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منظمة  
الغذية والزراعة  
للأمم المتحدة

# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Ninety-ninth Session

Rome, 20-23 October 2014

### Activities of the Development Law Branch - Information Report

## I. Introduction

1. At its 97<sup>th</sup> Session, the Committee on Constitutional and Legal Matters (CCLM) was presented with information on the mandate and activities of the Development Law Branch (LEGN) of the Legal Office, including LEGN's collaborative initiatives with various partners.<sup>1</sup> The Committee took note of LEGN's involvement in work planning and future implementation activities of the new FAO Strategic Framework. CCLM requested information reports on selected practical examples of LEGN's activities at its future sessions.<sup>2</sup> At its 148th Session, the Council noted this proposal by the CCLM.<sup>3</sup>

## II. Selected practical examples of LEGN's activities

2. This information report provides an overview of three practical examples of recent LEGN activities. These examples are intended to demonstrate how LEGN delivers its mandate by partnering directly with the beneficiary countries, as well as through collaboration with other entities. The examples seek to illustrate the multidisciplinary and multi-sectoral approach pursued by FAO's various technical departments and divisions, including LEGN. The examples also delineate the collaborative nature of LEGN activities, through its work with other intergovernmental organizations and regional and national bodies concerning various issues in different regions.

### A. The UNIDROIT/FAO Legal Guide on Contract Farming

#### *Background*

3. The International Institute for the Unification of Private Law (UNIDROIT) has led the work to prepare a *Legal Guide on Contract Farming Operations* (the *Legal Guide*). This work, which is almost complete, was initiated in November 2011 at a colloquium titled "Promoting Investment in

<sup>1</sup> CCLM 97/11.

<sup>2</sup> CL 149/2 Rev.1.

<sup>3</sup> CL 148/REP, paragraph 20(i).



Agricultural Production: Private Law Aspects”<sup>4</sup>. To develop the *Legal Guide*, UNIDROIT established a drafting Working Group (WG) consisting of experts representing different regions and legal backgrounds, representatives from producers and agribusiness sectors world farmers such as the World Farmers' Organization (WFO), and intergovernmental organizations, including FAO, the International Fund for Agricultural Development (IFAD), the World Food Programme (WFP) and the World Bank.

4. The *Legal Guide* is intended to become an international reference tool for contract farming operations. Its target audience includes international organizations, bilateral cooperation agencies, governments, non-governmental organizations, and producers and farmers' organizations engaged in activities in support of contract farming. The primary beneficiaries of the *Legal Guide* will be smallholders and family farmers engaged in contract farming operations. It will also help national governments and regulators to approve national policies and legislation that create an enabling environment for fair contractual practices in contract farming operations.

#### *Purpose and features of the Legal Guide*<sup>5</sup>

5. Contract farming can be defined as agricultural production carried out according to an agreement between a buyer and farmers, which establishes conditions for the production and marketing of a farm product or products.<sup>6</sup> As food and agricultural systems modernize, buyer requirements regarding quality, quantities, timing of delivery, and other market or production-related specifications are becoming increasingly demanding. Contracts may facilitate matching of agricultural production to these requirements by improving coordination in agrifood chains, reducing market risks for farmers and buyers and, thus, promoting efficiency in agrifood supply chains. Nevertheless, contracts may also be problematic for both buyers and sellers when they are unclear or not designed to equitably benefit both parties. Contract farming contributes to the implementation of the FAO Strategic Objective No. 4, outcome 2.

6. The *Legal Guide* provides a thorough analysis of substantive contractual issues related to contract farming, particularly those concerning the relationship between farmers and buyers. It also provides information on good contract practices. It identifies problem areas and possible solutions in light of current trade usages and legislation. It also includes advice and recommendations for lawmakers and public authorities dealing with contract farming at a public policy level, particularly in the context of legal reform.

7. The *Legal Guide* includes separate chapters on selected elements of contract farming operations, including: 1) scope of contract farming; 2) private law and regulatory framework; 3) parties to the contract; 4) contract content and formation; 5) obligations of the parties; 6) excuses for non-performance; 7) remedies for breach; 8) duration, renewal and cancellation of the contract; and 9) dispute resolution.

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<sup>4</sup> Unidroit Colloquium - Second Panel on “Legal tools for including smallholder farmers in the value chain”. Rome, 8-10 November 2011.

