



2005 Scoping Study Report: Sustainable Development Law Manuals

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About the CISDL

The Centre for International Sustainable Development Law (CISDL) aims to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law. The CISDL is an independent legal research centre which has a close partnership with the McGill Faculty of Law, the Oxford University Faculty of Law and the Université de Montréal in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. The CISDL Research Programmes are based in Kenya, Costa Rica, Uruguay, the UK, Canada and Hong Kong. CISDL also works in cooperation with a network of developing country faculties of law, with Yale University and Cambridge University. It has guidance from three Montreal-based multilateral treaty secretariats, the World Bank Legal Vice-Presidency, the United Nations Environment Programme and the United Nations Development Programme.

With the International Law Association and the International Development Law Organisation, under the auspices of the United Nations Commission on Sustainable Development, CISDL is the leader of a new Partnership, 'International Law for Sustainable Development' that was launched in Johannesburg at the 2002 World Summit for Sustainable Development, to build knowledge, analysis and capacity on international law for sustainable development. CISDL members have published extensively in many areas of sustainable development law and have lectured in all regions of the world.

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The Scope, Objectives, Partners and Audience of Sustainable Development Law Capacity-Building Manuals in Water Management, Desertification/Land Reform and Climate Change.

A CISDL Scoping Study Report

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ii. Executive Summary

In the context of the objectives of the Millennium Development Goals, and the commitments outlined in the 2002 World Summit on Sustainable Development Johannesburg Plan of Implementation, this Scoping Study Report briefly discusses the need to strengthen and develop capacity for the implementation of international law on sustainable development. It focuses on pressing needs and priorities in the areas of desertification, climate change, and water, toward the goal of “increasing capacities to address environmental issues such as desertification, climate change, and water and sanitation in ways that reflect the priorities and interests of women and men, girls and boys.”

The Report then reviews the potential scope, objectives, audience and partners for sustainable development law manuals, answering in particular questions such as: What would the contents of a "legal capacity building manual" in this area look like? Who would be the main partners for a project to develop and disseminate such manuals, and in which countries could they be developed, tested and used? Who are the potential audiences for the manuals? And, given that many water and land tenure issues are probably more domestic than international, what would the scope of the manuals be? The Report then provides brief outlines of certain issues which could be canvassed in each manual. These outlines are completed by preliminary descriptions of potential project partners for each manual, as well as an initial list of recommended resources for each manual.

The Report concludes with the recommendation that three manuals be developed to strengthen and develop capacity to implement international law on sustainable development concerning desertification and land degradation, water resources management and access to water, and climate change.

The Conclusions of the Report may be summarized as follows:

First, a format should be designed for the proposed manuals on legal aspects of freshwater access, legal aspects of land use/desertification and climate change law that focuses on the needs of national and sub-national regulators, as well as those jurists who work with them to develop and strengthen their capacity. Each manual could, for example, start with a hypothetical case that might be faced by a law-maker or regulator, followed by a description of the applicable legal principles, with examples (or "pop-out" boxes) of actual situations where such principles have been used by developing country laws and tribunals. Then, each manual can provide practical, down-to-earth explanations of the most relevant international treaties in the area; a few focus questions for use by a regulator to assess the state of the regulatory regime concerning this issue in his or her own country; and illustrative examples of well-drafted, effective national laws from different legal traditions and bio-geo-climatic conditions. Each manual can also provide a review of innovative compliance, monitoring and alternative dispute settlement techniques that are currently being used by developing countries to ensure the implementation of sustainable development law, again with practical examples and case studies. Glossaries, case examples and exercises can be provided as appendices, along with a section on recommended resources.

Second, to develop, use and disseminate the manuals in an open and cooperative way, resulting in solid, locally owned development outcomes, there is a need to consult and engage partners throughout the development of the manuals. There are several international and developing county

institutions interested in assisting with the preparation of the manuals. Several of these institutions can act as partners for the project as a whole -- that is, for all three manuals – as well as in certain instances acting as partners for specific manuals. These institutions have committed to an international partnership, registered with the United Nations Commission on Sustainable Development (UN CSD), to strengthen and support the implementation of international law on sustainable development, which is chaired by the CISDL. They include the International Development Law Association, the World Bank, the United Nations Environment Program, and the International Law Association. In addition, case-studies might be drawn from any of the following countries:

- Africa: Niger, Togo, Burkina Faso, Mozambique, Algeria, South Africa, Mali, Benin, Cameroon, Senegal, Cape Verde, Angola, Kenya, Ghana, Tanzania and Botswana.
- Latin America: Bolivia, Nicaragua, Guatemala, Equador, Paraguay, Chile, Costa Rica, Peru, Guyana, Antigua, Barbuda, Trinidad and Tobago.
- Asia: Sri Lanka, China, India, Indonesia and the Philippines.

Third, the principal potential audience of the manuals should be law-makers and regulators in the developing countries of francophone and Anglophone Africa, as well as Asia, Latin America and the Pacific Islands, who are presently faced with the extremely difficult task of drafting and implementing environmental laws in the context of competing but potentially complementary social and economic development imperatives. To reach these audiences, the manuals need to be designed in consultation with practicing lawyers, regulators and NGO leaders, especially those who provide teaching and training to the following groups: bar associations and colleges, judicial networks in the commonwealth and the francophonie, international legal capacity-building bodies, national judicial institutes, and professional networks in the field.

Fourth, the manuals can cover legal issues of both a domestic and international nature, as these are relevant to a particular topic. More specifically, the manuals can focus on agreed international objectives, as identified in multilateral treaty making processes and enshrined in international law, and explain the applicable principles. The manuals can then address how, at the domestic level, these objectives might best be implemented, either through adjusting existing domestic laws, drafting new laws or regulations, or simply taking account of international law in the context of judicial decision-making.

Fifth, and in particular, the specific content for each manual can address several pressing issues.

Water Management: Legal Instruments for Sustainable Development

With regards to “Water Management: Legal Instruments for Sustainable Development”, the starting-point for discussion of water access must be the International Covenant on Economic, Social and Cultural Rights (ICESCR). The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has therefore taken the view that the right to water is implicit in the ICESCR, and has elaborated the obligations imposed by the right in General Comment 15. In respect of the first question – how to implement the rights-based obligations imposed by the ICESCR – the manual draws upon case-law and legislation from South Africa. More specifically, it draws on the Constitution of the Republic of South Africa, and legislation in the form of the Water Services Act and the National Water Act. Recent case-law is also discussed. In respect of the second question – how to reconcile economic, environmental and human demand to a scarce resource – the manual

draws upon the policy of integrated water resource management (IWRM), which it discusses in light of the principles of international sustainable development law. Here, several country case studies will be selected, including examples based on innovative regional and bi-lateral water treaties in Asia, Europe and Africa. Potential partners which can provide support and assistance for the manual, through cooperative activities such as advice, consultations, reviews and edits, pilot-testing and dissemination of manuals, include the Centre for Housing Rights and Evictions (COHRE) programme on the right to water, the United Nations Commission on Human Rights (UNCHR) through its UN Special Rapporteur on the Right to Water, the World Bank WRMG, the World Conservation Union (IUCN), and the World Water Council.

