



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Hundred and Seventeenth Session

Rome, 24-26 October 2022

Activities of the Development Law Branch - Information report

I. Introduction

1. At its 99th Session, the Committee on Constitutional and Legal Matters (CCLM) recommended that it continue to be provided with information reports on the activities undertaken by the Development Law Branch (LEGN) at its future sessions.¹ Encouraged by the CCLM's recommendations and continued support, as endorsed by the Council,² LEGN presents this Report on selected activities undertaken since it last reported to the CCLM.³

II. Activities and results⁴

A. Recent initiatives and general updates

i. Food loss and waste

2. LEGN has undertaken several activities to support the implementation of the FAO Voluntary Code of Conduct for Food Loss and Waste Reduction, endorsed by the 42nd Session of the Conference in 2021. At country level, LEGN has assessed and provided guidance on the legal frameworks for food loss and waste (FLW) reduction in selected countries (Azerbaijan, Bosnia and Herzegovina, Kyrgyzstan, Peru, Tajikistan, Turkmenistan, Uruguay, and Uzbekistan). Furthermore, it is supporting the drafting of a framework law on FLW reduction in Georgia and Peru. A Legal Brief entitled “*Enabling legal environments for the prevention and reduction of food loss and waste*”, which summarizes key legislative approaches to addressing FLW and highlights the importance of the Voluntary Code of Conduct, is about to be published. At the regional level, LEGN assisted the Latin American and Caribbean Parliament (PARLATINO) in drafting a model law on FLW, which was adopted in February 2022, and prepared a Legal Brief for parliamentarians on legislating to prevent and reduce FLW (No. 10 of a series launched in 2020). In addition, technical inputs to the legal components of the Regional Postharvest Loss Management Strategy of the Intergovernmental

¹ CL 150/2, paragraphs 28 and 29; CL 165/12, paragraphs 22 to 25 and paragraph 3 of the Executive Summary.

² CL 165/REP, paragraph 28.

³ CCLM 113/6.

⁴ Full references to all publications are available in the Annex and also at <https://www.fao.org/legal-services/publications/library/en/>.

Authority on Development (Horn of Africa, Nile Valley and the African Great Lakes Members) were provided.

ii. *Gender mainstreaming and temporary special measures*

3. In line with the FAO Policy on Gender Equality 2020-2030, LEGN has worked on the preparation of a Legal Guide on mainstreaming gender equality into different areas of food and agriculture. In addition, LEGN published a Legal Paper on “*Achieving de facto gender equality in land, forest and fisheries tenure – Scaling up the adoption of temporary special measures in national legal frameworks*” which provides an in-depth perspective on how to achieve substantive gender equality in tenure rights in specific sectors through temporary special measures. This study aims to further encourage Members to put into practice the provisions of Article 4 of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). The paper will be supplemented by a Legal Brief on “*Legislating for impact: making use of temporary special measures in food and agriculture legislation*” to serve as an advocacy tool to promote legislation that goes beyond simple non-discrimination. In a related initiative, a cross-cutting thematic database called Gender Lex is being developed. It will provide free access to national and international legal instruments supporting women and men’s ability to enjoy and exercise their rights in the political, economic, cultural and family spheres.

iii. *High-level Roundtable on Governing Sustainable Agrifood Systems*

4. LEGN is proud to report on the success of the “*High-level Roundtable Discussion on Governing Sustainable Agrifood Systems*” on 15 July 2022. Organised and led by LEGN, in collaboration with the International Union for Conservation of Nature (IUCN), the event featured the participation of the FAO Director-General and other heads of UN agencies and programmes, as well as a plethora of high-level and leading subject matter experts from the public and private sectors. The roundtable examined the entire process of legislative development, from drafting to enforcement. Discussions were held on topics such as innovative solutions for better law-making as well as challenges and opportunities in implementation, compliance and enforcement. Specifically, the event focused on identifying innovative pathways to close current gaps in compliance and enforcement levels in the area of sustainable development and governance of agrifood systems, as well as the role of relevant players, including FAO. The themes covered in the event were carefully chosen so as to further inform the development of LEGN’s Programme on Implementation Compliance and Enforcement, an initiative which was reported on at the 113th Session of the CCLM.⁵

iv. *World Food Day 2022 - Legal Lecture*

5. Building on the “*High-level Roundtable Discussion on Governing Sustainable Agrifood Systems*” which took place on 15 July 2022, an inaugural FAO Law Lecture will be hosted by the Legal Counsel on 31 October 2022, as part of World Food Day 2022 events. LEGN intends to convene the Law Lecture as a regular annual event, exploring legal themes aligned with the focus of each World Food Day. With this series, the intention is to raise the visibility of law – international and national – related to nutrition, food and agriculture. A specific objective is to provide a forum to explore international legal perspectives, beyond those of food and agriculture law, on matters within FAO’s competence.

