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PROGRAMME COMMITTEE

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Follow-up to the Evaluation of FAO's Work on International Instruments

Executive summary

The Independent Evaluation of FAO's Work on International Instruments was presented to the Hundred and First Session of the Programme Committee (11-15 May 2009). The Evaluation examined the use of international instruments to promote, develop and reinforce policy and regulatory frameworks for food, agriculture, fisheries and forestry. It also examined aspects of national policies, legal instruments and supporting mechanisms, insofar as they relate to the international framework. Management accepted all 18 recommendations and proposed action to be taken, and reports here on follow-up two years later.

Progress on actions agreed in the Management Response is provided for each recommendation. Progress has been limited for a number of recommendations due to two main factors, as highlighted in the Management Response. First, a major part of the recommendations was directed primarily at the parties to regulatory instruments or their governing structures and not to FAO, which limits FAO's influence on implementation. Second, each instrument is the result of a negotiating process and presents a unique set of features, despite efforts to promote common practices and rules, including with respect to its relationship to FAO.

The follow-up report highlights recent developments that have impacted the situation of some instruments, and the preliminary review of statutory bodies under IPA action 2.69. It notes that the complexity of some recommendations, combined with workload and capacity constraints, have limited progress on the implementation of recommendations relating to a strategic programme, coordination and oversight of FAO's involvement in international instruments. Implementation will continue into the next biennium.

Suggested action by the Programme Committee

The follow-up report is for the information of the Committee.

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A. BACKGROUND

1. The Independent Evaluation of FAO's Work on International Instruments was presented to the Hundred and First Session of the Programme Committee (11-15 May 2009)¹. The Evaluation examined one of FAO's core functions, i.e. the use of international instruments to promote, develop and reinforce policy and regulatory frameworks for food, agriculture, fisheries and forestry (Strategic Objective B-1 of the Strategic Framework 2000-2015). The Evaluation also examined aspects of national policies, legal instruments and supporting mechanisms, insofar as they relate to the international framework (Strategic Objective B-2). The Evaluation aimed at assessing FAO's work on international instruments with respect to how useful that work is for FAO Members, in general, and for the achievement of the Organization's Strategic Objectives in particular.

2. In the Management Response², the Secretariat welcomed the Evaluation, which had formulated 18 main recommendations. Management accepted all the recommendations, subject however to a very important consideration that needs to be underscored in this follow-up report, which is that most of the recommendations concern primarily the parties to the regulatory instruments, or the governing structures of the regulatory instruments, and not the FAO Secretariat.

3. Of the 18 recommendations made, Management considered that 12, insofar as they concerned the FAO Secretariat, would require further funding.

B. Key issues covered

General observations

4. This follow-up report, with particular reference to its matrix in Annex, reflects efforts made by the Organization in implementing the recommendations. It reports progress only on a limited number of the recommendations, but this must be seen in the light of a number of factors.

5. The first is that, as mentioned above, a major part of the recommendations was directed primarily at the parties to regulatory instruments or their governing structures and not to FAO. Insofar as these instruments have "*a life of their own*", and were specifically designed to allow the parties thereto and Members to establish and define their priorities, the extent of the FAO Secretariat's involvement in the day-to-day work of the instruments and its ability to influence the workings of their secretariats and governing structures is limited.

6. The second is that, as also underlined in the Management Response, each instrument is the result of a negotiating process, driven primarily by the concerned FAO Members (which may express, within the governing structures of the instruments, interests that are substantially different from those put forward within the governing bodies of FAO) and may also be affected by subsequent practice in the implementation of the instrument in highly specialized areas over which, again, Management may have only limited influence. Moreover, despite efforts to promote common practices and rules, instruments do not follow a uniform, pre-established pattern. On the contrary, each instrument presents a unique set of features, including with respect to its relationship to FAO. The nuances, and at times substantial differences among the various international instruments, are difficult and perhaps impossible to capture in an exercise such as the Evaluation of FAO's Work on International Instruments. In any case, the Evaluation dealt with a range of instruments, in practice it reflected more the experience gained with only a few of the instruments concluded under the aegis of FAO and operated through the Organization.

7. Subsequent to the preparation of the Independent Evaluation of FAO's Work on International Instruments, and the review by the Programme Committee of the Evaluation and the Management Response, a number of important developments have taken place and these have, in one way or another, impacted upon the situation of some instruments. Thus, at the time of issuance of its response, prior to the adoption of the IPA, Management had regretted that the Evaluation did not provide firm guidance on the inter-relationship between this matter of treaty autonomy and FAO's oversight, which

¹ PC 101/5 (a)

² PC 101/5 (a) Sup. 1.

would have been possible under the broad terms of reference of the evaluation. The Immediate Plan of Action (IPA) for FAO Renewal, approved by the Conference at its Thirty-fifth (Special) Session, includes an action requiring Management and the relevant governing bodies to “undertake a review with a view to making any necessary changes to enable those statutory bodies which wish to do so to exercise financial and administrative authority and mobilize additional funding from their members, while remaining within the framework of FAO and maintaining a reporting relationship with it” (IPA Action 2.69).