Desertification/Land Reform: Legal Instruments for Sustainable Development

With regards to “Desertification/Land Reform: Legal Instruments for Sustainable Development”, the starting-point for discussion of desertification is the 1994 Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (UNCCD). The UNCCD focuses on the drylands of the world, and aims to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, especially in Africa. To this end, in terms of Article 5 of the UNCCD, state parties are required to: give due priority to combating desertification and mitigating the effects of drought; establish suitable strategies and priorities; address the underlying causes of desertification; promote awareness and facilitate the participation of local populations; strengthen existing legislation or, if this does not exist, enact new laws. If properly implemented, land reform provides a means of combating desertification. Effective, secure access to land can provide an incentive for land users to invest in sustainable land use practices. Equally, poorly implemented land reform has the potential to contribute to land degradation and desertification. Here, several country case studies will be selected, including examples based on innovative domestic experiences in Asia, Africa and Latin America. Potential partners which can provide support and assistance for the manual, through cooperative activities such as advice, consultations, reviews and edits, pilot-testing and dissemination of manuals, include the United Nations Development Program Drylands Development Centre, the African Centre for Technology Studies (ACTS), the United Nations Convention to Combat Desertification Secretariat, and the International Institute for Environment and Development (IIED).

Climate Change: Legal Instruments for Sustainable Development

With regards to “Climate Change: Legal Instruments for Sustainable Development”, the manual should recognize that developing countries occupy a particularly difficult position. On the one hand, as the most vulnerable countries, developing countries have a profound interest in mitigating and adapting to climate change. At the same time, the dominant development pattern depends on the use of fossil fuels. Developing countries therefore tend to perceive action to limit their emissions of greenhouse gases (GHG) as constituting a threat to their economic futures. Rightly, developing countries also tend to regard the responsibility for mitigating climate change as falling primarily on developed countries, given that they are primarily responsible for the bulk of carbon emissions. Finally, it is, of course, important not to regard developing countries as a monolithic block and to recognize the diversity of their interests. The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in recognition of the threat posed to the world climate by emissions of GHGs. Nevertheless, it is notable that, although these obligations are general in nature, they fall on all states, developed and developing. All states are, in terms of article 4 of the UNFCCC, required to develop national inventories of anthropogenic emissions of GHGs and formulate and implement programs designed to mitigate climate change. All states are also subject to reporting obligations in this regard. How then do developing countries figure in the climate

change regime, other than in the very general senses outlined already? One way is through the ‘clean development mechanism’ (CDM), which is established by the Kyoto Protocol. The CDM is of clear relevance to developing countries, given that investment will occur in their jurisdictions. What steps should such countries take to facilitate this process? An important step is that, in terms of the Marrakesh Accords, developing countries should designate a ‘national authority.’ This authority should, firstly, provide written confirmation that the host party is voluntarily participating in the project; and, secondly, that the project assists it in achieving sustainable development. The second step is of particular interest, given that it requires agreement on what constitutes sustainable development. In addition, questions are raised about the appropriate organizational structure of the national authority. These issues are discussed in light of the approaches adopted by Chile, Morocco, Argentina and Peru. Potential partners which can provide support and assistance for the manual, through cooperative activities such as advice, consultations, reviews and edits, pilot-testing and dissemination of manuals, include the Prototype Carbon Fund (PCF), the International Institute for Sustainable Development (IISD), the Carbon Trust (CT), and the United Nations Framework Convention on Climate Change Secretariat, among others.

The Report concludes by providing initial elements of a proposal, including partners and potentially available matching or in-kind support, to develop the manuals over the course of a one-year project.

1. Introduction

This Scoping Study Report is based on the initial results of a process of collaboration and partnership on three of the priority topics for international law and policy in the field of sustainable development law today: sustainable water management, desertification/land reform and climate change. The aim of the partnership is to produce a series of timely and useful legal capacity building manuals that will explore the implementation of international norms in each of these areas. In particular, the legal manuals will focus on the practical legal and policy integration challenges that arise in the process of implementation.

This report takes the form of a concept paper. It provides the summary results of a scoping study that was conducted by the CISDL for the Government of Canada (the Canadian International Development Agency) on the scope, objectives, partners, users and audience of such a series of manuals. It consists of an executive summary and three chapters proposing initial draft outlines and recommended resources for each manual.

The report has been drafted by CISDL researchers, with guidance from CISDL directors and lead counsel, and many international and national advisors, over the course of six months. Consultations have been held with potential partners, including institutions that will use the manuals for capacity building activities, and small "focus groups" that assisted by providing ideas for hypothetical cases and exercises, as well as with developed and developing country regulators and international advisors in Algeria, Burkina Faso, Chile, Costa Rica, Ecuador, India, Mexico, Mozambique, Niger, Sri Lanka, Tanzania, Togo, and also Canada, the U.K., Geneva, and Brussels. This final draft is presented for discussion and review. All comments will be integrated by the CISDL once they have been received from advisors and members of the public.

2. The Need to Strengthen Capacity in the Field of International Law on Sustainable Development

There is a significant need to strengthen the capacity of law-makers, parliamentarians, government officials and civil society leaders to strengthen and integrate implementation of the social, economic and environmental aspects of sustainable development law. This need has been identified by heads of state from over 140 countries in the 1992 Agenda 21, and in the recent 2002 Johannesburg Plan of Implementation, article 5 of which establishes a "collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels."

The need to strengthen capacity in respect of the implementation of sustainable development law is particularly urgent for developing countries. Thus, in the 2002 WSSD Plan of Implementation, at paragraph 4, states agreed that "[g]ood governance within each country and at the international level is essential for sustainable development. At the domestic level, sound environmental, social and economic policies, democratic institutions responsive to the needs of the people, [and] the rule of law ... are the basis for sustainable development." Later, in paragraph 121, priority objectives to improve sustainable development governance are recognised as including: "(a) Strengthening commitments to sustainable development; (b) Integration of the economic, social and environmental dimensions of sustainable development in a balanced manner; (c) Strengthening of the implementation of Agenda 21, including through...capacity-building programmes, particularly for developing countries; (d) Strengthening coherence, coordination and monitoring; (e) Promoting the rule of law and strengthening of governmental institutions;[... and] (h) Strengthening capacities for sustainable development at all levels, including the local level, in particular those of developing countries..." At paragraph 146, this is clarified, where states agreed that "[a]ll countries should promote sustainable development at the national level by, *inter alia*, enacting and enforcing clear and effective laws that support sustainable development. All countries should strengthen governmental institutions, including by providing necessary infrastructure and by promoting transparency, accountability and fair administrative and judicial institutions." Furthermore, at paragraph 106, states commit to "[i]mprove the transfer of technologies to developing countries, in particular at the bilateral and regional levels, including through urgent actions at all levels to: (a) Improve interaction and collaboration, stakeholder relationships and networks between and among universities, research institutions, government agencies and the private sector;"

Enhancing the capacity of developing countries to implement domestic and international law on sustainable development law requires clarification of the relevant legal principles and diffusion of useful, practical legal best practices and innovations. The principles have developed over time, through more than a decade of decisions by national and international courts and tribunals. Integrated new legal instruments have emerged in the areas of water (on land degradation, access to water, and tenure systems), energy (climate change laws, carbon financing and emission registries), health (tobacco) and biodiversity (plant genetic resources and biosafety), as well as regional regimes on trade and sustainable development and national laws on corporate social responsibility.