B. *Progress on other initiatives*

v. *Development of legal and regulatory frameworks*

6. LEGN continues to fulfil its responsibilities in delivering FAO’s constitutional mandate to provide technical assistance in legislative matters to its Members, upon their request and in close collaboration with relevant technical units and decentralized offices.

⁵ CCLM 113/6.

7. Assistance with development or revision of legal frameworks and legislative drafting was provided in a wide variety of areas: on plant health, pesticides and fertilizer management, feed safety and quality (Namibia); on forest management (Seychelles); on seeds (Mozambique); on conservation and sustainable use of fisheries resources and combatting IUU fishing (Eritrea, Fiji, Ghana, Kenya, Somalia, Sri Lanka, St Kitts and Nevis and St Vincent and the Grenadines, among others); on marking of fishing gear (Costa Rica, Indonesia and Kenya); on sustainable inland fisheries and aquaculture (Guyana); on land and real property registration (Uzbekistan); on land rights (Liberia); on food sovereignty and food security and nutrition (Cuba); on food sovereignty; and on nutrition labelling (Panama).

8. A series of precursory legal assessments on existing legal and institutional frameworks were conducted for Member Nations in the Western and Central African regions. Examples include an assessment of the legal and policy frameworks on land tenure governance and dispute resolution mechanisms (The Gambia); an assessment of legal and institutional frameworks governing fisheries and aquaculture (Senegal, Ivory Coast and Cabo Verde); an analysis of legal and institutional frameworks governing forests in seven countries as part of the project “*Global Transformation of Forests for People and Climate: A Focus on West Africa*”; an analysis of legal instruments pertinent to the management of natural resources through the “*Fouta Djallon Massif*” program;⁶ an analysis of the legislative and regulatory frameworks for governance of pastoral land and water resources in selected countries in the Western African region.

9. In addition, LEGN has supported the development of a Harmonized Fertilizer Regulatory Framework (HFRF) for the South African Development Community (SADC), its technical assistance to the Chilean Constitutional Convention regarding the inclusion of the right to adequate food in the new constitution, and its contribution to the drafting of an “*Order of the Minister on the creation of a national register for the registration of local action groups*” under a joint FAO-UN Women project on gender rural equity and tourism in Albania.

vi. *Support to parliamentarians*

10. LEGN’s ongoing collaboration with parliamentary alliances included support to the Pan-African Parliament to finalize the Model Law on Food and Nutrition Security in Africa, and technical support and capacity development in several areas. LEGN also took part in a stock-taking exercise on the governance structures, activities and technical support needs of parliamentary networks in the areas of food security and nutrition in Africa. It further collaborates with FAO technical divisions and country offices in national level trainings for parliamentarians; for example, a dedicated training on the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) will be provided upon the request of the Namibian Parliament in September 2022. In addition, in Latin America and the Caribbean, LEGN presented to the PARLATINO the main findings of the publication “*Legislating to promote agroecology in Latin America and the Caribbean. Guidelines for a PARLATINO model law on agroecology*”. As part of its ongoing technical assistance and capacity development activities to the Parliamentary Front Against Hunger of Latin America and the Caribbean, three new Legal Briefs for parliamentarians of the Latin America and Caribbean region were issued. Assistance was also provided to MERCOSUR’s Parliament (PARLASUR) for a family farming bill.

vii. *Climate change*

11. LEGN provided substantive inputs to the drafting of the FAO Strategy on Climate Change 2022-2031, which recognises the importance of legal and institutional frameworks to tackle climate change at the country level. It has updated and realigned its own “*Law and Climate Change Strategy*” to the FAO Strategic Framework 2022-31 and the FAO Strategy on Climate Change 2022-2031, which was endorsed at the 170th Session of the FAO Council.⁷ LEGN is now engaging directly

⁶ <https://digitallibrary.un.org/record/15356?ln=en>

⁷ See CL 170/REP, paragraph 12 f) and Appendix C.

with the FAO Office of Climate Change, Biodiversity and Environment (OCB) on the development of the organization-wide Action Plan for the implementation of the FAO Strategy on Climate Change.

viii. Initiative on regulatory impact assessment

12. Progress has been made on LEGN's Regulatory Impact Assessment (RIA) initiative, first reported on in CCLM 113/6. Through active engagement with FAO departments and technical units and strategic partnerships, LEGN is taking steps to develop its own knowledge in this area. As such, it will be in a better position to support the shaping of its future work and programmes, including the design and delivery of technical assistance across FAO's technical areas.