8. The implementation of IPA Action 2.69 is under way. It resulted first in a “Preliminary review of statutory bodies with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO” which was examined by the CCLM and the Council.³ This preliminary review focused on a number of instruments, including treaties concluded under Article XIV of the FAO Constitution. While functionally autonomous, these treaties operate under the framework of, and through FAO and remain administratively linked to the Organization. The experience of FAO and concerned bodies reveals that it may not always be easy to reconcile the dynamic and conflicting requirements of being functionally autonomous and, at the same time, under the framework of FAO. The purpose of the preliminary review to the CCLM and the Council was to seek to identify areas where some initiatives could be considered to better reconcile the requirements of functional autonomy and those arising from the administrative relationship with FAO. A document on the matter is also being referred to the Programme Committee under another item of the Agenda.⁴ It is important to underline that the implementation of this action has triggered, within most of the governing structures of the instruments operating under the framework of FAO, a process of reflection and review of their status and working procedures. Thus, the current situation regarding the topic covered by the Evaluation of FAO’s Work on International Instruments, the Management Response and this follow-up report is an evolving one, it continues to undergo changes and that situation has not stabilized. This changing background must be taken into account when examining this follow-up report.

Specific observations

9. The fact that it has not been possible to implement some recommendations, generally accepted by Management, calls for clarifications.

10. The Evaluation recommended that the Secretariat should create and regularly review an analysis and a strategic programme to guide and support future decision-making regarding involvement in international policy and international instruments, possibly as part of a “*State of Policy and Regulatory Framework for Food and Agriculture*” (Recommendation 3.1). FAO headquarters, as well as Regional Offices would be involved in the preparation of the analysis as would the Secretariats of the Technical Committees. The level of resources available to the Legal Office and the Secretariats of the Technical Committees and their workload have not allowed for timely implementation of this recommendation, seen in the light of the complexity of the exercise. These limitations and risks were clearly and explicitly foreseen both in the Evaluation and the Management Response. The various concerned units of the Organization have also been confronted in the course of the past few years with the implementation of the IPA and have had to face a large number of conflicting demands. As mentioned in the recommendation, this would require significant investment in the baseline document, but less investment in subsequent reviews. In this connection it may be of interest to mention that the idea of a *State of Policy and Regulatory Framework for Food and Agriculture* originated in 1999 in the context of preparations for the Strategic Framework 2000-2015. At the time, the initiative was not pursued because of the significant effort and investment required. Management is examining ways and means to start implementing this recommendation in the course of the biennium 2012-13.

11. In its response, Management expressed agreement with the observation that FAO’s activities in relation to many international instruments were unconnected, due to the absence of an organization-wide process to oversee FAO’s international regulatory objectives or to assess the extent of their

³ CCLM 88/3; CL 137/5; CL 137/REP para. 53

⁴ PC 108/10

achievement and ensure coordination among them. This is reflected in Recommendations 5.2 and 6.1. In fact, this would seem to involve two dimensions, one of coordination of, and oversight over a core function and, the other, broader policy and administrative coordination among instruments, including a mechanism for determining the contents and authorization of those undertaking formal advocacy of the positions of FAO in non-FAO fora.

12. As to the first dimension, Management noted that this lack of coherence may arise from the failure to designate one coordinating unit to oversee FAO's activities in relation to international instruments. It was proposed that the Legal Office should exercise a role in ensuring that the core function is carried out in a coordinated manner throughout the Organization, both at headquarters and in the field and under appropriate legal oversight. Any coordinating role would need to take account of the fact that some soft law instruments are primarily of a technical nature and, therefore, the role of the Legal Office would be limited to legal aspects. Notwithstanding its active role, for reasons similar to the ones put forward in relation to Recommendation 3.1. the Legal Office has not been able to exercise effectively its role. It is expected that, in the course of the biennium 2012-13, this coordination and oversight role on legal matters be enhanced.

13. As regards coordination on broader policy and administrative issues on the operation of instruments, including the determination of a corporate position in non-FAO fora, a decision would have to be made on the appropriate mechanism and tool to be implemented. The implementation of IPA Action 2.29 would afford an opportunity to implement the recommendations of the Evaluation during the next biennium.

14. The Evaluation contained extensive developments and formulated a few recommendations on observers, civil society and private sector participation in the activities of the instruments. It recommended in particular that the FAO Conference or others responsible for maintenance of the FAO Basic Texts should ensure that rules regarding participation of observers in international meetings carefully balance the interests of public participation by all interested groups and the overall objectives of the meetings or processes involved. The Evaluation also recommended that a number of initiatives be immediately considered or implemented by concerned instruments or bodies (Recommendation 4.10).