The challenge for the member states of the United Nations, and developing countries in particular, is to monitor and take account of these diverse developments. This is not the only problem. Even where the relevant legal principles are known, difficulties arise in respect of their implementation.

New laws can overlap or even conflict, rather than complementing one another. This, combined with a lack of capacity and knowledge, blocks access to justice and prevents compliance with sustainable development law.

In addition to calls for action in the 1992 Agenda 21 at Chapter 39, and throughout the 2002 Johannesburg Plan of Implementation, many leading international agencies, including the United Nations Environment Programme, the United Nations Development Programme, the World Bank and others, as well as forums for international dialogue such as the United Nations Commission on Sustainable Development, have highlighted the need to overcome these barriers, and to better implement international law on sustainable development. In 2002, intergovernmental bodies, academic institutions and members of the legal profession met at a conference in Montreal, Canada - *Sustainable Justice 2002: Implementing International Sustainable Development Law* - to review recent progress in sustainable development law. In the 2002 *International Jurists Mandate for the Implementation of Sustainable Development Law*, they identified an urgent need for focused legal research and capacity building, to meet the dual challenges of identifying and reconciling the principles of sustainable development law. They noted that this work must be supported by timely, relevant materials, to assist judges, lawyers and non-lawyers in the implementation of international social, economic and environmental law in an integrated and innovative manner at all levels.

In light of these developments, it is submitted that up-to-date, relevant and focused legal capacity building manuals, focusing on key topics of priority in the world today, are needed and would be extremely useful to support capacity building efforts to achieve sustainable development and poverty eradication objectives. These manuals can be pilot-tested through courses at the International Development Law Organisation and other inter-governmental bodies, lectures in developing country law faculties, and a presentation at the United Nations Commission on Sustainable Development in 2006 and 2007. They should then be disseminated and made available to developing country regulators and jurists through the growing networks of developed and developing country legal research centres and university law faculties.

Manuals such as these can assist in the implementation of sustainable development law, thereby fulfilling the mandate of the Johannesburg Plan of Implementation. They should also be of particular interest to the government of Canada, particularly the CIDA. Capacity development - understood as helping individuals in developing countries to gain the skills and resources needed to sustain their own social and economic progress¹ - is a key approach for development agency efforts to achieve their mandates. Indeed, according to CIDA,² Canada's *Sustainable Development Strategy 2001-2003: An Agenda for Change* recognized capacity development as an essential tool for sustainable development. It suggested that development cooperation efforts can be most effective when working with partner countries to strengthen their own capabilities to strengthen good governance and public management, democratic accountability, the protection of human rights, and the rule of law; as well as to promote sustainable environmental practices. The Strategy targeted the development of capacity-development mechanisms for implementing multilateral environmental agreements for special efforts.

¹ See "International Assistance" in *Canada in the World - Canadian Foreign Policy Review 1995* available at <http://www.dfait-maeci.gc.ca/foreign_policy/cnd-world/chap6-en.asp>.

² See "Canadian Policy on Capacity Development" 2004 available at <http://www.acdi-cida.gc.ca/cida_ind.nsf/0/BC9589CF18B619F785256D24006B1FD9?OpenDocument>

Canadian commitment to capacity development reflects a general tendency among funding agencies. As explained in the OECD Development Assistance Committee's *Shaping the 21st Century*, which was adopted by the DAC Member Development Ministers and Heads of Aid Agencies at their meeting of 6-7 May 1996, "Sustainable development, based on integrated strategies that incorporate key economic, social, environmental and political elements, must be locally owned. The role of external partners is to help strengthen capacities in developing partner countries "to meet those demanding, integrated requirements for sustainable development, guided by the conditions and commitments in each country"... Our understanding of development and development cooperation has undergone fundamental change. It has expanded to take more fully into account how societies operate and how the international system functions. We now see a much broader range of aims for a more people-centred, participatory and sustainable development process:... [including] improving the capacity of developing countries to contribute to the management and solution of global problems; and reinforcing the transformation of institutions and enabling environments to facilitate the emergence of developing countries and transition economies as growing trade and investment partners in the global economy..."

Indeed, the current Canadian *Sustainable Development Strategy: 2004-2006 Enabling Change* includes, as an important strategic priority, the need to focus on "Improved environmental sustainability, through the protection, conservation, and management of the diversity and integrity of the environment," as well as important issues surrounding poverty and human rights. It commits to "[s]upport and promote the integration of environmental considerations in countries' policies, programs and projects in support of the achievement of the Millennium Development Goals; and [c]ontribute to increasing capacities to address environmental issues such as desertification, climate change, and water and sanitation in ways that reflect the priorities and interests of women and men, girls and boys." In particular, key global priorities including desertification and soil degradation, water, and climate change³ are the focus of the proposed series of manuals.

³ Outlined in *Sustainable Development Strategy: 2004-2006 Enabling Change* <<http://www.acdi-cida.gc.ca/sds>>.

3. Scope, Objectives, Partners and Audience of Sustainable Development Law Manuals

This section of the Scoping Study Report addresses a series of questions that are important in respect of each of the manuals. These are: What would the contents of a "legal capacity building manual" in this area look like? Who would be the main partners for a project to develop and disseminate such manuals, and in which countries could they be developed, tested and used? Who are the potential audiences for the manuals? And, given that many water and land tenure issues are probably more domestic than international, what would the scope of the manuals be?

What would the contents of a "legal capacity building manual" in this area look like?

Few legal capacity building manuals have been designed in the area of international law on sustainable development, and even fewer focus how to implement sustainable development law in developing countries in a way that responds to the objective of poverty reduction. However, there are several recently published documents that provide examples of the type of publications that are envisioned in this proposal.⁴ A comprehensive review of such examples, conducted during the course of the scoping study, provides a format for the proposed manuals on legal aspects of freshwater access, legal aspects of land use/desertification and climate change law (see following section) that focus on the needs of national and sub-national regulators, as well as those jurists who work with them to develop and strengthen their capacity.

Each manual could, for example, start with a hypothetical case that might be faced by a law-maker or regulator, followed by a description of the applicable legal principles, with examples (or "pop-out" boxes) of actual situations where such principles have been used by developing country laws and tribunals. Then, each manual can provide practical, down-to-earth explanations of the most relevant international treaties in the area; a few focus questions for use by a regulator to assess the state of the regulatory regime concerning this issue in his or her own country; and illustrative examples of well-drafted, effective national laws from different legal traditions and bio-geo-climatic conditions. Each manual can also provide a review of innovative compliance, monitoring and alternative dispute settlement techniques that are currently being used by developing countries to

⁴ M.C. Cordonier Segger & A. Khalfan, *Sustainable Development Law: Principles, Practices & Prospects* (Oxford: Oxford University Press, 2004) provides one example of a sustainable development law textbook that lays out the most important principles, surveys case studies of 'practices', and provides a review of the prospects for further research, though this publication is more scholarly than the Manuals envisioned by this scoping study project (available online at: <http://www.oup.com/us/catalog/general/subject/Law/InternationalLaw/?ci=0199276714&view=usa>). UNEP / IISD, *Environment and Trade: A Handbook* (Winnipeg: IISD/UNEP, 2000) provides another example of a handbook to explain trade policy and concepts to environment decision-makers, though this publication provides little practical legal guidance and fewer case studies than the Manuals envisioned by this scoping study project (available online at: <http://www.unep.ch/etu/etp/acts/aware/handbook.pdf>). IUCN / FIELD / WRI, "An Explanatory Guide to the Biosafety Protocol" *IUCN Environmental Policy and Law Paper No. 46* (Bonn: IUCN, 2003) also provides an example of a guidebook in this area, with detailed explanations of each provision in the Cartagena Protocol, though this publication is focused only on one treaty, rather than explaining broadly how to understand, use and comply with the most relevant international law in this particular area towards sustainable development (available online at: <http://www.iucn.org/themes/law/pdffdocuments/Biosafety%20Guide/Biosafety-guide-prelims.pdf>). J. Gupta, On Behalf of My Delegation: A Survival Guide for Developing Country Climate Negotiators (Winnipeg: IISD/CSDA, 2000) is a good example of the tone and style of the manuals, but is focused exclusively on international negotiations for one treaty, rather than on the relevant international and domestic implementation challenges and solutions in an area of international law and policy (available online at: <http://www.cckn.net/www/index.html>).

ensure the implementation of sustainable development law, again with practical examples and case studies. Glossaries, case examples and exercises can be provided as appendices, along with a section on recommended resources.

