.b (Adopting and implementing legal regulatory, policy and/or institutional frameworks for small scale fisheries)

a. Introduction

13. Goal 14 (“SDG 14”) is to “*conserve and sustainably use the oceans, seas and marine resources for sustainable development.*” FAO is custodian for 5 of the 10 Targets for SDG 14. Indicators 14.6.1 and 14.b will, respectively, measure progress made through legislation to implement international instruments to combat illegal, unreported and unregulated (“IUU”) fishing and to recognize and protect access rights for small scale fisheries. FAO, through the use of the results of an adapted online questionnaire for Members to review the implementation of the Code of Conduct for Responsible Fisheries (“the Code”) and related instruments, will extract information on how States have developed and implemented legislation on combatting IUU fishing and recognizing and protecting small scale fisheries.

b. LEGN's role and technical assistance

14. LEGN is collaborating with the Department of Fisheries and Aquaculture (FI) to address Indicators 14.6.1 and 14.b and the Chief, LEGN, is one of the FAO focal points for inter-agency and intra FAO coordination of work on Indicator 14.6.1.

15. LEGN has contributed to the review and adaptation of the online questionnaire for the Code to ensure that Members can report on the development and implementation of legal frameworks to combat IUU fishing and to recognize and protect access rights of small scale fisheries. LEGN is developing a legislative guide for small scale fisheries in collaboration with other technical divisions. This will be used in combination with the online questionnaire, as a tool for providing a qualitative evaluation of the performance of Members for Indicator 14.b.

c. Partners / Collaboration

16. LEGN collaborates closely with FI, in particular with the Policy, Economics and Institutions Branch (FIAP), in this context. The collaboration in respect of Indicator 14.6.1 (Implementation of international instruments to combat IUU fishing) builds upon existing collaboration supporting implementation of the Agreement on Port State Measures to Prevent Deter and Eliminate Illegal Unreported and Unregulated Fishing. The collaboration in respect of Indicator 14.b is an extension of LEGN's work with FIAP on the Voluntary Guidelines on Small Scale Fisheries.

17. LEGN collaborates with ESS in terms of FAO-wide coordination of work on Indicators, including those in respect of which FAO contributes to work on Indicators under the custody of other UN agencies (e.g. United Nations Division on Oceans and Law of the Sea with respect to Indicator 14.c).

B. Antimicrobial resistance

1. Background

18. Antimicrobial resistance (“AMR”) refers to microorganisms – bacteria, fungi, viruses, and parasites – that have acquired resistance to antimicrobial substances. A consequence of this includes the failure to successfully treat infections, leading to more severe or prolonged illness, or even death. It also leads to production losses and negative consequences for livelihoods and food security.¹ While this phenomenon can occur naturally through microbial adaptation to the surrounding environment, it has been exacerbated by inappropriate and excessive use of antimicrobials. Poor regulatory frameworks and non-therapeutic uses of antimicrobials are among the factors which have contributed to AMR.

19. Resolution 4/2015 of the FAO Conference adopted at its 39th Session (June 2015), calls on Members and the Organization to address the multifaceted aspects of mitigating both the impact of, and contribution of the food and agriculture sectors to, the threat posed by AMR to public health and food safety. It welcomes the adoption by the World Health Assembly of a “Global Action Plan on antimicrobial resistance” (Resolution 68.7 adopted in May 2014), which called for strengthened collaboration between FAO, the World Organisation for Animal Health (OIE) and the World Health Organization (WHO) to address AMR within the context of a “One Health” approach.²

20. FAO has developed a specific Action Plan to guide its work on AMR in collaboration with WHO and OIE. One of the four pillars of the FAO Action Plan focuses on “Strengthening governance related to antimicrobial usage and AMR in food and agriculture” and highlights the importance of legislation.³

2. LEGN’s role and technical assistance

21. Regulating antimicrobial uses (“AMU”) involves multiple sectors, ranging from the production, importation, distribution and use of antimicrobials to the residues of antimicrobials in food and the discharge of waste into the environment. Continuous scientific developments related to AMR and the broad scope of regulatory areas involved presents a unique challenge when addressing AMR and AMU related issues through legislation. LEGN’s role in undertaking legal analysis on matters falling under FAO’s mandate and providing legal assistance to Members at their request, ensures that it is strategically placed to provide legal advice across the multiple sectors involved in AMU and AMR.

22. As a member of the FAO Interdepartmental Working Group on Antimicrobial Resistance (“WGAMR”), LEGN contributed to the drafting of the FAO Action Plan on AMR, as well as other related documents.

23. In addition, LEGN is implementing field projects addressing AMR and AMU in Africa and Asia, in close coordination with OIE and WHO. This work is to be extended to projects in the Americas.

¹ The health consequences and economic costs of AMR are estimated at 10 million annual human fatalities and a 2 to 3.5 percent decrease in global Gross Domestic Product (GDP), or 100 trillion USD by 2050 (see O’Neill O.J., 2014: *Antimicrobial Resistance: tackling a crisis for the health and wealth of nations*. The Review on Antimicrobial Resistance). However, the real consequences of AMR remain unpredictable (see Smith R. and Coast J., 2013: *The true cost of antimicrobial resistance*. BMJ 346, f1493).

