I would like to thank Professor Echols, Executive Director of the World Food Law Institute, for the opportunity to deliver this lecture. I am also grateful to Hans Hoogeveen, the Independent Chairperson of the FAO Council for his introductory remarks, which have set the stage for this lecture.

I would also like to thank Jocelyn Brown Hall, Director of the FAO North America Liaison Office, and her team for the support they have provided towards the organisation of this Lecture. Most importantly, I am grateful to my colleagues from the Development Law Service of the Legal Office, who have contributed to this Lecture.

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As the FAO Director-General has said "Agri-food systems lie at the heart of sustainable development". But what are agri-food systems? The FAO Governing Bodies have applied the following definition:

“The agri-food system covers the journey of food from farm to table – including when it is grown, fished, harvested, processed, packaged, transported, distributed, traded, bought, prepared, eaten and disposed of.

It also encompasses non-food products that also constitute livelihoods and all of the people as well as the activities, investments and choices that play a part in getting us these food and agricultural products.”

The agri-food system is not working as it should. This has been highlighted by the Covid-19 pandemic. The current outlook on food security is grim. According to the 2021 report on the State of Food Security and Nutrition in the World Report, “For the global prevalence of moderate or severe food insecurity, the estimated increase in 2020 was equal to that of the previous five years combined. Thus, nearly one in three people in the world (2.37 billion) did not have access to adequate food in 2020 – an increase of almost 320 million people in just one year. Related to this, the high cost of healthy diets coupled with persistent high levels of income inequality put healthy diets out of reach for around 3 billion people in 2019 across all regions. This number will likely increase in 2020, affecting most regions, due to the COVID-19 pandemic”.

Today, I intend to illustrate how laws, at each stage of the chain, can support better agri-food systems and, by contrast, how the absence of laws can undermine agri-food systems.

The pandemic affected the entire agri-food supply chain, from the farm to the ultimate consumer. It has led to restrictions on movement of workers, changes in consumption choices and options, the shutdown of food production and processing facilities, revised food trade policies and severe financial pressures on
the food supply chain and national budgets. Most countries revised or created legal instruments to address the current and future emergencies.

The pandemic showed how any actions, including legislative actions, to support better agri-food systems must operate at many levels: internationally, nationally and locally. They also demonstrated that legal instruments and governance structures (multi-lateral, national and local), must address both public and private actors.

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Even before King Hammurabi developed the Code of Hammurabi in 1760 BC setting the law for ancient Mesopotamia, people subjected themselves to rules that would allow order in social and economic interactions. Ancient Egyptian law, dating as far back as 3000 BC, was embedded in the values of social equality and impartiality, as well as tradition. Therefore, Law is at the core of our lives, as members of a community. It regulates human relations and organizes life within a society around certain values that society shares and wishes to promote, including the right to adequate food. In the absence of law, the power-based relations take the front stage.

Laws are fundamental drivers of change. They can set standards for desirable conduct and deter undesirable conduct. They can establish responsibilities, rights and entitlements, procedures and sanctions, for institutions and for individuals. As such, laws and regulations are vital to build strong agri-food systems, as I will now try to demonstrate.

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The law can establish the fundamental principles and rights on which these systems should be built.

A sustainable agri-food system is one that delivers food security and nutrition for all in a sustainable manner. This includes the development and implementation of conservation and management measures. International laws relating to fishing provide a good illustration in this regard.

Illegal, unreported and unregulated fishing – known as IUU fishing – threatens marine ecosystems as it undermines national and regional efforts to manage fisheries sustainably, and conserve marine biodiversity. As such, it also undermines the attainment of food security and nutrition. The Agreement on Port State Measures – the PSMA –, which entered into force in 2016, is the first binding international agreement that specifically targets IUU fishing. It lays down a minimum set of standard measures for Parties to apply when foreign vessels seek entry into their ports or while they are in their ports. As more governments have ratified the PSMA, the gaps allowing illegal fishers to bring illegitimate catch to markets have narrowed, reducing the incentive for IUU activities. The PSMA requires countries to have robust legal and institutional frameworks, including mechanisms for prosecuting IUU offenders, training staff on port inspection standards and instituting policies and technology for cooperation and information exchange.