<sup>5</sup> The *Legal Guide* contributes to the achievement of Strategic Objective 4 of the Reviewed Strategic Framework, by which “FAO will contribute to more inclusive and efficient agricultural and food systems at local, national and international levels by achieving three Organizational Outcomes: a) policies, regulatory frameworks and public goods enhance inclusiveness and efficiency of food, agriculture and forestry systems; b) enhanced public-private collaboration in addressing the challenges and risks faced by smaller and disadvantaged participants in food and agricultural systems; and c) international agreements and mechanisms promote inclusive and efficient markets”.

<sup>6</sup> FAO Contract Farming Resource Centre (<http://www.fao.org/ag/ags/contract-farming/faq/it/>)

### *LEGN's role and technical assistance*

8. FAO, through LEGN and the Rural Infrastructure and Agro Industries Division of the Agriculture and Consumer Protection Department, is one of the main contributors to the development of the *Legal Guide*. LEGN's specific contribution includes the drafting of selected sections and editing and revising numerous drafts of the whole body of the *Legal Guide*. The WG meets regularly to review drafts and LEGN officers provide comments based upon their field experience in contract farming legislation and in the development of regulatory frameworks governing this activity.<sup>7</sup> Incorporating findings from LEGN's research and fieldwork experience into the WG technical discussions has helped the *Legal Guide* address the practical and daily challenges faced by farmers and agribusiness companies.

### *Partners / Collaboration*

9. UNIDROIT is FAO's leading partner in this collaboration. UNIDROIT is an intergovernmental organization dedicated to the harmonization and modernization of private law rules at the global level through international treaties and soft law instruments. As such, its membership draws practitioners and leading scholars in the area of private international law to study and formulate legal guidelines in various fields of international business and investment. UNIDROIT is known for its activities in the contract law area. In particular, its *Principles of International Commercial Contracts* enjoys widespread use as a model and reference document in areas of international and domestic commercial practice and arbitration.

10. IFAD has also substantially contributed to the development of the *Legal Guide*, through provision of comments and financial resources, and it is financing a project that will support international and regional consultations. The WFP and the WB have also participated in the meetings and provided technical inputs.

11. The WFO, composed of national agricultural producer bodies and farm cooperative organizations, also contributes to the development of the *Legal Guide*, ensuring that professional and trade interests of farmers are considered.

## **B. The Hunger-Free Latin American and Caribbean Initiative Support Project**

### *Background*

12. The Hunger Free Latin America and the Caribbean 2025 Initiative (HFLACI) represents a commitment by Latin American countries to eradicate hunger within the term of a generation.<sup>8</sup> It was launched during a Latin American Summit on Chronic Hunger held in Guatemala in September 2005. Soon afterwards, the Declaration of the Presidents from Central America and Brazil set the overarching goals of the Initiative. Following the request of their Governments, the countries of the Caribbean sub-region were included in the Initiative and its name was changed to reflect the wider geographical representation.<sup>9</sup>

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<sup>7</sup> This experience includes, for example, LEGN's field projects in Kenya and Malawi and its research on legal frameworks related to contract farming in Central American countries.

<sup>8</sup> FAO HFLACI website: <http://www.rlc.fao.org/en/proyecto/iniciativa/hunger-free-latin-america-and-the-caribbean-website/>

<sup>9</sup> The Ibero-American Conference of Heads of State and Governments of 2006 and the First and Second Summit of Latin America and the Caribbean on Integration and Development (2008 and 2010) have indicated their support for the Initiative through two Regional Declarations (the countries represented in these fora were : Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Costa Rica, Colombia, Cuba, Dominica, El Salvador, Ecuador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and

13. In July 2014 at the African Union Summit in Malabo, Equatorial Guinea, African Heads of State committed to end hunger on the continent by 2025 and, thus, reflecting, for African countries, the Hunger Free Initiative already adopted by the Community of Latin America and the Caribbean States. These Initiatives both serve to respond to the Zero Hunger Challenge announced by the United Nations Secretary-General.

14. The main goal of the HFLACI is to contribute to the reduction of chronic child undernourishment to below 2.5% in all the countries of the region by 2025.<sup>10</sup> While the HFLACI includes all Latin American and Caribbean countries, other countries can participate in its efforts. Through the HFLACI, FAO and the Spanish Agency for International Development Cooperation (AECID) provided technical and financial support, respectively. In 2009, FAO designated HFLACI as the strategic framework for all projects funded through the Spain-FAO Programme in Latin America and in the Caribbean. The Brazil-FAO International Cooperation Programme was incorporated into this strategic framework in 2010. The HFLACI support project is a multi-annual ongoing technical cooperation project. Between 2012 and 2014, the HFLACI included a legal component directly implemented by LEGN.