ix. Collaboration with partners

13. LEGN has pursued its collaboration with the Quadripartite (UNEP, WHO and WOAHA (formerly OIE))⁸ in the areas of One Health and Antimicrobial Resistance (AMR) legislation. Further to the development of a One Health Legislative Assessment Tool on AMR (OHLAT-AMR), which was led by LEGN, work is now underway for the development of a "Quadripartite Tool" in 2023. This will be the first and only instrument addressing AMR-relevant legislation from a One Health (human, animal, plant and environment) perspective. LEGN's collaboration with these partners extends also to other areas relevant for food and agriculture legislation: expansion of country assistance project and global activities with WOAHA; with UNEP and WHO on pesticides legislation (LEGN is supporting the drafting of three guidance documents for the implementation of the International Code of Conduct on pesticides management); and with UNEP as coordinator of the development of an international Treaty on Plastics (LEGN inputs on marine and agriculture plastics).

14. In a partnership with the International Development Law Organisation (IDLO), LEGN led legal research in Uganda and Honduras on legislating to mitigate the impact of COVID-19 on the food security and nutrition of vulnerable groups. In addition to national level discussions in both countries, to be followed by national legal reports and legal briefs, work continues to produce a Global Study, a Global Legal Brief as well as convening a joint Global Event on food security and nutrition in times of emergency.

15. With the International Institute for the Unification of Private Law (UNIDROIT), collaboration focussed on a research project on the legal structures of agricultural enterprises, which foresees the development of a legal instrument on legal structures of agricultural enterprises. In this connection, LEGN delivered two lessons at the first UNIDROIT Summer School in July 2022; one on the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming of 2015; and one on the ongoing work on the Legal Structures of Agricultural Enterprises.

16. LEGN's now longstanding collaboration with the International Bar Association (IBA) saw its tangible results in May 2022. Two capacity development events for legal professionals on the topic of responsible investments in agriculture were delivered, in collaboration with the International Institute of Environment and Development, the Colombia Centre for Sustainable Investment, and the Agricultural Law Section of the IBA. Covering the Africa and Asia regions respectively, participants were engaged in discussions about the challenges and opportunities for legal professionals in this field, using the CFS RAI Principles⁹ and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) as guidance.¹⁰

17. Several collaborations between LEGN and partners have led to the development of knowledge publications and capacity development materials and events. Some examples are: 1) with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

⁸ UNEP – the United Nations Environment Programme; WHO - World Health Organization; WOAHA - World Organisation for Animal Health (founded as OIE).

⁹ RAI Principles - Principles for Responsible Investment in Agriculture and Food Systems adopted by the Committee on World Food Security (CFS).

¹⁰ More information and recordings of the webinars are available at: <https://www.ibanet.org/conference-details/CONF2216> and <https://www.ibanet.org/conference-details/CONF2217>.

(CITES), which led to the publication of a sourcebook on implementing CITES through national fisheries legal frameworks in 2020 and to the delivering of two virtual sub-regional training workshops on using the sourcebook, with a third planned for end of 2022 or early 2023; 2) with the UN Office on Drugs and Crime (UNODC), development of a “*Legislative Guide on Combatting Crimes in the Fisheries Sector*”, which will be published by the end of 2022; 3) with the One Ocean Hub (OOH), the UN Office of the High Commissioner for Human Rights (UNOCHR) and FAO’s Fisheries Division, co-organization of two events in June 2022 on how to advance the protection of human rights of small-scale fishers, with the participation of the Special Rapporteur on human rights and the environment. LEGN is currently contributing to the development of a related policy brief; 4) with the World Bank (WB), the UN Division for Ocean Affairs and the Law of the Sea (DOALOS), the International Seabed Authority (ISA), the University of Melbourne Law School (MLS); and the Centre for Maritime and Oceanic Law of the University of Nantes, to develop and deliver online training courses on “Ocean Governance Capacity Building”.

x. Capacity-development, publications and other learning tools

18. LEGN has developed e-learning courses, mostly on fisheries related issues, which have been released on the FAO elearning Academy website.¹¹ In collaboration with the Ecosystem Approach to Fisheries (EAF)-Nansen Programme and FAO’s Fisheries Division, LEGN developed a course entitled “*Ecosystem Approach to Fisheries – Policy and Legal Implementation*”, which was released in October 2021. In addition, it co-organized a series of five virtual workshops, from September 2020 to April 2021, to train participants from countries in Africa and South-East Asia, on how to use “*A diagnostic tool for implementing an EAF through policy and legal frameworks*”. A course entitled: “*Legislating for Small-Scale Fisheries*”, developed in collaboration with the One Ocean Hub, will be released in 2022. Finally, three other courses were issued and hosted at the FAO Training Platform for Latin America and the Caribbean (Capacitación para América Latina): two introductory courses on Illegal Unreported and Unregulated (IUU) Fishing and on the FAO Agreement on the PSMA (translations into Spanish are underway); and one course on the right to adequate food in the Latin America and the Caribbean Region, available free of charge.¹²