One example of the PSMA’s beneficial action is Thailand, which has effectively used the PSMA legal framework to monitor fishing vessels. According to its Department of Fisheries, Thailand is the third largest exporter of fishery and seafood products in the world, accounting for around 8% of total world exports. It is the European Union’s 5th largest seafood trade partner with a trade value of €426 million (2016). The fisheries sector contributes €3.2 billion to GDP. It supports the livelihoods of approximately
2 million people working in the industry, ranging from small fishing villages to large-scale exporters. The PSMA framework – through the information exchange procedures established under the PSMA, enabled Thailand in 2018 to refuse entry into its port of 46 containers carrying fish suspected of being caught through IUU fishing, and thereby protecting its producers and markets. This international legal instrument, implemented at the national level through legislation, has supported Thailand’s efforts to create a sustainable supply chain, supporting this element of its agri-food system.

Another international law example is the International Plant Protection Convention (IPPC). The treaty aims to protect cultivated and wild plants by preventing the introduction and spread of pests. It applies to most nations involved with international trade in any commodity that could introduce a new plant pest into a new area. It controls all trans-boundary movements of plants and plant products. While many of you may not be aware of this, at the international level, you are protected by ISPM 15 – a standard for word packaging, which ensures that each pallet, wooden box or other wood packaging is free from pests. So, when these cross continents, they do so in a manner consistent with safe agri-food systems. This international instrument is applied through national legal instruments. For example, the ISPM mark is registered and protected under national intellectual property laws. Also, laws establish the institutions necessary to effectively fight the entry and spread of plant pests. Recent examples include the Law on Plant Health in the Maldives, which supported the establishment of a national plant protection organization and to regulate import and export controls. Very recently, draft laws have been developed by countries as diverse as Nicaragua and Bahamas, and similar legislative processes are ongoing in Fiji and Mongolia.

Thus, by establishing international legal standards, creating global mechanisms for coordination, and requiring related national legal measures to be put in place, international law can be seen as a key driver of sustainable agri-food systems.

Due to time constraints, I will not be addressing international soft law instruments, which are also very important to foster harmonization of national legislation in this context.

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Turning to focus on the national level, the law can act as a guiding framework instrument that coordinates and drives changes across the agri-food systems to improve sustainability and healthy diets.

National constitutions offer the highest form of legal protection. Written or unwritten, they enshrine the basic principles to which the state and society must conform. They bind every administrative and governmental act and every legal intervention must comply with them.

Constitutions can compel the transition towards improved nutrition and sustainability in agri-food systems. Constitutions can directly address Food Security and Nutrition issues, including the causes of food insecurity and adverse environmental effects of agri-food systems (e.g., land and natural degradation, pollution, climate change). As such, Constitutions can establish fundamental human rights as constitutional rights. This does not have to be limited to those rights that have been traditional recognized as human rights.
For example, the 2015 Constitution of Nepal recognizes the right to adequate food, the right to be free from hunger and the right to food sovereignty. It also recognizes the right for every citizen to live in a clean and healthy environment.

Similarly, the 2009 Constitution of the Plurinational State of Bolivia recognizes the right of everyone to water and food. It establishes an obligation on the State to guarantee food security, by means of healthy, adequate and sufficient food.

These countries have shown that important steps can be taken in recognizing that sustainable agri-food systems are key to their sustainable development.

The potential effectiveness of constitutional provision in supporting agri-food systems is illustrated by one case from South Africa. In the case of World Wildlife Fund South Africa vs. Minister of Agriculture, Forestry and Fisheries and Others, WWF South Africa invoked the provisions of the South African Constitution that establish the right of everyone to

“have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures”

WWF alleged that the Department of Agriculture, Forestry and Fisheries – DAFF – unlawfully set the 2017/18 allowable catch quota for the West Coast Rock Lobster at an unsustainable level, thus undermining the long-term survival of the species and threatening the livelihood of the fishers who depend on the West Rock Lobster.

The High Court of South Africa concluded that the quotas did indeed threaten the environmental rights codified in the Constitution of South Africa. The South African Constitution thus provided a basis for stakeholders to challenge decisions that they considered undermined the sustainability of the agri-food system.

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While Constitutions reflect the highest laws of the land, framework laws – sometimes referred to as organic, planning or orientation laws – can set the objectives, principles, rights and obligations, and frame sectoral legislations in order to achieve sustainable agri-food systems.