15. In the Management Response, the Secretariat indicated that Recommendation 4.10 could only be implemented as part of a broader process of review of rules and practices regarding participation of NGOs (including, *inter alia*, the industry and the private sector and civil society organizations) in the work and meetings of FAO, and taking into due account the intergovernmental status of FAO and the instruments concluded under the framework of FAO. While some flexibility could be allowed, the instruments are required to follow FAO's rules which have not yet been reconsidered. Management will seek to implement this recommendation throughout the biennium 2012-13. In addition to involving inherent technical complexity, this recommendation also involves some sensitivity in view of the intergovernmental nature of FAO and the instruments concluded thereunder.

Guidance sought

16. The follow-up report is for the information of the Committee.

Annex: Follow-up report matrix of the Evaluation of FAO's Work on International Instruments - Management Response

Recommendations	Action Agreed	Comments on actions taken, including reasons for actions not taken	Impact (changes) of actions taken on programme, policies and/or procedures
<p>Recommendation 3.1 <i>Immediate Action: FAO should approach its implementation of Strategy B-1 more strategically. The Secretariat should create and regularly review an analysis and strategic programme to guide and support future decision-making regarding involvement in international policy and international instruments, possibly as part of a "State of Policy and Regulatory Framework for Food and Agriculture." Regional Offices should be specifically and aggressively involved in preparation of the analysis. Each of the FAO Committees (CCP, COFI, COFO, COAG, CFS and CCLM) should participate in this planning process in a pyramid approach, building from the bottom up, based on initial guidance from Headquarters. This will require significant investment in the baseline document, but less investment in subsequent reviews.</i></p>	<p>Prepare concept note for how to implement and maintain a SOPRFA and make it sustainable, building on review under the IPA in 2009.</p>	<p>3.1 No action was taken on this matter because the level of resources available to the Legal Office and the Secretariats of the Technical Committees, as well as their workload have not allowed for timely implementation of the recommendation, seen in the light of the complexity of the exercise. As pointed out in the recommendation, its implementation will require significant investment in the baseline review. These limitations and risks were clearly and explicitly foreseen in the Evaluation and the Management Response.</p>	

Recommendations	Action Agreed	Comments on actions taken, including reasons for actions not taken	Impact (changes) of actions taken on programme, policies and/or procedures
<p>Recommendation 3.2</p> <p>a. Future Strategy: FAO should integrate concerns and commitments relating to funding and operational responsibility into its decisions to authorise commencement of negotiation of new instruments, recognising that the creation of a new instrument provides no guarantee of funding of its activities. To this end, the FAO Secretariat should prepare realistic analyses of the financial cost of a new instrument, including secretariat operations, national implementation and global processes. These estimates should be fed into discussions at an early stage when they will have the most impact on the decision whether to go forward with creation of an international instrument or pursue other options.</p> <p>b. Future Strategy: FAO's budgetary decisions and Member decisions to make extra-budgetary contributions should recognise that performance of key initial activities can be essential to long-term support for and participation in a new instrument and thus its long-term success. As such, these decisions should specifically take into account the need of each new international instrument to ensure the levels of early progress necessary for the instrument's long-term success.</p>	<p>Management for its part has no objection to the recommendation and indeed agrees with it, subject to two clarifications. First, there are often situations, mainly at regional level, where there is a need for specific instruments and where developing countries press FAO to support them. It may be difficult for the Organization not to respond to the needs of some countries. In general, the Organization always draws attention to the financial implications of some initiatives. Presumably, in the context of the new priorities there might be a possibility for FAO to more strongly resist requests for support of initiatives that do not fit within FAO's established priorities.</p> <p>Second, the recommendation is also directed at Members as they negotiate agreements, and this should be taken into account.</p>	<p>3.2a) Insofar as this action concerns and is directed to the FAO Secretariat, it has been implemented.</p> <p>3.2c) This particular long-term recommendation insofar as it relates to the document being submitted to the Programme and Finance Committee specifying which operations FAO will fund has not yet been implemented.</p>	<p>In a recent instance of negotiation of an instrument under Article XIV of the Constitution (Agreement on Fisheries and Aquaculture in the Caucasus), strong emphasis was put on the need for a clear financial commitment on the part of the potential parties before going any further.</p>

Recommendations	Action Agreed	Comments on actions taken, including reasons for actions not taken	Impact (changes) of actions taken on programme, policies and/or procedures
<p>Consequently a higher level of funds should be allocated to new instruments to enable them to put necessary initial programmes into operation.</p> <p>c. Future Strategy: In the creation of new instruments, where the Parties anticipate that FAO shall pay all or a portion of the costs of an instrument's operations, that instrument or some other document should specify which operations FAO will fund. This document should be submitted with the instrument financing plan to the Finance Committee (in addition to the Programme Committee) and should also be separately approved by the FAO Conference.</p>			
<p>Recommendation 4.1</p> <p>a. Future Strategy: FAO should continue to develop both hard and soft law Those making or advising on the choice between the two should ensure that it is made strategically, considering the following factors:</p> <p>(i) the specific needs of each situation. Hard law should be used where there is a need for, and parties are willing to make, national-level political commitments on a particular issue. Soft law should be used where there is an international need or</p>	<p>Management is generally in agreement with the recommendation. The choice between hard- and soft-law is largely one for the Members.</p> <p>Agreed action was the Inventory under Rec. 3.1.</p>	<p>The implementation of this action is ongoing and FAO is indeed currently supporting both the adoption of hard-law and soft law instruments.</p>	<p>FAO has been supporting the adoption of hard-law instruments (e.g. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009; Agreement on the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission, 2009; initiative aimed at the possible establishment of a Fisheries Commission for the Red Sea) and soft-law instruments (e.g. development of International Guidelines on Bycatch Management and Reduction of Discards; Guidelines on Ecolabelling</p>