19. Capacity development activities were also provided: 1) to Western and Central Africa on the use of LEGN’s legal diagnostic tools on sustainable artisanal fishery, on an ecosystem approach to fisheries, on the Aquaculture Legal Assessment and Revision, and on Antimicrobial Resistance (AMR); and 2) to Chile and El Salvador, in the context of their respective constitutional revision processes, on the “*Right to food in Chile: contributions and experiences for the new Constitution*”, which benefitted from the participation of the Special Rapporteur on the right to food, among other high-level participants.

20. LEGN continues to be prolific in its publications, specifically in the area of Legal Briefs and publications with partners on a wide range of topics. Please see the **Annex** for a complete list of publications since CCLM 113/6.

xi. Customised data for decision-making updates

21. While FAOLEX, LEGN’s flagship legislative and policy database, continues to grow and user numbers increase, it has also concentrated on integrating associated thematic databases into an efficient and synergistic legal data ecosystem. The below are updates since CCLM 113/6.

22. **PORT-LEX** was conceived to allow monitoring of the state of implementation of the Port State Measures (PSM) Agreement, following its entry into force. This database compiles both national and regional (through regional fisheries management organizations - RFMO) port state measures adopted to prevent, deter and eliminate illegal, unreported and unregulated fishing. By making

¹¹ <https://elearning.fao.org/>.

¹² <https://capacitacion.fao.org/>.

available best practices, it will help countries and RFMOs coordinate their efforts when adopting and implementing PSM.

23. The **AQUALEX** thematic database was launched in early March 2022 and was showcased at the World Water Week in Dakar, Senegal shortly thereafter. A promotional video was produced and work is ongoing, subject to available resources, to continue populating the database with analytical profiles of national water law and transboundary basins instruments.

24. **AMR-LEX** was launched in July 2022. Funded by the Fleming Fund (UK Aid) and NORAD (Norwegian Agency for Development Cooperation), AMR-LEX is a thematic database compiling legislation and policies relevant for combating antimicrobial resistance within agrifood systems.

25. **SSF-LEX** is planned to be launched at the 4th World Small-Scale Fisheries Congress, in South Africa, November 2022, in celebration of the 2022 International Year of Artisanal Fisheries and Aquaculture (IYAFA). This thematic database is entirely dedicated to the small-scale fisheries sector. It provides country profiles, with information on international and regional commitments, and a brief analysis of the national laws and policies that are relevant to small-scale fisheries, and which support the implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries.

IV. Suggested action by the Committee

26. The CCLM is invited to:

- a) take note of this Information Report and provide guidance, as it deems appropriate;
- b) take note, in particular, of the efforts undertaken by LEGN in respect of its initiative on the assessment of the social and economic impact of legislation, its outreach efforts including the High-Level Roundtable and the Legal Lecture, and to encourage Members to support such initiatives;
- c) take note of the increased availability and accessibility for Members and other stakeholders of customised legal information and guidance, including through FAO's subset legal databases, e-learnings and legal briefs; and
- d) reiterate the importance of sound legal frameworks and their effective implementation for the achievement of the *four betters* and the SDGs, and take note of the need for increased resources for development law work.

Annex**List of publications - October 2021 to September 2022***Legal Papers*

- Vapnek, J. and Boaz, P. 2021. *Legislative and regulatory frameworks for family farming*. FAO legal papers, No. 108. Rome, FAO. <https://doi.org/10.4060/cb6922en>.
- Knox, J.H. and Morgera, E. 2022. *Human rights and the environment – The interdependence of human rights and a healthy environment in the context of national legislation on natural resources*. FAO Legal Papers No. 109. Rome, FAO. <https://doi.org/10.4060/cb9664en>.
- Kenney, N. 2022. *Achieving de facto gender equality in land, forest and fisheries tenure – Scaling up the adoption of temporary special measures in national legal frameworks*. FAO Legal Papers No. 110. Rome, FAO. <https://doi.org/10.4060/cb9701en>.
- Knight, R. 2022. *Tackling land corruption by political elites – The need for a multi-disciplinary, participatory approach*. FAO Legal Papers No. 111. Rome, FAO. <https://doi.org/10.4060/cc0079en>.