How could the Manuals be developed, used and disseminated?

Key partners have been consulted during the period of this scoping study, and there are several international and developing country institutions interested in assisting with the preparation of the manuals. Several of these institutions can act as partners for the project as a whole -- that is, for all three manuals – as well as in certain instances acting as partners for specific manuals. These institutions have committed to an international partnership, registered with the United Nations Commission on Sustainable Development (UN CSD), to strengthen and support the implementation of international law on sustainable development, which is chaired by the CISDL. They include the International Development Law Association, the World Bank, the United Nations Environment Program, and the International Law Association.

To focus on two examples, a key partner of the CISDL, the International Development Law Organisation (IDLO) based in Rome, Italy, teaches between three and four six-week courses each year to over 600 developing country lawyers from Africa, Asia and Latin America, and maintains an extensive alumni network, many of whom are responsible for training colleagues in their countries and regions. The IDLO can assist in the pilot-testing of the manuals, and in their dissemination and use in training regulators through the IDLO's regularly scheduled capacity development initiatives. Another partner is the International Law Association, which has a committee on international sustainable development law made up of academics and practitioners from developing and developed countries, many of whom are willing to provide pro bono advice and support for the project, and are interested in using the project manuals.

Other partners, specific to each manual, include topic-specific legal and regulatory professional networks in developing countries, as well as developing country law faculties, law colleges and bar schools, and regulatory training bodies. Finally, it is expected that the staff at the Commonwealth Secretariat, members of various bar associations, and different bodies in the Francophonie, will also be helpful in advising and disseminating the manuals. It is also expected that legal publishers might well be interested in being involved in such a project, and willing to print and distribute the final versions of the manuals, with exceptions made for distribution in developing countries.

In addition, although countries are mentioned as potential case-studies, the CISDL has a network of contacts throughout Africa, Latin America and Asia. For this reason, it is possible that case-studies might be drawn from any of the following countries, in addition to those mentioned below:

- *Africa:* Niger, Togo, Burkina Faso, Mozambique, Algeria, South Africa, Mali, Benin, Cameroon, Senegal, Cape Verde, Angola, Kenya, Ghana, Tanzania and Botswana.
- *Latin America:* Bolivia, Nicaragua, Guatemala, Ecuador, Paraguay, Chile, Costa Rica, Peru, Guyana, Antigua, Barbuda, Trinidad and Tobago.
- *Asia:* Sri Lanka, China, India, Indonesia and the Philippines.

Who are the potential audiences for the manuals?

The principal potential audience of the manuals will be law-makers and regulators in the developing countries of francophone and Anglophone Africa, as well as Asia, Latin America and the Pacific Islands, who are presently faced with the extremely difficult task of drafting and implementing environmental laws in the context of competing but potentially complementary social and economic development imperatives. As such, each manual will be geared towards individuals who have certain responsibility for and knowledge of the domestic laws of their country and region (regulators, law-makers and practitioners, including legal NGOs), a little knowledge of international law related to sustainable development (as one would read in the newspapers), and a concern for both environmental and developmental objectives. The materials used in the manuals could also be adapted for focused briefings or other training documents for judges and members of tribunals.

To reach these audiences, the manuals need to be designed in consultation with practicing lawyers, regulators and NGO leaders, especially those who provide teaching and training to the following groups: bar associations and colleges, judicial networks in the commonwealth and the francophonie, international legal capacity-building bodies, national judicial institutes, and professional networks in the field. The manuals should be designed to meet the needs of these individuals, institutes and organisations, and should be developed in consultation with them in order to ensure that they are accessible to a broad audience, especially regulators at national and sub-national levels. The participatory nature of the design and preparation of the manuals will also make these bodies much more likely to use the eventual project results and publications.

Many water and land tenure issues are probably more domestic than international. What will be the scope of the manuals?

The manuals can cover legal issues of both a domestic and international nature, as these are relevant to a particular topic. More specifically, the manuals can focus on agreed international objectives, as identified in multilateral treaty making processes and enshrined in international law, and explain the applicable principles. The manuals can then address how, at the domestic level, these objectives might best be implemented, either through adjusting existing domestic laws, drafting new laws or regulations, or simply taking account of international law in the context of judicial decision-making.

By starting with a practical hypothetical problem, and returning to it periodically, the manuals will walk the domestic law-makers and regulators through the existing international and domestic law in the field, and help him or her to consider how best to implement the law in his or her own country and context. This approach will also help international negotiators and delegates of developing countries gain an understanding of how global commitments might be implemented locally. Rather than attempting to be comprehensive, the manuals can provide recommended resources for the practitioner wherever useful and necessary. These recommended resources will be mainly in the form of web-links, so that users can access information specific to their region, the particular topic or legal instrument, or problem at hand.

4. Draft Outlines of Sustainable Development Law Manuals

In what follows, brief outlines of the issues to be canvassed in each manual are provided. Thereafter, the project partners for each manual are introduced, as well as a preliminary list of recommended resources.

4.1 Water Management: Legal Instruments for Sustainable Development

The starting-point for discussion of water access must be the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR does not contain an express right to water. However, article 11 provides that each person has a right to ‘an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions.’ The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has therefore taken the view that the right to water is implicit in the ICESCR, and has elaborated the obligations imposed by the right in General Comment 15. For the purposes of this overview, it is necessary only to mention that states are obliged to progressively make water available to everyone. Such water should be sufficient, safe, acceptable, accessible and affordable. Implicit in the duty of progressive realisation is one of non-retrogression. That is, states should not erode existing access to water or services that are already in place. Furthermore, all states must realise, as a matter of priority, a ‘minimum core’ of access to water. Essentially, this obligation requires that, in progressively realising the right to water, states should, as far as possible, prioritise the needs of those who are most desperate.

The key question, however, is how to translate these abstract principles into concrete laws and programs. Two levels of difficulty are apparent. Firstly, what sorts of laws are necessary to give effect to the rights-based obligations identified by the CESCR? Secondly, water has many uses. Not only does it satisfy human needs, but it is also essential to industry and the maintenance of ecosystems. In other words, water is integral in the human, economic and environmental spheres. In terms of what principles should these conflicting, yet potentially complementary, demands be reconciled?