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<p>desire to enable planning, implementation, legislation, enforcement or other actions in an area in which a significant number of FAO Members (with or without consensus) want to take action.</p> <p>(ii) The fact that FAO's strongest comparative advantage – technical expertise – is often better mobilised through soft law instruments rather than hard law instruments; and that its most generally recognised comparative disadvantage is administration and bureaucracy can often be better avoided through soft law instruments.</p> <p>(iii) The estimated long-term costs and impacts of negotiation, adoption and implementation of an instrument of either type.</p> <p>b. Future Strategy: Where soft law is chosen, promotion and circulation of relevant documents should be maximised and support to assist in their implementation mobilised in order to make best use of FAO's high quality expert contributions of this type.</p> <p>c. Immediate Action: The FAO Secretariat, possibly in conjunction with the analysis described in Recommendation 3.1, should inventory its existing soft law instruments in order to determine</p>			<p>of Fish and Fishery Products from Inland Capture Fisheries). There are also situations where soft law instruments are developed under the framework of treaties. For instance, under Article 21 of the Agreement on Port State Measures, an <i>ad hoc</i> working group is set up to, <i>inter alia</i>, develop procedures for the implementation of the Agreement. FAO is very actively involved in the formulation of Voluntary Guidelines on Responsible Governance of Land, Fisheries and Forests.</p>

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whether and how they can be more effectively used and promoted.			
<p>Recommendation 4.2</p> <p>a. Future Strategy: Cost and oversight factors suggest that integration of instrument operations within FAO departments or as FAO units should be preferred where possible, and where the nature of the specific rights and duties of the instrument and FAO can be delineated by agreement. New instruments should seek to be completely or primarily separate (autonomous) only where that decision has been rigorously analysed and justified.</p> <p>b. Future Strategy: In any new, renegotiated or amended binding instrument, specific language should be included to clarify the precise nature of the FAO-instrument linkage and expectations. Such a provision will help in clarifying each situation, avoiding potential future difficulties and respecting the rights of sovereign Parties.</p> <p>c. For existing binding instruments, resolution of autonomy issues should occur as an affirmative process,</p>	<p>Management agrees with the recommendation, but notes that it does not necessarily have an influence over the operation of international instruments, or over the decisions of the governing structures of new international instruments. The desirability of integrating operations within FAO departments or as FAO units should be considered on a case-by-case basis. Management is uncertain in any case whether these observations apply to both binding and non-binding instruments, noting that cost and oversight factors vary depending on the nature of an instrument.</p> <p>As regards the need for a precise delineation of the linkage of the instrument to FAO, this is certainly important and desirable. But the nature of the linkage is, to a large extent, a matter for negotiation which may not conform to a pre-established uniform pattern.</p> <p>Management agrees with the need to solve “autonomy issues” as an ongoing and “affirmative process” and is</p>	<p>Insofar as this recommendation concerns Management, it has been implemented.</p>	<p>In the context of the implementation of IPA action 2.69, Management is conducting “a review aimed at making any necessary changes to enable those statutory bodies which wish to do so to exercise financial and administrative authority and mobilize additional funding from Members, while remaining within the framework of FAO and maintaining a reporting relationship with it”. This review concerns mainly bodies established under Article XIV of the Constitution. A first version of this review has been completed and reviewed by the CCLM and the Council.</p> <p>A document is also before the Programme Committee⁵. The purpose of this exercise is to identify areas where the requirements of functional autonomy of some instruments and the constraints inherent in the fact of being within the framework of FAO could be better reconciled.</p> <p>This particular sub-recommendation is being implemented in the context of the implementation of IPA action 2.69.</p>