² On 21 September 2016, the High-level meeting on Antimicrobial Resistance of the UN General Assembly adopted the “Political Declaration of the High level Meeting of the General Assembly on Anti-microbial Resistance”, which recognizes the role of relevant inter-governmental organizations, particularly the WHO, FAO and OIE, in responding to the challenges of antimicrobial resistance.

³ For further details see <http://www.fao.org/3/a-mp128e.pdf>

3. Partners / Collaboration

24. FAO, OIE and WHO are focussing on coordinating activities, including in respect of the implementation of projects as well as the development of new instruments and guidance. In this context, LEGN is strengthening its collaboration with these organizations to promote consistency in addressing AMR and bridging the gap between human health, veterinary, fisheries and agricultural legislation. In particular, LEGN is collaborating with the OIE pathway for veterinary legislation.

C. Sustainable Wildlife Management

1. Background

25. The relative accessibility and affordability of wild meat for urban populations is resulting in the over-exploitation of wildlife resources. In addition, more and more natural habitats are being converted to other uses such as agriculture. These factors are depleting wildlife resources, so that wildlife no longer plays its essential ecological roles (e.g., seed dispersion and nutrient cycling). Furthermore, rural families are losing an ecological service vital to their nutrition, livelihoods and cultural identities. Food and nutrition insecurity is on the increase, as well as the incidence in human versus wildlife conflicts, and risks for animal and human health are on the rise. In several countries, these are the consequences of ineffective legal frameworks and limited enforcement capacities.

2. LEGN's role and technical assistance

26. LEGN is collaborating in the Sustainable Wildlife Management (“SWM”) programme, an initiative aimed at reconciling wildlife conservation with food security. It seeks to promote sustainable and legal exploitation of resilient wildlife populations. The SWM is an initiative under the European Commission’s wildlife conservation strategy “Larger than elephants: inputs for an EU strategic approach for African wildlife conservation”. The initiative focuses on a limited number of Key Landscapes for Conservation (“KLC”) in Africa selected to cover the greatest biodiversity and to target emblematic species essential for natural ecosystems with established importance for global biodiversity.

27. LEGN is leading work in this context to strengthen institutional and legal frameworks intended to support the sustainable exploitation of “wildlife species resilient to hunting and fishing” (“WSRHF”) and to safeguard protected and/or endangered species. LEGN will provide technical legal expertise aimed at securing tenure rights, protect wildlife, regulate markets and trade, and introduce animal health and food safety measures.

3. Partners/collaboration

28. The SWM programme will be 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).

D. New FAOLEX website and digitization of historical materials

1. FAOLEX

29. Consistent with its constitutional mandate, since its establishment in 1945, FAO has collected and disseminated legal, governance and policy information related to food, agriculture and natural resources management.⁴ From 1954 to 1994, the Legal Office published “Food and Agricultural Legislation”, an annual compilation of significant, innovative and illustrative legislation. In 1995, this information service was replaced with FAOLEX, an online repository of national legislation and

⁴ [In 1948, the functions and assets of the Institute of International Agriculture \(IIA\) were transferred to FAO, including the statistical information on farming and agricultural products](#) collected by the IIA.

policies maintained by LEGN.⁵ In addition to being a source of multi-sectoral information, FAOLEX data is used for other FAO managed websites and databases, particularly those focussed on specific areas, such as the FAO Pastoralist Knowledge Hub⁶ and the FAO Agroecology Knowledge Hub.⁷

30. FAOLEX now makes accessible over 135,000 records with abstracts, indexing information and full texts of relevant instruments. In 2016, approximately 10,400 new entries were added: 9,750 laws and regulations, 507 national policies, 140 bilateral agreements and 3 constitutions. Some 470,000 users accessed the database in 2016, adding up to a total of 1,174,335 page views.

31. A new FAOLEX website was launched in 2016. With the support of the Information Technology Division (CIO) and the Office for Corporate Communications (OCC), the website has been simplified and made more user-friendly, providing intuitive search functionalities commonly found in internet search engines. The new platform also facilitates data-sharing arrangements with external partners. Notably, the new technical infrastructure allows the seamless integration of legislation from FAOLEX into ECOLEX, a database on environmental legal instruments jointly run by LEGN with IUCN and UNEP.⁸

2. Digitization of historical materials

32. For over 40 years, the Legal Office collected national legislation with the assistance of the Members acting pursuant to the reporting requirement under Article XI (1) of the FAO Constitution. In order to preserve these archives, currently existing either in paper form or on unreadable microfiche, approximately 850,000 pages are being converted into digital format. The objective is to preserve this historical information and make it available in a Historical Database for historians, legal scholars, researchers and others who may have an interest in these materials.

III. Suggested action by the Committee

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

⁵ www.fao.org/faolex

⁶ <http://www.fao.org/pastoralist-knowledge-hub/knowledge-repository/legislation/en/>

⁷ <http://www.fao.org/agroecology/policies-legislations/en/>

⁸ www.ecolex.org