In respect of the first question – how to implement the rights-based obligations imposed by the ICESCR – the manual draws upon case-law and legislation from South Africa. More specifically, it draws on the Constitution of the Republic of South Africa, and legislation in the form of the Water Services Act and the National Water Act. Recent case-law is also discussed.

In respect of the second question – how to reconcile economic, environmental and human demand to a scarce resource – the manual draws upon the policy of integrated water resource management (IWRM), which it discusses in light of the principles of international sustainable development law. IWRM takes the view that management of water should be sectoral. That is, the different uses of water are interdependent and should therefore be approached in an integrated fashion. The emerging field of international sustainable development law recognises this and suggests principles in terms of which such conflicts can be resolved. Here, several country case studies will be selected, including examples based on innovative regional and bi-lateral water treaties in Asia, Europe and Africa.

Potential partners which can provide support and assistance for the manual, through cooperative activities such as advice, consultations, reviews and edits, pilot-testing and dissemination of manuals, include:

- *The Centre for Housing Rights and Evictions (COHRE)* <www.cohre.org/water>. This NGO, based in Geneva, Switzerland, focuses primarily on housing rights but also has a well-established program on the right to water. COHRE would be able to provide expert input on translating rights-based aspirations into regulatory realities. Contact: Scott Leckie, Executive Director, cohre@cohre.org.
- *United Nations Commission on Human Rights (UNCHR)* <www.unhchr.ch>. Social rights fall within the remit of the UNCHR, and a recent body of research and analysis has been generated through the preparation of General Comment 15 on the Right to Water. Experts associated with this body would be able to provide advice on the right to water. Contact: El Hadji Guisse, UN Special Rapporteur on the Right to Water, ngochr@ohchr.org
- *The World Bank* <www.worldbank.org/water>. The World Bank has undertaken extensive research on integrated water resource management. The mandate of the WRMG encompasses quality of World Bank lending and analytic work on water resources; human resource actions with respect to water resources management, working collaboratively with various sector boards; outreach and corporate positions on water resource issues; and knowledge management on water resources. The members of the WRMG are the managers or lead specialists from the "stakeholder sectors" (water and sanitation, hydropower, irrigation and environment), the lead water resource specialist from each region, the water leaders from the World Bank Institute, IFC, and the GEF Secretariat, as well as a representative from the Legal Department. Contact: John Briscoe and David Grey, Senior Water Advisors, dgrey@worldbank.org.
- *The World Conservation Union (IUCN)* <www.iucn.org/themes/wetlands>. The IUCN conducts research on the conservation of wetlands and water resources, and could therefore provide input on the environmental aspects of water management. Contact: Elroy Bos, Communications Officer, wetlands-water@iucn.org
- *The World Water Council* <<http://www.worldwatercouncil.org/about.shtml>> is the International Water Policy Think Tank dedicated to strengthening the world water movement for an improved management of the world's water resources and water services. Its mission is "to promote awareness, build political commitment and trigger action on critical water issues at all levels, including the highest decision-making level to facilitate the efficient conservation, protection, development, planning, management and use of water in all its dimensions on an environmentally sustainable basis for the benefit of all life on earth". Contact: Daniel Zimmer, Executive Director, wwc@worldwatercouncil.org

Preliminary recommended resources of focus:

- International Covenant on Economic, Social and Cultural Rights
- General Comment Number 15 on the Right to Water
- Centre on Housing Rights and Evictions *Legal Resources for the Right to Water: International and National Standards* (2004)
- M Cordonier-Segger & A Khalfan *Sustainable Development Law: Principles, Practices and Prospects* (OUP Oxford 2004)

4.2 Desertification/Land Reform: Legal Instruments for Sustainable Development

The starting-point for discussion of desertification is the 1994 Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (UNCCD). The UNCCD focuses on the drylands of the world, and aims to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, especially in Africa. To this end, in terms of Article 5 of the UNCCD, state parties are required to: give due priority to combating desertification and mitigating the effects of drought; establish suitable strategies and priorities; address the underlying causes of desertification; promote awareness and facilitate the participation of local populations; strengthen existing legislation or, if this does not exist, enact new laws.

The principles of land reform, on the other hand, cannot be traced to a single treaty. However, three strands can be identified: land redistribution (which aims to provide the poor and other marginalised groups with the means to access land); land restitution (which aims to restore land or provide compensation to those deprived of land through processes such as colonisation); and land tenure reform (which aims to secure current rights in land that are legally insecure and to recognise a variety of forms of land holding).

Why should desertification be paired with land reform? If properly implemented, land reform provides a means of combating desertification. Effective, secure access to land can provide an incentive for land users to invest in sustainable land use practices. Equally, poorly implemented land reform has the potential to contribute to land degradation and desertification. Here, several country case studies will be selected, including examples based on innovative domestic experiences in Asia, Africa and Latin America.

Potential partners which can provide support and assistance for the manual, through cooperative activities such as advice, consultations, reviews and edits, pilot-testing and dissemination of manuals, include:

- *The United Nations Development Program Drylands Development Centre* <www.undp.org/drylands>. This centre is located in Nairobi, Kenya, and assists countries in developing the drylands. It has also organised workshops and conducted research on land tenure reform. Contact: Phil Dobie, Director, ddc@undp.org.
- *African Centre for Technology Studies (ACTS)* <www.acts.or.ke>. ACTS undertakes research on the application of science and technology to sustainable development. It has focused on improving knowledge on land degradation and land resources tenure. Contact: Chris Huggins or George Sikoyo, Officers, ACTS, CHuggins@ICRAF.EXCH.CGIAR.ORG, and g.sikoyo@cgiar.org.
- *United Nations Convention to Combat Desertification Secretariat* <www.unccd.int>. The secretariat of the Desertification Convention assists in preparing sessions of the Conference of Parties and will be able to provide invaluable advice on implementation of the Convention. Contact: Hama Arba Dialo, Executive Secretary, secretariat@unccd.int.
- *International Institute for Environment and Development (IIED)* <www.iied.org>. The IIED promotes sustainable patterns of world development and has specific expertise in desertification and African drylands management. Contact: Ced Hesse, Director, Drylands Program, ced.hesse@iied.org.

Preliminary recommended resources of focus:

- 1994 Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification
- M Cordonier-Segger, C Huggins & G Sikoyo 'Land Tenure Reform in the Drylands: Hopes and Challenges' in M Cordonier-Segger & C.G. Weeramantry (eds) *Sustainable Justice* (OUP Oxford 2004).
- H Diallo 'Challenges to Implementing International Sustainable Development Law on Desertification' in M Cordonier-Segger & C.G. Weeramantry (eds) *Sustainable Justice* (OUP Oxford 2004).

4.3 Climate Change: Legal Instruments for Sustainable Development

Developing countries occupy a difficult position in the debate on climate change. On the one hand, as the most vulnerable countries, developing countries have a profound interest in mitigating and adapting to climate change. At the same time, the dominant development pattern depends on the use of fossil fuels. Developing countries therefore tend to perceive action to limit their emissions of greenhouse gases (GHG) as constituting a threat to their economic futures. Rightly, developing countries also tend to regard the responsibility for mitigating climate change as falling primarily on developed countries, given that they are primarily responsible for the bulk of carbon emissions. Finally, it is, of course, important not to regard developing countries as a monolithic block and to recognise the diversity of their interests.