⁵ PC 108/10

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<p>where either FAO or an international instrument is experiencing problems or challenges.</p>	<p>committed to solving these issues insofar as this is possible within the framework of the Organization. A review of the matter has been requested under the IPA. Management regrets that the Evaluation did not provide further guidance on this important and complex matter.</p>		
<p>Recommendation 4.3 Immediate Action: FAO's international instruments should hold off expending scarce resources to develop formal legal compliance and liability mechanisms and/or to increase the profile of their dispute settlement mechanisms, until there are clearer indications of: (i) success in the use and application of these mechanisms in other international instruments and (ii) demand for such mechanisms within FAO. At that point, it may be possible for FAO to develop organization-wide mechanisms and give the particular instruments the right to adopt or not adopt them.</p>	<p>This specific recommendation is not so much directed at Management as at Members. Insofar as this recommendation is relevant to Management, Management recognises that in some cases compliance and dispute settlement mechanisms may have been given excessive importance, especially if one considers that they have been rarely used. It may be useful here to note that Codex standards are used in WTO dispute settlement mechanisms.</p>	<p>Action has been taken in the sense that no formal compliance and/or dispute settlement mechanisms have been established in any recent agreements concluded after the Evaluation.</p>	
<p>Recommendation 4.4 a. Future Strategy: With regard to promotion of national participation, FAO's Members and Secretariat should focus on actions aimed at enabling countries to feel confident of their ability to participate effectively, by increasing awareness</p>	<p>Management observes that it has carried out many activities in training and capacity building, which may then allow countries to have more confidence in their ability to participate. This is already taking place in many contexts, for example with respect to Codex, where FAO and WHO are providing technical</p>	<p>Action has been taken and FAO has made efforts to facilitate participation of countries and national administration in activities related to instruments.</p>	

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<p>at the political level of the instrument's value, removing barriers of capacity (see later Recommendations) or relaxing the interpretation of politically charged language and, where technical compliance is at issue, building a step-wise approach to compliance.</p> <p>b. Future Strategy: FAO should not utilize international instruments as a tool for addressing current emergencies or other urgent situations, except when necessitated by special circumstances. Where there is sufficient consensus, however, international instruments can create mechanisms now to enable prompt action in particular future situations of urgency.</p>	<p>assistance to member countries to enhance their capacity to effectively participate in standard-setting work, amongst other things through the Codex Trust Fund. Measures to increase participation are also taking place in fisheries and other areas.</p>	<p>Action has been taken insofar as FAO is concerned, in the sense that no international instruments were used to address emergency situations.</p>	
<p>Recommendation 4.5 For Future Strategy:</p> <p>a. In assigning responsibilities to focal points and national intra-session activities, FAO's Conference, Members and instrument governing bodies should balance the additional responsibility against the level of demand already imposed on individual focal points.</p> <p>b. In designating national focal points, Members should recognize that the level of demand involved by such persons, including authorising appropriate powers relevant to intra-</p>	<p>Recommendation accepted by FAO, to the extent that it concerns FAO.</p>	<p>The recommendation is of a long term nature. The Organization has had yet no occasion to start implementation.</p>	

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<p>national preparation, integration and information-sharing processes, is essential to converting any international instrument into a functional element within the international policy and regulatory framework, and providing staffing appropriate for these tasks.</p> <p>c. National implementation, delegate preparation and meeting report processes should be designed as two-sided processes, requiring both sharing information among ministries and each ministry's willingness to disseminate, use and apply the information received from other ministries and to consider how national commitments under other international instruments can be integrated at national level in a way that is thorough and organic.</p>			
<p>Recommendation 4.6 Immediate Action: Given the importance of information sharing, FAO, its Secretariat and the FAO instruments should give high priority to:</p> <p>a. assisting developing and least developed countries in meeting their reporting and other information collection responsibilities under relevant international instruments;</p> <p>b. providing resources and other support to building and operation of</p>	<p>The implementation of this recommendation would require funding. There might perhaps be a possibility of linking its implementation to SOPFRA, especially as regards a systematic inventory of reporting requirements. Identified actions were: Inventory of reporting requirements; prepare strategic plans to assist countries with reporting requirements.</p>	<p>As a general line of action, FAO has been assisting Members in carrying out national activities for the national implementation of their responsibilities under international instruments, including in discharging their reporting responsibilities. In the same vein, it has supported databases, information-sharing mechanisms and electronic dissemination of database information.</p>	<p>In general all the instruments operating under the framework of FAO and their secretariats have given high priority to activities aimed at assisting developing countries. This includes, <i>inter alia</i>, the IT-PGRFA, IPPC, Codex Alimentarius, etc.</p>

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<p>instrument-required databases and other information-sharing mechanisms;</p> <p>c. taking measures to assure that electronically accessible databases are made available (in hard copies or CD-Rom) to agencies and other users of the data whose internet access is limited.</p>			
<p>Recommendation 4.7</p> <p>a. Immediate Action: FAO should be cognizant of the multiple and sometimes conflicting demands imposed on countries as a result of the proliferation of international instruments. Where international instrument implementation is needed, legislative and administrative/ institutional assistance should focus on developing tools to help national legislators and administrators implement multiple obligations effectively.</p> <p>b. Immediate Action: FAO should continue to strongly support national implementation of FAO instruments and give priority to capacity building for the development of solutions to technical concerns that obstruct or delay national implementation.</p> <p>c. Immediate Action: Relevant units and FAO instruments should develop and make available information on national and regional legislation and</p>	<p>FAO Management acknowledges the difficulties countries face, but questions how it could have accurate information about countries' treaty adherences and other international obligations in order to evaluate their possibly conflicting obligations. Action agreed was: Resource mobilization and delivery of technical assistance.</p> <p>FAO is committed to continuing to provide assistance to developing countries to implement standards at the national level, once these are adopted internationally. Action agreed was Develop capacity-building action plan.</p> <p>FAO has developed an International Portal on Food Safety, Animal and Plant Health (IPFSAPH). In addition, FAO/WHO coordinating committees are serving as a forum for member countries to exchange information on recent changes to food legislation and regulation. Action agreed was: Develop proposal for mechanisms for information sharing.</p>	<p>FAO has been implementing these recommendations. FAO is fully aware of risks inherent in the proliferation of instruments. It continues to support national implementation of FAO instruments within the means available to it. FAO draws attention to the need to avoid duplication of work.</p>	

