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Organisation Internationale de Droit du Développement

**International Law for Sustainable  
Development Partnership**

**IDLO-ILA-CISDL-LCIL Contribution to  
the UN CSD 2012 Deliberations**

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**Contents:**

<b>Summary of Recommendations: .....</b>	<b>3</b>
<b>A) Sustainable Development in International Law and Policy....</b>	<b>4</b>
I. Introduction .....	4
II. Sustainable Development as an Objective in International Law .....	4
III. Need to Reconcile Competing International Norms and Regimes .....	6
IV. Need to Clarify the Importance of International Law to Support the Pillars of Sustainable Development .....	7
<b>B) Green Economy in the Context of Poverty Eradication: ILSD Recommendations .....</b>	<b>8</b>
I. Domestic Law & Policy Initiatives for Legal Preparedness for a Green Economy .....	8
II. International Law and Legal Preparedness for a Green Economy .....	8
<b>C) Institutional Structure for Sustainable Development: ILSD Recommendations .....</b>	<b>10</b>
I. Law and the Domestic Institutional Structure for Sustainable Development	10
II. Law and International Institutions for Sustainable Development .....	11
<b>Key References.....</b>	<b>12</b>
<i>Annex 1) Profile of International Law for Sustainable Development Partners....</i>	<i>13</i>
<i>Annex 2) Sustainable Development in International Courts &amp; Tribunals 1992-2012 .....</i>	<i>15</i>
<i>Annex 3) IDLO Legal Preparedness for Climate Change Initiative .....</i>	<i>15</i>
<i>Annex 4) CISDL Biodiversity Research Program .....</i>	<i>16</i>
<i>Annex 5) Environmental Migration: The prospects of sustainable development</i>	<i>17</i>
<i>Annex 6) Legal Empowerment and Sustainable Development: ILSD Approach .</i>	<i>18</i>

## **Summary of Recommendations:**

The International Law for Sustainable Development Partnership recommends that States convened at the United Nations Conference on Sustainable Development:

- Recognize sustainable development as a central objective of international law;
- Engage in a significant effort to resolve conflicts between sustainable development obligations contained in international law and other international and domestic legal obligations. The ILSD Partnership views the UNCSD as an opportunity to focus attention and dialogue on this growing issue;
- Emphasize and clarify the importance and role of international law as a tool to support the pillars of sustainable development, and especially recognize and validate the growing role of sustainable development in international treaty law, customary law and the decisions of international courts and tribunals;
- Highlight the importance of innovative, integrated and coordinated domestic law and policy reform and initiatives to green the key sectors of the economy identified in the 2011 UNEP Green Economy Report;
- Recognize and promote the role of international law for the transition to a green economy in the context of poverty eradication, and specifically the pivotal role played by Multilateral Environmental Agreements, international trade, investment and finance law, as well as international human rights and legal empowerment initiatives;
- Emphasize the importance of streamlining sustainable development at all levels of domestic institutions and governance, in order to effectively green the key sectors identified in the 2011 UNEP Green Economy Report, which often depend on various levels of governance;
- Promote the importance of legal empowerment and access to justice at the domestic institutional level for sustainable development;
- Mandate the UNCSD or another body to carry out a comprehensive review of the international institutional structure for sustainable development, which has grown in size and complexity over the past two decades;
- Establish an international experts panel to examine the advancement of international law on sustainable development in the past 20 years, especially in treaties and international courts and tribunals. This panel would produce a full report as well as a practical legal toolkit for decision-makers.

## A) Sustainable Development in International Law and Policy

### I. Introduction

The objective of UNCSO is to renew political support for sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development, and addressing new and emerging challenges.

The 2002 World Summit on Sustainable Development Plan of Implementation, at Chapter XI, 148 (e) mandated the UNCSO to “[t]ake into account significant legal developments in the field of sustainable development, with due regard to the role of relevant intergovernmental bodies in promoting the implementation of Agenda 21 relating to international legal instruments and mechanisms.”

**The International Law for Sustainable Development Partnership, composed of the International Development Law Organisation (IDLO), the Centre for International Sustainable Development Law (CISDL), the International Law on Sustainable Development Committee of the International Law Association (ILA) and the Lauterpacht Centre for International Law (LCIL) focuses on the implementation of significant legal developments in the field of sustainable development.**<sup>1</sup> The main goal is to strengthen sustainable development governance at the international, regional and national levels, laying the foundation for policy implementation by facilitating access to, compliance with, and enforcement of coherent, integrated economic, social and environmental law.