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in recognition of the threat posed to the world climate by emissions of GHGs. However, in part because of the very different interests of states, it imposed only very general obligations. Nevertheless, it is notable that, although these obligations are general in nature, they fall on all states, developed and developing. All states are, in terms of article 4 of the UNFCCC, required to develop national inventories of anthropogenic emissions of GHGs and formulate and implement programs designed to mitigate climate change. All states are also subject to reporting obligations in this regard. An example of a developing country that has implemented a successful regional program to combat climate change is Chile, which has implemented a permit trading scheme in Santiago.

In order to supplement the broad obligations of the UNFCCC, the 1997 Kyoto Protocol established specific targets and timetables. These, however, fall on so-called 'annex one' countries and not on developing countries. In terms of commitments for developing countries, the Kyoto Protocol does not go beyond the UNFCCC.

How then do developing countries figure in the climate change regime, other than in the very general senses outlined already? One way is through the 'clean development mechanism' (CDM), which is established by the Kyoto Protocol. This allows annex one countries, when investing in developing countries, to utilise technology that produces fewer GHG emissions than conventional

technology. The resultant certified emission reductions can then be used by industrialised countries to meet their emission targets and can also be traded on carbon markets.

The CDM is of clear relevance to developing countries, given that investment will occur in their jurisdictions. What steps should such countries take to facilitate this process? An important step is that, in terms of the Marrakesh Accords, developing countries should designate a 'national authority.' This authority should, firstly, provide written confirmation that the host party is voluntarily participating in the project; and, secondly, that the project assists it in achieving sustainable development. The second step is of particular interest, given that it requires agreement on what constitutes sustainable development. In addition, questions are raised about the appropriate organizational structure of the national authority. These issues are discussed in light of the approaches adopted by Chile, Morocco, Argentina and Peru.

Potential partners which can provide support and assistance for the manual, through cooperative activities such as advice, consultations, reviews and edits, pilot-testing and dissemination of manuals, include:

- *Prototype Carbon Fund (PCF)* <www.prototypecarbonfund.org>. Established by the World Bank, the PCF is committed to combating climate change. It has facilitated a number of CDM projects in developing countries, experience that it is of obvious relevance to the proposed manual. Contact: David Freestone, Chief Counsel in Environmentally and Socially Sustainable Development, dfreestone@worldbank.org.
- *International Institute for Sustainable Development (IISD)* <www.iisd.org>. The IISD advances policy recommendations on the various facets of sustainable development, including climate change. It has recently conducted research on implementation of the CDM in the developing world. Contact: John Drexhage, Director, Climate Change and Energy, jdrexhage@iisd.ca.
- *Carbon Trust (CT)* <www.thecarbontrust.co.uk>. The CT is an independent company founded by the British government, which aims to help the United Kingdom move towards a low carbon economy. The insights gained through its work should be of relevance to the proposed manual. Contact: James Cameron, Founder, JCameron@c-c-capital.com.
- *The United Nations Framework Convention on Climate Change Secretariat* <www.unfccc.int>. The secretariat provides technical expertise to parties to the UNFCCC and also facilitates the flow of information on implementation of the Convention. Contact: Joke Waller-Hunter, Executive Secretary, secretariat@unfccc.int.

Preliminary recommended resources of focus:

- United Nations Framework Convention on Climate Change
- Kyoto Protocol
- P Sands 'Climate Change' *Principles of International Environmental Law* (Cambridge University Press Cambridge 2003)
- S Oberthur & H Ott *The Kyoto Protocol: International Climate Policy for the 21st Century* (Springer-Verlag Berlin Heidelberg 1997)
- D Freestone & C Streck *Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work* (OUP Oxford 2005)
- A Guide to the Climate Change Convention and its Kyoto Protocol (<http://unfccc.int/resource/guideconvkp-p.pdf>)

5. Conclusions & Recommendations

This Scoping Study Report concludes with the recommendation that three manuals be developed to strengthen and develop capacity to implement international law on sustainable development concerning desertification and land degradation, water resources management and access to water, and climate change.

A format should be designed for the proposed manuals on legal aspects of freshwater access, legal aspects of land use/desertification and climate change law that focuses on the needs of national and sub-national regulators, as well as those jurists who work with them to develop and strengthen their capacity. Each manual could, for example, start with a hypothetical case that might be faced by a law-maker or regulator, followed by a description of the applicable legal principles, with examples (or "pop-out" boxes) of actual situations where such principles have been used by developing country laws and tribunals. Then, each manual can provide practical, down-to-earth explanations of the most relevant international treaties in the area; a few focus questions for use by a regulator to assess the state of the regulatory regime concerning this issue in his or her own country; and illustrative examples of well-drafted, effective national laws from different legal traditions and bio-geo-climatic conditions. Each manual can also provide a review of innovative compliance, monitoring and alternative dispute settlement techniques that are currently being used by developing countries to ensure the implementation of sustainable development law, again with practical examples and case studies. Glossaries, case examples and exercises can be provided as appendices, along with a section on recommended resources.

To develop, use and disseminate the manuals in an open and cooperative way, resulting in solid, locally owned development outcomes, there is a need to consult and engage partners throughout the development of the manuals. There are several international and developing country institutions interested in assisting with the preparation of the manuals. Several of these institutions can act as partners for the project as a whole -- that is, for all three manuals -- as well as in certain instances acting as partners for specific manuals. These institutions have committed to an international partnership, registered with the United Nations Commission on Sustainable Development (UN CSD), to strengthen and support the implementation of international law on sustainable development, which is chaired by the CISDL. They include the International Development Law Association, the World Bank, the United Nations Environment Program, and the International Law Association. In addition, case-studies might be drawn from any of the following countries:

- Africa: Niger, Togo, Burkina Faso, Mozambique, Algeria, South Africa, Mali, Benin, Cameroon, Senegal, Cape Verde, Angola, Kenya, Ghana, Tanzania and Botswana.
- Latin America: Bolivia, Nicaragua, Guatemala, Ecuador, Paraguay, Chile, Costa Rica, Peru, Guyana, Antigua, Barbuda, Trinidad and Tobago.
- Asia: Sri Lanka, China, India, Indonesia and the Philippines.

The principal potential audience of the manuals should be law-makers and regulators in the developing countries of francophone and Anglophone Africa, as well as Asia, Latin America and the Pacific Islands, who are presently faced with the extremely difficult task of drafting and implementing environmental laws in the context of competing but potentially complementary social and economic development imperatives. To reach these audiences, the manuals need to be designed in consultation with practicing lawyers, regulators and NGO leaders, especially those who provide teaching and training to the following groups: bar associations and colleges, judicial networks in the

commonwealth and the francophonie, international legal capacity-building bodies, national judicial institutes, and professional networks in the field.

The manuals can cover legal issues of both a domestic and international nature, as these are relevant to a particular topic. More specifically, the manuals can focus on agreed international objectives, as identified in multilateral treaty making processes and enshrined in international law, and explain the applicable principles. The manuals can then address how, at the domestic level, these objectives might best be implemented, either through adjusting existing domestic laws, drafting new laws or regulations, or simply taking account of international law in the context of judicial decision-making. In particular, the specific content for each manual can address the following pressing issues:

1) Water Management: Legal Instruments for Sustainable Development

The starting-point for discussion of water access must be the International Covenant on Economic, Social and Cultural Rights (ICESCR). The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has therefore taken the view that the right to water is implicit in the ICESCR, and has elaborated the obligations imposed by the right in General Comment 15. In respect of the first question – how to implement the rights-based obligations imposed by the ICESCR – the manual draws upon case-law and legislation from South Africa. More specifically, it draws on the Constitution of the Republic of South Africa, and legislation in the form of the Water Services Act and the National Water Act. Recent case-law is also discussed. In respect of the second question – how to reconcile economic, environmental and human demand to a scarce resource – the manual draws upon the policy of integrated water resource management (IWRM), which it discusses in light of the principles of international sustainable development law. Here, several country case studies will be selected, including examples based on innovative regional and bi-lateral water treaties in Asia, Europe and Africa.