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<p>policies adopted or proposed as full or partial implementation of their obligations (or soft law objectives) under the instrument. In this work, it is important not to duplicate work already being done through FAOLEX, and to ensure that both FAOLEX and the instrument's databases are equally up-to-date. If sufficient resources can be found, special sub-databases of FAOLEX could be programmed and refined to provide national implementation data in a form accessible to national and international non-lawyers (including for example, identifying particular clauses in the instruments of general or related sectors, and might be missed or omitted).</p>			
<p>Recommendation 4.8 Immediate Action: FAO and the various international instruments' governing bodies should consider focusing a larger percentage of efforts to build capacity for implementation of international instruments around the subject area of FAO's most widely accepted international instruments.</p> <p>a. Immediate Action: Coordination between FAO departments and the secretariats regarding the development of capacity to implement the international</p>	<p>In the case of food safety and quality, the capacity building of governments is ensured by the relevant units of FAO and WHO, and not by the Codex Secretariat. Close and regular consultation is maintained at headquarters level between the Codex secretariat and the FAO units responsible for capacity building. Moreover, FAO staff in decentralized offices actively participate in the FAO/WHO coordinating committees and are engaged in the dialogue with member countries. Regarding funding, a formal mechanism should be established to facilitate access to the</p>	<p>In general, FAO has been implementing this recommendation as far as practicable. However, there may be a need to bring the concerns underlying this recommendation in a more detailed and precise manner to the attention of both the FAO departments and the secretariat of instruments.</p>	<p>IPPC is strengthening CB activities through the adoption of CB strategy and the development of the associated operational plan (CPM5 in 2010), and making substantial and successful efforts to attract the external funds to support such activities.</p>

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<p>instruments should be enhanced. Plans for building capacity for implementation should be prepared, based on systematic needs assessment, taking into account alternative sources of supply. FAO should focus its resources for capacity building on meeting needs for the type of relatively short-term, technical forms of assistance that it can supply well. The instrument secretariat should have the key role in coordinating and prioritising response to demand and need, even where funding is channelled through technical units.</p>	<p>funding channelled to technical units. Actions agreed were Identify subject areas of FAO's most widely accepted international instruments; Prepare capacity building plans.</p>		
<p>Recommendation 4.9 a. Immediate Action: FAO Conference, FAO staff and the FAO instruments should continue to address the issues of lack of funding for delegate transportation and accommodations, which remain major obstacles to national representation in instrument processes. b. Immediate Action: FAO Conference, FAO staff and the FAO instruments should place high priority on enhancing experiential and technical capacity to participate in international negotiations, investigating the cost, impacts and benefits of developing and executing the various options for promoting</p>	<p>Management agrees with this Recommendation but notes that it depends largely on donor funding. Action agreed: Advocacy for support to Codex Trust Fund. Same observation as above. Management notes that some international instruments have established a number of facilities for delegates. Thus an e-learning facility to build capacity of Codex delegates has been launched. Action agreed: Prepare capacity building plans.</p>	<p>This recommendation is generally being implemented by the FAO Secretariat, although its implementation would require a differentiated approach. In general, the range of actions designed to enhance experimental and technical capacity to participate in international negotiations are being implemented by the FAO Secretariat, insofar as the FAO Secretariat is concerned and can intervene on these matters on its initiative.</p>	<p>FAO and the secretariats of the instruments concerned have taken steps to fund participation from delegates from developing countries. FAO continues to actively support the FAO/WHO Trust Fund for participation in Codex activities. Albeit in a less structured way, other instruments operating under the framework of FAO such as the ITPGRFA and IPPC have facilitated participation by developing countries in meetings.</p>

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<p>attendance by national delegates and increasing capacity to participate effectively. Possible options include:</p> <ul style="list-style-type: none"> - Extended support for delegates' preparation, especially at regional level (meetings, seminars and expert training programmes) prior to global FAO meetings at which substantive issues will be negotiated; - Engagement by FAO of one or more un-aligned ombudsmen, whose mission is to advise delegates in critical meetings; - Voluntary collaboration by delegations in regional groupings, to ensure that each grouping's joint delegation includes experts in all primary professions relevant to a particular meeting; - Increased and extended funding for increasing the number of delegations able to participate, and increasing developing countries' ability to participate in those negotiations and meetings in which most substantive decisions and discussions are conducted. <p>Given the substantial differences among international instruments examined in this evaluation, each instrument's governing body, secretariat, parties and other supporters (including the FAO Conference and staff) must consider</p>			