They aim to address cross-sectoral issues, bringing together under one legal instrument different sectoral disciplines. Framework laws can be useful legal instruments in transforming agri-food systems because they can coordinate multi-sectoral or sectoral efforts, implementing and monitoring the right to adequate food for all and achieving food and nutrition security in the long term.

From Tanzania, the framework law of Zanzibar is a good example. There, the Food Security and Nutrition Act establishes that – and I quote – “the Government has an obligation to facilitate accessibility of right to food to every person through maintaining the right to have continuous access to the resources that will enable someone to produce, earn or purchase enough food not only to prevent hunger, but also to ensure health and wellbeing”. This Act establishes institutional and administrative frameworks, setting out the responsibilities of key ministries to implement and monitor food security and nutrition related activities. Specific responsibilities are attributed to the ministries of trade, livestock, fisheries, social welfare, health, disaster management, among others. The Act requires the establishment of a Zanzibar food reserve and identifies how this is to be resourced. It specifically establishes an obligation on the
Government of Zanzibar to provide and maintain sustainable food systems and the protection of the right to food from encroachment by any public authority or any person. It establishes criminal penalties for any person or officer who breaches the provisions establishing government obligations on the right to food.

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**Sectoral laws may bring about changes in specific aspects of the agri-food systems.**

You will remember that the definition of agri-food systems covers the journey of food from farm to table. It includes how food is not only produced, but also how it is prepared, eaten and disposed of.

Agri-food systems can be made stronger through sector-specific legislation, including through measures that protect the most vulnerable. Belize, for instance, has recently completed the development of a Contract Farming law that will facilitate the introduction of written and fair contracts for important commodities such as pineapple. In Malawi, draft contract farming legislation stipulates that children should not be used as workforce in contract farming operations.

Turning to the other end of the supply chain, laws addressing, for example, the school environment – establishing obligations to provide food and stipulating how it is prepared, can transform lives. Legislation on school feeding, such as that from Ecuador, can define the rights and entitlements of schoolchildren, determine clear institutional responsibilities, establish inclusive participation and ensure coordination among the different stakeholders involved. They address adequate budget allocation, and provide a framework for monitoring and enforcement. In the Republic of Korea, the 2006 School Meals Act goes beyond providing for nutritious school meals and obliges schools to establish healthy eating habits among young people.

Moreover, legislation for sustainable agri-food systems for nutrition can also address cultural contexts. For example, in 2005, Japan enacted the Basic Law on Food Education (2005) for several reasons, including the loss of traditional food culture. In addition to promoting food education, the law aims to protect "traditional Japanese food culture". It aims to promote the revitalization of agricultural, mountain and fishing villages and improve Japan’s food self-sufficiency. National and local governments are required to adopt measures to promote the heritage of traditional and regional food cultures, such as the information and dissemination of knowledge and information.

Another example of specific legislation relates to AMR. AMR refers to the ability of bacteria to develop genes that are resistant to the existing antimicrobials, including antibiotics. The misuse and overuse of antimicrobials in animal and crop production have exacerbated AMR and are creating major risks for human, animal and environmental health. Work in this area is very new. It is, however, progressing rapidly. For example, in Zimbabwe, with the support of FAO, the revision of a veterinary medicinal products regulation has been undertaken to prohibit the sale of antimicrobials without prescription. This prohibition is a necessary step to prevent the sale of antimicrobials over the counter which would result in massive overuse of antimicrobials and the development of AMR.

Sectoral laws and regulations regulate the responsibilities, rights and obligations of the actors of agri-food systems, regulate the activities of those systems, as well as their political, economic, social, cultural and institutional environment. In so doing, they can strengthen the agri-food systems.
So far, I have focused on the positive, that is, where laws – at international and national levels – have positively contributed to supporting and strengthening agri-food systems.

I believe that the transformative impact of laws in supporting sustainable agri-food systems is confirmed by looking to the impact of the absence of laws. The Covid-19 pandemic has, regrettably, given us many examples.