2) Desertification/Land Reform: Legal Instruments for Sustainable Development

The starting-point for discussion of desertification is the 1994 Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (UNCCD). The UNCCD focuses on the drylands of the world, and aims to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, especially in Africa. To this end, in terms of Article 5 of the UNCCD, state parties are required to: give due priority to combating desertification and mitigating the effects of drought; establish suitable strategies and priorities; address the underlying causes of desertification; promote awareness and facilitate the participation of local populations; strengthen existing legislation or, if this does not exist, enact new laws. If properly implemented, land reform provides a means of combating desertification. Effective, secure access to land can provide an incentive for land users to invest in sustainable land use practices. Equally, poorly implemented land reform has the potential to contribute to land degradation and desertification. Here, several country case studies will be selected, including examples based on innovative domestic experiences in Asia, Africa and Latin America.

3) Climate Change: Legal Instruments for Sustainable Development

Developing countries occupy a difficult position in the debate on climate change. On the one hand, as the most vulnerable countries, developing countries have a profound interest in mitigating and

adapting to climate change. At the same time, the dominant development pattern depends on the use of fossil fuels. Developing countries therefore tend to perceive action to limit their emissions of greenhouse gases (GHG) as constituting a threat to their economic futures. Rightly, developing countries also tend to regard the responsibility for mitigating climate change as falling primarily on developed countries, given that they are primarily responsible for the bulk of carbon emissions. Finally, it is, of course, important not to regard developing countries as a monolithic block and to recognise the diversity of their interests.

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in recognition of the threat posed to the world climate by emissions of GHGs. Nevertheless, it is notable that, although these obligations are general in nature, they fall on all states, developed and developing. All states are, in terms of article 4 of the UNFCCC, required to develop national inventories of anthropogenic emissions of GHGs and formulate and implement programs designed to mitigate climate change. All states are also subject to reporting obligations in this regard. How then do developing countries figure in the climate change regime, other than in the very general senses outlined already? One way is through the 'clean development mechanism' (CDM), which is established by the Kyoto Protocol. The CDM is of clear relevance to developing countries, given that investment will occur in their jurisdictions. What steps should such countries take to facilitate this process? An important step is that, in terms of the Marrakesh Accords, developing countries should designate a 'national authority.' This authority should, firstly, provide written confirmation that the host party is voluntarily participating in the project; and, secondly, that the project assists it in achieving sustainable development. The second step is of particular interest, given that it requires agreement on what constitutes sustainable development. In addition, questions are raised about the appropriate organizational structure of the national authority. These issues are discussed in light of the approaches adopted by Chile, Morocco, Argentina and Peru.

Scoping Study Annex

Background on the CISDL and Biographies of Key Personnel

Further Background on the CISDL

The Centre for International Sustainable Development Law (CISDL) aims to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

The CISDL is an independent legal research centre which has a close partnership with the McGill Law Faculty and the Oxford Faculty of Law in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. CISDL also works in cooperation with a network of developing country faculties of law, and other departments of McGill University, the Université de Montreal, the Université de Québec à Montreal (UQAM), La Sorbonne, Yale University and Cambridge University. It has guidance from the three Montreal-based multilateral treaty secretariats, the World Bank Legal Vice-Presidency, the United Nations Environment Programme and the United Nations Development Programme.

With the International Law Association and the International Development Law Organisation, under the auspices of the United Nations Commission on Sustainable Development, CISDL is the leader of a new Partnership, ‘International Law for Sustainable Development’ that was launched in Johannesburg at the 2002 World Summit for Sustainable Development, to build knowledge, analysis and capacity on international law for sustainable development.

The CISDL has six legal research programmes led by jurists from developing and developed countries. These primary areas of sustainable development law research, each of which is led by a CISDL Lead Counsel based at a developed or developing country law faculty or international organisation, include Climate change and vulnerability law; Sustainable developments in natural resources law; Biodiversity law; Human rights and poverty eradication in sustainable development law; Trade, investment and competition law; and Health in sustainable development law. There are also two lead counsels responsible for cross-cutting sustainable development law issues (e.g. governance, corporate social responsibility, financing, criminal and constitutional law aspects of sustainable development).

As a result of its ongoing legal scholarship and research, the CISDL publishes books, journal articles, working papers and legal briefs in English, Spanish and French. The CISDL also organises academic workshops, dialogue sessions, legal experts panels parallel to international negotiations, and conferences. It provides instructors, lecturers and capacity-building materials for developing country governments and international organisations in national and international law in the field of sustainable development, and works with countries to develop national laws to implement international treaties in these areas.

The CISDL has published several books and many research papers and journal articles on legal aspects of corporate social responsibility, and the principles and practices of sustainable

development law and policy. It is known for its academic achievements, analytical rigour, highly dedicated personnel, and integrated approach to sustainable development that accommodates economic, social and environmental perspectives and priorities. Its most recent publication is M. C. Cordonier Segger and A. Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004). *Sustainable Development Law: Principles, Practices and Prospects*, the book, is an expression of the mandate of the Centre for International Sustainable Development Law (CISDL) – to advance the understanding, development and implementation of international sustainable development law. It is the fruit of research and innovative analysis by a team of jurists drawn from all regions and principal legal traditions of the world: the Lead Counsel and Research Fellows of the CISDL. Three other recent publications include M.C. Cordonier Segger and C. G. Weeramantry, *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Martinus Nijhoff, 2004); M. Gehring and M.C. Cordonier Segger, *Sustainable Development in World Trade Law* (Kluwer Law International, 2005); and M.C. Cordonier Segger & M. Leichner Reynal, *Beyond the Barricades: An Americas Trade and Sustainable Development Agenda* (Ashgate Press, 2005).

Main Authors / Editors of Report:

Marie-Claire Cordonier Segger, Canada / United Kingdom, MEM (Yale), B.C.L. & LL.B. (McGill), B.A. Hons (Crlt), is Director of the CISDL. She has served as an instructor to developing country lawyers for the International Development Law Organisation, the United Nations Environment Programme (UNEP), the United Nations Economic Commission, the United Nations Development Programme, Oxford University, Yale University and other institutions. With colleagues from developed and developing countries, she authored three legal text books on sustainable development law, published by Oxford University Press, Kluwer Law International and Martinus Nijhoff Press, also several manuals and other studies on implementation of international law in Latin America and the Caribbean, and Africa. She serves as an advisor to the UNEP- Global Environment Facility Biosafety Project, where she is responsible for reviewing the draft laws of 15 francophone African countries for the UN Biodiversity Convention *Cartagena Protocol on Biosafety*, and she also serves on the UNEP Gender and Environment Experts Group. She is director of a joint UNEP, International Institute for Sustainable Development (IISD) and CISDL research and capacity building initiative, where she chairs an Americas research consortium, reviews Latin American and Caribbean health and environmental impact assessment laws as these are applied to trade and development, and was lead author of four additional books on regional trade and sustainable development issues. She is a member of the International Law Association's (ILA) Committee on International Law on Sustainable Development, and has served as an editor on the *Revue québécoise de droit international*, on the Board of Directors of the Canadian Environment Network, and on several Canadian delegations to the United Nations. She has been twice appointed an AVINA Fellow, a Visiting Scholar at the Lauterpacht Research Centre for International Law at Cambridge University, and Associate Fellow at the Royal Institute of International Affairs (Sustainable Development Programme). A British Chevening Scholar, she holds a SSHRC Doctoral Fellowship for a Ph.D. in International Law at Oxford University, where she coordinates a graduate seminar on Globalisation and Sustainable Development Law. She is fluent in English, French and Spanish with a notion of Portuguese and German. Ms. Cordonier Segger is the main editor of the Scoping Study Report.