### II. Sustainable Development as an Objective in International Law

**The ILSD Partnership recommends that the UNCSO recognize sustainable development as a central objective of international law.** Over the past two decades especially, States have enhanced the integration of sustainable development into international treaty-making. Numerous Multilateral Environmental Agreements (MEAs) aim at addressing global challenges by applying sustainable development principles.<sup>2</sup> States have also included sustainable development provisions in international trade treaties, including the preamble to the World Trade Organisation (WTO) agreement.<sup>3</sup> In the *US-Shrimp* dispute, the WTO Appellate Body acknowledged that the “preamble of the WTO – which informs not only the GATT 1994 but also the other covered agreements – explicitly acknowledges the objective of sustainable development.”<sup>4</sup> Sustainable development is now well represented and acknowledged in international law.

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<sup>1</sup> See Annex 1 for the profile of the partners.

<sup>2</sup> For example, United Nations Framework Convention on Climate Change (opened for signature 4 June 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC); United Nations Convention on Biological Diversity (opened for signature 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, 143 (UNCBD); United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (opened for signature 14 October 1994, entered into force 16 December 1996) 1954 UNTS 3 (UNCCD).

<sup>3</sup> Marrakesh Agreement Establishing the World Trade Organization (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 4.

<sup>4</sup> WTO, United States: Import Prohibition of Certain Shrimp and Shrimp Products—Report of the Appellate Body (6 November 1998) Doc.WT/DS58/AB/R, 123, Note 107.

In parallel, the meaning of a commitment to sustainable development in international law has been increasingly clarified. Some jurists do note that sustainable development is an emerging principle of customary law,<sup>5</sup> and others suggest that it could be conceived of as a right of states,<sup>6</sup> an obligation *erga omnes*,<sup>7</sup> or a commitment of an "interstitial nature."<sup>8</sup> However, there appears to be an emerging consensus among jurists to view sustainable development as an objective of international law, part of the object and purpose of international treaties.<sup>9</sup> From this perspective, there is not one unique principle of sustainable development. Rather, there is a growing corpus of international law on sustainable development that is integrated in a variety of fields, including international trade law, finance law, environmental law, health law, and other fields. As such, sustainable development can be considered part of the object and purpose of a growing number of treaties, and therefore directly relevant in the interpretation of their provisions.

After ten years of study and exchange, and with the input and support of other ILSD members, the ILA released the 2002 New Delhi Declaration on the Principles of International Law Related to Sustainable Development, which identifies seven principles in particular, without claiming that this list is exhaustive.

The principles are:

- 1 The duty to ensure sustainable use of natural resources**
- 2 The principles of equity and the eradication of poverty**
- 3 The principle of common but differentiated responsibilities**
- 4 The principle of the precautionary approach to human health, natural resources and ecosystems**
- 5 The principle of public participation and access to information and justice ("Openness")**
- 6 The principle of good governance**
- 7 The principles of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives**

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<sup>5</sup> *Case Concerning the Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) (Separate Opinion of Vice President Weeramantry) [1997] ICJ 7.

<sup>6</sup> *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006, p. 133 (General List No 135, 67).

<sup>7</sup> P Sands *Principles of International Environmental Law* (Cambridge: CUP, 2003) 254.

<sup>8</sup> V Lowe, 'Sustainable Development and Unsustainable Arguments' in A Boyle and D Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (Oxford: OUP, 1999) 19-28.

<sup>9</sup> A Boyle & D Freestone, *International Law and Sustainable Development* (Oxford: OUP, 1999) 17-18; MC Cordonier Segger and A Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford: OUP, 2004) 46-50; P Birnie, A Boyle & C Redgwell, *International Law & the Environment* (Oxford: OUP, 2009) 126-127.

These principles are meant to inform the integration and interpretation of sustainable development as an objective in international law, including for international treaties and other international sources of law.<sup>10</sup>

### III. Need to Reconcile Competing International Norms and Regimes

**The ILSD Partnership calls for a greater effort from States to reconcile the legal obligations contained in international sustainable development treaty regimes with other international and domestic obligations.** As noted, the past 20 years have seen the emergence of a number of important new treaties on a wide range of issues related to sustainable development, at the international, regional, and even bilateral levels. Notable examples include the United Nations Framework Convention on Climate Change (UNFCCC), the United Nations Convention to Combat Desertification (UNCCD), and the United Nations Convention on Biological Diversity. Yet, the obligations contained in these legally binding instruments often conflict with other obligations in international or domestic law. These conflicts lead to a lack of clarity and predictability as to international sustainable development obligations.