According to the Supply Chain Risk Insights Report 2021, food shortages and high demand led to an increase in food fraud, that is, either the production of substandard food, or the substitution of labeled products with often-harmful alternatives. This report concludes that countries particularly affected “frequently have gaps in legislation and enforcement that weaken the ability to detect and seize fake food, and this issue is only likely to worsen in 2021”. Thus, not only did many countries not have the operational capacity to detect food fraud, they also lacked the legal mechanisms to take action.

The pandemic also highlighted the impact of gaps in legislation, or in regulatory measures ensuring coordination. In some countries, while measures were imposed to restrict movement to stop the spread of Covid-19, these had the unintended consequence of closing down food supply chains; producers could not get their foods to market and, as a result, consumers experienced, in many cases, higher food prices or shortages. This was particularly felt by the most vulnerable.

Looking at a very different aspect of the impact of Covid-19, e-commerce provides an interesting example. According to an OECD Brief on E-commerce in the time of Covid-19, the pandemic accelerated e-commerce, that is the sale of products on digital platforms. However, as this brief notes, “regulations that are not adapted to e-commerce can create barriers to firms”. It notes that “shifts towards e-commerce have been observed in several countries, in particular along the food supply chain, including farmers who started using digital technologies to sell their produce directly to consumers or restaurants that switched to providing food or grocery delivery services”. However, most food safety laws are not equipped to address e-commerce. For example, few countries have provisions specifically addressing the liability of third-party platforms on which food may be sold.

China has some of the most comprehensive e-commerce laws. Nevertheless, according to some reports, “from 2017 to the first half of 2020, 45 percent of the 49,000 e-commerce disputes handled by Chinese courts were related to food products”. In order to increase food safety, in October 2020, the Judicial Committee of the Supreme People’s Court (“SPC”) passed the Interpretation on Several Issues Concerning the Application of Laws in the Trial of Civil Cases Involving Disputes over Food Safety (“Interpretation”), implemented from 1 January 2021. This Interpretation guides the courts on how to apply the laws regulating food safety issues, with respect to food e-commerce. The interpretation confirms that not should food producers and business operators be held legally responsible for food safety, but that e-commerce operators shall also be held liable for food safety issues related to products purchased on their platforms.

Thus, potential gaps have, in this instance, been addressed through judicial interpretation. For countries where there is no legislative regulation of e-commerce, efforts to address food sales on digital platforms will be much more difficult.
In conclusion, law – at every level – can drive transformation of agri-food systems. As observed earlier, the COVID-19 pandemic might have pushed an additional 132 million into chronic hunger in 2020. 22.0 percent of children in 2020 were affected by stunting, 29.9 percent of women aged 15 to 49 years in 2019 were affected by anemia, and adult obesity has increased globally.

While not the only mechanisms available, laws are critical to support a transformation to MORE efficient, inclusive, resilient and sustainable, agri-food systems for better production, better nutrition, a better environment, and a better life, leaving no one behind. These goals, embedded in FAO’s Strategic Framework, require action by, and empowerment of, all stakeholders, from government to multi-lateral organizations, civil society and private sector, including through legislation at the national and international level.

ADDITIONAL REFERENCES


Parliamentary Fronts against Hunger in Latin America and the Caribbean, which have made to the World Summit on food systems that shows the extensive work of these fronts in the transformation of food systems http://parlamentarioscontraelhambre.org/wp-content/uploads/pdf/Proposal-from-the-IberoAmerican-parliaments.pdf

A way to implement the right to food is thorough framework laws. For more information check here: https://www.fao.org/3/cb0447en/COB0447EN.pdf


Principles for Responsible Investment in Agriculture and Food Systems: https://www.fao.org/3/au866e/au866e.pdf


Statutory recognition of customary law in Africa, on legal pluralism, you may refer to a study on available here https://www.fao.org/3/i1945e/i1945e.pdf


On climate change, please see a legislative study on agriculture and climate change here: https://www.fao.org/3/cb1593en/COB1593EN.pdf

Legal Assessment Tool to monitor SDG 5.2.a


Para información sobre estas leyes en la región, una manera de implementar este derecho es mediante leyes marco, pueden revisar: https://www.fao.org/3/cb0447es/CB0447ES.pdf

Para más información sobre avances legislativos en materia de pérdida y desperdicio de alimentos en la región de América Latina y el Caribe, los invitamos a revisar este Estudio Legislativo: https://www.fao.org/3/cb2889es/CB2889ES.pdf