Mr. Murray Wesson, South Africa BA (Hons) LLB (Natal), BCL, MPhil (Oxon), is an associate fellow of the CISDL, a Rhodes Scholar and candidate for a Ph.D. (D.Phil.) at Oxford University Faculty of Law. In his native South Africa he lectured at the University of Natal in Durban before departing to Oxford on a Rhodes Scholarship. There, he completed a BCL, with a strong emphasis on public law and legal theory, and wrote an MPhil thesis on the South African Constitutional Court's adjudication of socio-economic rights. He is currently writing a doctorate on the relationship between substantive equality jurisprudence and socio-economic rights. He has published in the field of socio-economic rights and has strong interests in human rights law and public law more generally. At Oxford he attempts to combine his interests in activism and academia by working for Oxford Public Interest Lawyers and as an associate editor for the Oxford University Commonwealth Law Journal. He speaks English fluently, Afrikaans adequately and is learning French. Outside his work, he enjoys hiking, travelling, fine wine and good literature. Mr. Wesson is the main researcher of the report, and a principal author.

Contributing Authors / Reviewers:

Mr. Ashfaq Khalfan, Kenya / Canada, B.C.L & LL.B (McGill), B.A. Hons. (McGill), is director of the CISDL, and initiated the Human Rights and Poverty Eradication programme. He has published on a range of topics including human rights and sustainable development, minority rights and constitutional reform and poverty eradication. He serves as Coordinator of the Right to Water Programme at the Centre on Housing Rights and Evictions, where he co-authored two books on the right to water. In this capacity, he has monitored violations of the rights to housing and water in a range of countries and provided legal advice to other civil society organisations. He previously worked with the Investigations Branch of the Canadian Human Rights Commission, and with the Federal Department of Justice in Canada. He has also worked with the Kituo Cha Sheria (Legal Advice Centre) in Kenya carrying on research on insecurity in informal settlements and with the Law & Society Trust, a Sri Lankan human rights NGO where he coordinated the work of a civil society coalition on constitutional reform. He led CISDL's research project on debt legitimacy, co-authored the CISDL working paper: *Advancing the Odious Debt Doctrine*, and regularly advises civil society advocates of Southern debt cancellation of their legal and strategic options. He has served as an editor on the *Revue québécoise de droit international*, a Montreal-based law journal. He speaks English, Swahili and French.

Prof. W. Bradnee Chambers, Tokyo, is a Senior Research Fellow at the CISDL. He is a Senior Programme Officer of the United Nations University / Institute of Advanced Studies, as well as the Coordinator of the Multilateralism and Sustainable Development Programme at UNU/IAS. Before working at UNU/IAS, he worked at UNCTAD in the Transnational Corporation Division, where he researched and wrote chapters on National Legislation and the Regulations Relating to Transnational Corporations. He joined the UNU/IAS in 1996 where he has performed an array of different tasks and positions such as legal advisor, research associate, associate fellow, research fellow, coordinator of the UNU/IAS PhD and Postdoctoral Fellowship Programme and secretary of the UNU/IAS Board. Chambers has also participated in a number of diplomatic, academic and international conferences including Conference of the Parties and Subsidiary Body Meetings for the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, the WTO Ministerials, and the UN Commission on Sustainable Development. He is specialised in public international law and international relations and works on environmental treaty and international economic legal issues. In addition to his responsibilities at UNU/IAS, Chambers is a Convening Lead Author in the Millennium Ecosystem Assessment. Chambers' current research

concentrates on finding means for improving cooperation between major multilateral environmental agreements based on an interlinkages approach. He works and publishes on issues related to climate change law, biodiversity, biotechnology policy, and trade and environment.

Mr. Kishan Khoday, Singapore / Canada, B.Sc. (McGill), M.Sc. (Antioch), J.D. (Vermont Law School) is a Research Fellow at the CISDL. A sustainable development advisor with the United Nations Development Programme (UNDP), Mr. Khoday's work focuses on the relationship between globalization, legal pluralism and sustainable development. His research explores globalization and development as more than consequences of expanding trade and market forces - but also as processes of social, political and cultural change. Mr. Khoday focuses on the implication of these more contentious aspects of globalization for international law and sustainable development. Emphasis is placed on legal pluralism and the rise of constitutional autonomy regimes for indigenous and minority communities that provide the space to address the bridge between 'modern/scientific' and 'traditional/customary' legal epistemologies in framing the local boundaries of globalization. This adaptation of constitutional cultures brings new opportunities to address issues of inequitable distribution of benefits from globalization, trade and development; exclusion of marginalized communities in economic, social and environmental decision-making; and new ways to protect the planets vital ecosystems. Mr. Khoday also serves as an advisor on globalization and trade within the UN Millennium Ecosystem Assessment, the largest-ever study on integrated responses to address linkages between ecosystem change and human well being. He played a key role in preparations for WSSD, and serves as an advisor for follow-up programmes in Asia on issues of legal and judicial reform, corporate responsibility, natural resources management, and debt swaps. Before joining the UN, Mr. Khoday served with various agencies and NGOs in Singapore and Canada on issues of development and trade.

Mr. Christopher Tung, China, LL.B, LL.M (London), is a Legal Research Fellow with the CISDL, and a partner in the Hong Kong office of Mallesons Stephen Jaques. He specialises in projects, environmental and renewable energy work. Mr. Tung regularly assists contractors and sponsors in the preparation of tender and contract documentation, and risk assessments in major building and infrastructure projects around Asia. This work involves advice on environmental regulatory risk and compliance, which encompasses corporate environmental governance and corporate sustainable investment issues. Increasingly, this work requires a consideration of climate change issues and advice on emerging national laws and regulations driven by the Kyoto Protocol (such as the recent PRC "Provisional Measures on the Administration of Clean Development Mechanism Projects"). Mr. Tung is admitted as a solicitor of the Supreme Court of England and Wales (1995) and the High Court of Hong Kong (1994). He serves as Chair of the Environment Committee and a Councillor of the French Chamber of Commerce in Hong Kong, Member of the Environment Committee of the Hong Kong General Chamber of Commerce, Member of the Sustainable Development Committee of AustCham in Hong Kong, and Honorary Legal Consultant, Business Environment Council, Working Group on Sustainable Development. He writes and speaks on conservation, environmental and sustainability issues on a regular basis. He speaks English, French and Cantonese.