#### *Purpose and outcomes of the HFLACI support project<sup>11</sup>*

15. FAO's experience suggests that, in order to achieve food security and adequate nutrition and the promotion and protection of the right to food, all elements of the national policy and legal framework which can impact on food security and nutrition may need to be strengthened. The realization of these objectives requires the engagement and sensitization of all relevant stakeholders. Accordingly, the HFLACI support project promotes and encourages engagement of relevant government institutions, parliamentary bodies, civil society organizations, farmers' organizations and lawyers. As such, FAO's experience in coordinating efforts of various stakeholders could contribute to achieving food security and promoting the right to food.

#### *LEGN's role and technical assistance*

16. Under the legal component of the HFLACI support project, LEGN conducted a comprehensive analysis of legislation on food security and nutrition, school feeding and contract farming in four countries in Central America (El Salvador, Guatemala, Honduras and Nicaragua), and two countries in the Andean region (Ecuador and Peru). In addition, LEGN provided technical assistance in the form of capacity building for lawyers and regulators in selected areas of agricultural legislation. LEGN also assisted in the drafting of national legislation on food security and nutrition, school feeding and contract farming.

17. As leading implementing unit, LEGN provided technical guidance to, and supervision of, the field research undertaken by the national and regional legal consultants for the analysis of legislation on food security and nutrition, school feeding and contract farming. Field research was conducted for

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the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela). It was also endorsed, in 2010, by the Southern Common Market Parliament (MERCOSUR Parliament), which declared its "*firm and resolute support*" for the Initiative ([http://www.parlamentodelmercosur.org/innovaportal/file/4868/1/decl\\_19\\_2010.pdf](http://www.parlamentodelmercosur.org/innovaportal/file/4868/1/decl_19_2010.pdf)).

<sup>10</sup> The 29<sup>th</sup> FAO Regional Conference for Latin America and the Caribbean endorsed the Initiative (see document LARC/06/REP).

<sup>11</sup> As reflected in the context of Strategic Objective 1 of the Revised Strategic Framework: "*Two necessary conditions for the eradication of persistent hunger, food insecurity and malnutrition, despite progress in overall development, food production and poverty reduction are: (i) strengthened political will and commitment, backed up by appropriate governance and accountability mechanisms; and (ii) more purposeful action in areas that have the greatest possible impact on improving people's food security and nutrition status*" (See paragraph 82). This Project has also contributed to the implementation of the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*, adopted by FAO Council in 2014.

three regional comparative legal studies. LEGN officers developed the methodological framework to guide the elaboration of the national and regional studies, and reviewed the drafts prepared by the national and regional consultants. LEGN officers also presented the methodology and preliminary findings of the studies in national and regional meetings. The studies were used to formulate recommendations that were subsequently developed with some of the key stakeholders in the region.<sup>12</sup>

18. In regards to the development of regulatory frameworks, LEGN provided technical legal advice which resulted in the following national and regional legislation:

- Regional framework law on the right to food, adopted by the Latin American Parliament (PARLATINO) in November 2012;
- Food security and nutrition framework laws in El Salvador and Peru, which are under consideration in the respective Parliaments;
- School feeding law in El Salvador (under development).

19. LEGN also contributed to various national and regional legal capacity development activities, in which more than one hundred and forty lawyers and regulators from twelve countries of Central and South America participated.

### *Partners/Collaboration*

20. Within FAO, LEGN worked closely with other technical units at headquarters and the Regional Office for Latin America and the Caribbean (RLC) to deliver the technical assistance. In particular, LEGN collaborated with units of the Agricultural Development Economics Division (ESA), specifically with the Right to Food Team, the Rural Infrastructure and Agro Industries Division (AGS), and the Nutrition Division (ESN). It also worked closely with the FAO Sub-regional Office for Central America and the FAO offices of the countries involved.

21. Close collaboration was also required with a large number of non-FAO partners. These partners included regional organizations such as the Andean Community (CAN), the Latin American Parliament (PARLATINO), the Forum of Presiding Officers of National Parliaments of Central America and the Caribbean Basin (FOPREL), the Central American Parliament (PARLACEN), the International Regional Organization for Plant and Animal Health (OIRSA) and the Regional Parliamentary Front Against Hunger (PFAH).

## **C. National technical assistance in the Union of the Comoros**

### *Background*

22. In June 2013, the Government of the Union of the Comoros initiated a project to strengthen its national regulatory frameworks for plant protection, food safety and animal health (“the Comoros Project”). The Comoros Project is financed by a grant awarded by the Standards and Trade Development Facility (STDF), and is implemented by intergovernmental organizations such as FAO and WHO, as well as non-governmental organizations under the coordination of UNDP, the project main implementation agency. The Comoros Project will run for a period of three years. Two components of the Project, including the legal review and the formulation of operational action plans, were assigned to FAO, with deliverables due by the end of 2014.