Legal Briefs

- Blondeau, S. and Korzenszky, A. 2022. *Family farming*. Legal Brief N. 8. Rome, FAO. <https://www.fao.org/3/cb8227en/cb8227en.pdf>.
- *Legislar para garantizar los derechos de las mujeres rurales en América Latina y el Caribe – Nota de orientación jurídica para parlamentarios en América Latina y el Caribe*. N. 8, 2021. <https://www.fao.org/3/cb7926es/cb7926es.pdf>.
- *Legislar para Promover la Agricultura Familiar en América Latina y el Caribe – Nota de orientación jurídica para parlamentarios en América Latina y el Caribe*. N. 9, 2022. <https://www.fao.org/3/cb8765es/cb8765es.pdf>.
- *Legislar para prevenir y disminuir las pérdidas y desperdicios de alimentos – Nota de orientación jurídica para parlamentarios en América Latina y el Caribe*. N. 10, 2022. <https://www.fao.org/3/cc0664es/cc0664es.pdf>.
- FAO. 2021. *El reconocimiento constitucional del derecho a la alimentación adecuada en El Salvador*. Santiago Chile. <https://www.fao.org/3/cb8050es/cb8050es.pdf>.

Partner Publications

- GIZ and FAO. 2021. *Guidelines on Strengthening Gender Equality in Land Registration – Southeast Europe 2021*. Rome. <https://doi.org/10.4060/cb2857en>.
- FAO. 2021. *Legislating for an ecosystem approach to fisheries – Revisited – An update of the 2011 legal study on the ecosystem approach to fisheries*. FAO EAF-Nansen Programme Report No. 36. Rome. <https://doi.org/10.4060/cb6750en>.
- UNIDROIT and IFAD. 2021. *UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts*. Rome. <https://www.unidroit.org/wp-content/uploads/2021/10/ALICGuidehy.pdf>.
- FAO. 2021. *Assessment of agricultural plastics and their sustainability. A call for action*. Rome. <https://doi.org/10.4060/cb7856en>.
- Cook, K., Rosenbaum, K. L. and Poulain, F. 2021. *Building resilience to climate change and disaster risks for small-scale fisheries communities. A human-rights-based approach to the implementation of Chapter 9 of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*. Rome, FAO. <https://doi.org/10.4060/cb7616en>.

- FAO. 2021. *Consumer organizations and the right to adequate food– Making the connections*. Rome. <https://doi.org/10.4060/cb3685en>.
- Pasarín Linares, V. 2022. *El rol de la normativa en la promoción de dietas saludables desde la perspectiva de los sistemas alimentarios - Ejemplos en América Latina*. Santiago de Chile, FAO. <https://doi.org/10.4060/cb7076es>.
- Nakamura, J.N. and Amador, T. 2022. *Legal report on the ecosystem approach to fisheries in Togo – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Togo*. FAO EAF-Nansen Programme Report No. 46. Rome. <https://doi.org/10.4060/cc0177en>.
- Nakamura, J.N., Amador, T. 2022. *Legal report on the ecosystem approach to fisheries in Ghana – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Ghana*. EAF-Nansen Programme No. 44. Rome, FAO. <https://doi.org/10.4060/cb9563en>.
- FAO and UNCCD. 2022. *Technical Guide on the Integration of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security into the Implementation of the United Nations Convention to Combat Desertification and Land Degradation Neutrality*. FAO, Rome and UNCCD, Bonn. <https://doi.org/10.4060/cb9656en>.
- *Achieving SDG indicator 5.a.2 in the Western Balkans and beyond*. Partnerships for Gender Equality in Land Ownership and Control, Third Ed. 2022. <https://www.fao.org/3/cb9475en/cb9475en.pdf>.
- FAO. 2022. *A policy and legal diagnostic tool for sustainable small-scale fisheries – In support of the implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*. Rome. <https://doi.org/10.4060/cb8234en>.
- FAO. 2022. *Making way: developing national legal and policy frameworks for pastoral mobility*. FAO Animal Production and Health Guidelines, No. 28. Rome. <https://doi.org/10.4060/cb8461en>.
- *La protección de los derechos de las mujeres rurales en América Latina. Estado actual de la legislación y políticas existentes en el contexto de post pandemia COVID 19*. FAO. 2022. <https://intercoonecta.aecid.es/Gestin%20del%20conocimiento/Mujeres-Rurales-%20derechos.pdf>.
- FAO. 2022. *European good practices on land banking*. FAO Study and Recommendations. Budapest. <https://doi.org/10.4060/cb8307en> <https://www.fao.org/3/cb8307en/cb8307en.pdf>.