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<p>its own circumstances regarding which among the above (or other) options to investigate or apply. Each has its own advantages and drawbacks.</p>			
<p>Recommendation 4.10 a. Future Strategy: The FAO Conference or others responsible for maintenance of the FAO Basic Texts should ensure that rules regarding participation of observers in international meetings carefully balance the interests of public participation by all interested groups and the overall objectives of the meeting or process involved. b. Immediate Action: Each instrument or body should reconsider its individual rules on participation of industry or other non-governmental stakeholders, to maximize its inclusion of views of all relevant sectors and interest groups by credible organizations, and to find an appropriate balance in participation. What is “appropriate” will vary from instrument to instrument. c. Immediate Action: Each instrument should take a more proactive role in selecting observers, encouraging each of them to marshal and present the views of other organizations within his stakeholder</p>	<p>Management notes that this Recommendation and its sub-parts could be implemented as part of the broader process of review of rules regarding participation of international non-governmental organizations and civil society organizations in the work of FAO, which will be launched in the near future. However, the matter might be far more complex than it appears at first glance insofar as Members seem attached to the intergovernmental nature of the fora operating within or under the framework of FAO. Management would also like to point out that considerable experience has been gained in some specific areas which might help in the process of review of current rules. For instance, in the case of Codex, as a result of the 2002 Codex evaluation rules and procedures regarding INGO participation have been changed.</p>	<p>In the Management Response the Secretariat indicated that this recommendation could only be implemented as part of a broader process of review of rules and practices regarding participation of NGOs (including, <i>inter alia</i>, the industry and the private sector and civil society organizations) in the work and meetings of FAO, and taking into due account the intergovernmental status of FAO and the instruments concluded under the framework of FAO. Management is much aware of the importance of this issue.</p> <p>For the time being, while some flexibility has been allowed (see the Codex Alimentarius case in the next column), the instruments are required to follow FAO’s rules. A reconsideration of FAO’s rules, including in some cases some general policies, is being initiated,</p>	<p>Since 1999, the Codex Alimentarius Commission has adopted Principles concerning the Participation of international non-governmental organizations in its work. These principles have been under review between 2001 and 2003. In 2004, a further step ahead was the right given for the first time to the Executive Committee of the Codex Alimentarius, to recommend organizations that may not fulfil in all cases the requirements of the principles of Codex, FAO and WHO, but which were expected to make a significant positive contribution to the work of the Commission itself. Efforts are being made between the Codex Secretariat and the legal offices to speed up the application process of the Principles.</p>

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<p>group.</p> <p>Specific options to be considered in order to increase the level of participation by NGOs and private sector groups from developing countries and to enable such groups to represent the interests of other similarly focused groups are:</p> <ul style="list-style-type: none"> - preparatory meetings for NGOs and private sector groups to share positions and concerns prior to essential meetings; - support and assistance to observer groups, to encourage dissemination of the results of FAO meetings and to inform them of the impact that their group's inputs, issues and proposals had on the meeting. 			
<p>Recommendation 4.11</p> <p>Future Strategy: Cooperation with regional bodies and instruments, whether created under FAO's mandate or not, should be an essential element of FAO's use of international instruments, particularly at the level of national implementation. Such cooperation should also encompass all stages of the development or implementation of any new instrument. Corresponding support should be given to ensure adequate capacity at regional level, as part of coordinated capacity building plans for each</p>	<p>This recommendation is accepted subject to concerns expressed regarding "regional standards" as impediments to globalised, multilateral trade.</p> <p>FAO Management has been actively involved in regional activities and commissions, and is pursuing increased cooperation with regional bodies to achieve common goals with the international instruments, especially in the implementation of standards and in capacity building. Agreed action : Identify areas for further regional cooperation.</p>	<p>This recommendation is being generally implemented.</p>	

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instrument (see Recommendation 4.8 above).			
<p>Recommendation 5.1. Future Strategy: In the development of international instruments, FAO should seek to build on its apparent comparative advantages as provider of impartial expert/technical advice, as analyst/interpreter of particular technical or sectoral elements of the issue and as enabler of integrated national level implementation. It should only seek the “lead” in development of an international instrument after realistic assessment of the potential short- and long-term implications, advantages and disadvantages and taking into account its position relative to other stakeholders concerning the issue(s) to be addressed by the proposed international instrument.</p>	<p>Recommendations accepted, with the caveat that whether or not FAO takes the lead in particular areas remains a matter for Members.</p>	<p>This recommendation is being generally implemented, subject to the consideration that whether or not FAO takes the lead in the development of any international instrument is a matter for concerned Members.</p>	
<p>Recommendation 5.2. a. Future Strategy: FAO Conference and Members should exercise care that new international instruments be developed either: (i) in coordination with, and/or building consensus with, all relevant sectors and international actors; or (ii) in a manner that can be consistently applied with all other instruments in the international policy and</p>	<p>FAO Management has no objection, but notes that FAO always works closely with counterparts in other international instruments. FAO Management also notes that a review of partnerships is being undertaken in 2009 under the IPA. Action agreed was to prepare a concept note to identify possible mechanisms</p>	<p>As already indicated in the Management Response, FAO has always worked with counterparts in other international instruments and continues to do so.</p>	