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<sup>12</sup> The studies are to be published as part of the FAO Legislative Studies series and as Legal Papers On-Line.

### *Purpose and outcome of the Project*

23. The Union of the Comoros is a Small Island Developing State, with a Human Development Index value of 0.488<sup>13</sup> - which is in the low human development category. The Comoros has also been classified as a Low-Income Food-Deficit Country (LIFDC)<sup>14</sup>. As an archipelagic country, the Comoros heavily relies on imported food and agricultural products, making it vulnerable to risks arising from the entry, establishment or spread of pests, diseases, as well as additives, contaminants, toxins in foods, beverages or feedstuffs.

24. The Comoros Project aims to develop the national regulatory framework in order to facilitate international trade in agricultural commodities, while protecting human, animal and plant health. In particular it seeks, *inter alia*, to:

- i) strengthen the national institutions concerned with sanitary and phytosanitary (SPS) measures and to create a national SPS strategy and implementation plan;
- ii) support the development of food safety and quality, with a focus on fisheries products;
- iii) update the national plant protection legislation; and
- iv) identify the legal lacunae in the area of animal health, paving the way for a legal drafting assistance project by the Animal Health Organization (OIE).

25. The Comoros Project contributes to the implementation of the FAO Strategic Objective No. 4: "Enable more inclusive and efficient agricultural and food systems at local, national and international levels". It also supports the implementation of the "Barbados Programme of Action for the Sustainable Development of Small Island Developing States"<sup>15</sup> and the "Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States"<sup>16</sup>. It illustrates a partnership and initiative in support of the sustainable development of Small Island Developing States, which was the overarching theme of the Third International Conference on Small Island Developing States to be held in Samoa on 1-4 September 2014 and it has a potential for replication in other Small Island Developing States.

### *LEGN's role and technical assistance*

26. FAO contributes to this Project through its Agriculture Department and LEGN. LEGN's specific activities include:

- i) the analysis of national sanitary and phytosanitary legislation in the framework of the WTO SPS Agreement, and the identification of any legal *lacunae*; and
- ii) support to the Government of the Union of Comoros in the development of new legislation.<sup>17</sup>

27. Once the legal review in paragraph 24(i) above is complete, LEGN will undertake consultations with the Government of the Union of Comoros to identify priority regulatory needs within the different areas. In light of the Project's limited financial resources, this process is crucial to the success of the project. Following these consultations, LEGN will provide assistance in the revision of the fisheries certification regulations to facilitate fisheries producers' access to new markets. LEGN

<sup>13</sup> <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>

<sup>14</sup> <http://www.fao.org/countryprofiles/lifdc/en/>

<sup>15</sup> [http://www.un.org/esa/dsd/dsd\\_aofw\\_sids/sids\\_pdfs/BPOA.pdf](http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf)

<sup>16</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/60/401](http://www.un.org/ga/search/view_doc.asp?symbol=A/60/401)

<sup>17</sup> This methodology has been applied by LEGN in other projects implemented in countries such as The Bahamas and The Republic of the Maldives. In The Bahamas, FAO supported the development of SPS legislation to facilitate WTO accession. In The Maldives, LEGN supported the development of selected agricultural primary laws, including plant protection, pesticides, veterinary legislation and agricultural land legislation.

is now providing assistance for the amendment of the Comorian plant protection legislation in order to harmonise it with the requirements of the International Plant Protection Convention (IPPC).

#### *Partners/collaboration*

28. The STDF, which is funding the Project, supports developing countries in building their capacity to implement international SPS standards, guidelines and recommendations as a means to improve their human, animal and plant health status and their ability to gain and maintain market access. The STDF is a global partnership and trust fund established by FAO, the OIE, the World Bank, the World Health Organization (WHO) and the World Trade Organization (WTO). The STDF is hosted by the WTO.

29. UNDP is responsible for coordinating the overall execution of the project. Inside FAO, LEGN collaborates with the IPPC Secretariat in connection with its legal review and drafting of legal texts relating to plant protection. This includes cooperation in conducting the phytosanitary capacity evaluation and in identifying and formulating institutional options. LEGN also collaborates with the FAO Sub-regional Office for Southern Africa (SFS), as well as with WHO, in undertaking the review of food safety legislation.

### **III. SUGGESTED ACTION BY THE COMMITTEE**

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