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<p>regulatory framework involving or affecting food, agriculture, forests and fisheries. Particular attention should be given to enhancing coordinated national implementation and to repeating FAO's successes in developing instruments that operate to facilitate and guide that implementation.</p> <p>b. Immediate Action: In preparing to advocate sectoral interests on behalf of FAO, FAO staff should focus on aligning positions with the priorities set out in the Organization's strategic and medium-term plans, approved by Members, and with specific and focused priorities arising from Recommendation 6.1 (below) to enable focused concentration of resources. Maximum use should be made of ongoing efforts in the Organization to enhance transparency to gain information about relevant activities in other departments and units and to offer information to them. This should be supplemented by resources dedicated to enabling focused inter-departmental cooperation, as necessary, and by cooperation with other relevant stakeholders.</p> <p>c. Immediate Action: FAO should develop a mechanism for</p>		<p>Management has interpreted this recommendation as requiring it to inform staff widely about strategic and medium-term plans, to provide training, to foster information sharing and to facilitate interdepartmental collaboration. The implementation of this recommendation, as explained in the Management Response, would require that a unit responsible for promoting interdepartmental coordination be designated or appropriate mechanisms be otherwise designed. The Organization intends to implement this recommendation in the near future.</p> <p>This recommendation has to be seen in connection with IEE recommendations and IPA actions regarding the need for FAO to promote its concerns and advocate its interests in other fora. In its response, Management has indicated that it would have to improve its procedures and systems and, if necessary, to institute new ones. It was also considered that there was a need for a structure or procedures which would identify and formalize the position of the Organization. In this sense, it has not been possible to implement this recommendation, which, as foreseen in the Management Response, is linked to the implementation of Recommendation 3.1.</p>	<p>The implementation of this recommendation might potentially lead to better inter-action with other instruments, in other fora.</p> <p>The implementation of this recommendation might potentially lead to better inter-action with other instruments, in other fora.</p>

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determining the contents and authorization of those undertaking formal advocacy of those positions in non-FAO fora.			
<p>Recommendation 6.1 Immediate Action: FAO, at all levels, should ensure that all aspects of its work and involvement in the international policy and regulatory framework be integrated, to the greatest extent possible, in a clearly expressed analysis and strategy. Linking this strategic planning to the overview described in Recommendation 3.1 will ensure that FAO stays abreast of developments across all parts of the international framework that affect or are affected by FAO's core areas. Such awareness and integration are critical, even where FAO decides to pursue parallel processes rather than participating in other organizations' primary negotiations.</p>	<p>FAO Management agrees with this Recommendation, related to Recommendation 3.1, but notes that it will require significant cooperation with the governing structures of international instruments and calls for the identification of an organizational unit to oversee development and implementation of the strategy. Moreover, as stated above, it is important that this horizontal approach does not undermine the requirements of individual international instruments</p>	<p>Also as explained in the Management Response, the implementation of this recommendation would require that a unit responsible for promoting interdepartmental coordination be designated. As far as coordination and oversight over activities of a legal nature are concerned, the Legal Office performs that role within available means. However, broader coordination functions on policy and administrative matters would also need to be performed.</p>	
<p>Recommendation 6.2 Immediate Action: FAO should give priority to placing its existing international instruments on a firm financial footing and ensuring that they can operate fairly and effectively, including with a fair balance of competent (or technically supported) national delegations, recognising that the level of support</p>	<p>FAO Management agrees with this Recommendation, related to Recommendation 3.2, but notes that some decisions will be taken by the governing structures of international instruments</p>	<p>This recommendation is being implemented. FAO is much concerned at ensuring that instruments are placed and operate on a firm financial footing.</p>	

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<p>needed for the newest instruments may be higher in formative stages than it will be later, once operations reach a “steady state.”</p>			
<p>Recommendation 6.3 Immediate Action: The FAO Secretariat and the existing FAO international instruments should develop a focused plan for providing support to national implementation and regional activities under each instrument. This should encompass the development, dissemination and implementation of each international instrument, as well as technical assistance activities, with the aim of concentrating on a more focused substantive range of activities in each core sector, enabling greater cooperation within FAO and enhancing FAO’s international profile and reputation.</p>	<p>Management agrees with this recommendation but notes that most decisions on national implementation of particular instruments will be taken by the governing structures of those instruments. A focused plan for providing support to national implementation and regional activities under each international instrument would be useful, but should be conceived on a case-by-case basis, taking into account the particular operating environment of each instrument.</p>	<p>In its response, while agreeing with the recommendation, Management has considered that decisions and recommendations on national implementation of particular instruments would be taken by the governing structures of the instruments and that plans for supporting national implementation and regional activities under each instrument would be useful, but should be conceived on a case-by-case basis, taking into account the particular operating environment of each instrument. This recommendation, insofar as it implies actions by Management and relevant governing structures of instruments has been implemented.</p>	