For example, obligations contained in Multilateral Environmental Treaties may conflict with the obligations contracted by states under the World Trade Organisation (WTO) or Regional Trade Agreements (RTAs). For instance, the *Convention on International Trade of Endangered Species (CITES)*,<sup>11</sup> which has 172 Parties, contains trade measures that prevent Parties from allowing illegally harvested species to enter international commerce. This MEA authorizes trade between its Parties in a specific product, such as certified ivory, but blocks trade in the same product with countries that allow elephants to be killed illegally for their tusks and have not signed the agreement. While considered essential to avoid 'free riders' for the environmental regime, such a ban could be found to be incompatible with WTO's 'most favoured nation treatment' and non-discrimination obligations. These obligations do not permit trading partners to ban a product from one country while permitting entry of a like product from a different country, simply based on the way the product is made or harvested. Similarly, the 1997 *Montreal Protocol on Substances that Deplete the Ozone Layer*<sup>12</sup> to the 1985 *Vienna Convention for the Protection of the Ozone Layer* contains trade measures that prevent Parties from trading with non-parties in goods that either contain or were produced using prohibited ozone-depleting substances. Both the Convention and the Protocol have 191 Parties. The 1989 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*,<sup>13</sup> which has been ratified by 170 States, contains trade measures to prevent developed country Parties (or states with which they trade) from risking that their hazardous wastes become subject to illegal disposal in the territories of developing country Parties. The WTO, which has 151 Members, has mandated negotiations under the ongoing Doha Round on the

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<sup>10</sup> See <http://cisdl.org/tribunals/pdf/NewDelhiDeclaration.pdf> for more details.

<sup>11</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243 (CITES).

<sup>12</sup> Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3.

<sup>13</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57.

relationship between WTO rules and the trade provisions of MEAs to which Members are both Parties. So far these negotiations have not been very fruitful.

The ILSD Partnership views the UNCSD as an important forum for the discussion of these conflicts between legal obligations, which can prevent States from pursuing legitimate sustainable development goals.

#### **IV. Need to Clarify the Importance of International Law to Support the Pillars of Sustainable Development**

**The ILSD Partnership calls on States at the UNCSD to emphasize and clarify the importance and role of international law as a tool to support the pillars of sustainable development.** Specifically, the ILSD partnership recommends that the UNCSD build on the Johannesburg Plan of Implementation (JPOI) and clarify the role of sustainable development especially in the following sources of international law:

- **Treaty Law:** This is the most common source of international law, and includes rules of international law expressed in writing. As mentioned above, there is a growing consensus that sustainable development can be characterised as an objective of international treaty regimes. Numerous treaties now mention sustainable development as an objective in their preamble. As such, they should be interpreted and implemented in light of sustainable development principles, such as those expressed in the 2002 ILA New Delhi Declaration.
- **Customary International Law:** Customary law is derived from the behaviour of States, according to norms generally accepted as binding. While sustainable development itself is most likely not one unique principle of customary law, several principles of sustainable development have been recognised as customary norms. For example, The International Court of Justice has recognized the obligation to conduct Environmental Impact Assessments prior to engaging with large-scale transboundary projects as a principle of customary international law.<sup>14</sup> The UNCSD should clarify and recognise which principles of sustainable development are binding customary law.
- **International Courts and Tribunals:** Over the past decade, the ILSD partnership has documented the integration of sustainable development in the decisions of international courts and tribunals.<sup>15</sup> We recommend that the UNCSD recognise and validate the emergence of sustainable development principles in the decisions of international courts and tribunals.

Such a clarification will be an important recognition of the progress of international law on sustainable development in the past decade, and will also

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<sup>14</sup> *Case Concerning the Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) (Majority Opinion of Judge Schwebel) [1997] ICJ 7, 206.

<sup>15</sup> See Annex 1, and <http://cisdl.org/tribunals/> for a free research tool on sustainable development in international courts and tribunals.

help in constituting an inventory of the sustainable development obligations and commitments of States.

## **B) Green Economy in the Context of Poverty Eradication: ILSD Recommendations**

International and domestic law and policy is an important and yet neglected aspect of the transition to a Green Economy. The ILSD recommends that the UNCSD result in a clarification of the role of law at both the domestic and international levels for a Green Economy.

### **I. Domestic Law & Policy Initiatives for Legal Preparedness for a Green Economy**

The ILSD Partnership under the leadership of IDLO is currently preparing a Compendium of Domestic Legal Best Practices for the Transition to a Green Economy, for publication in December 2011. The objective of this Compendium is to assist governments, especially in developing countries, to identify what type of legislative and policy initiatives and reforms are important and effective in terms of greening the economy. This document will be based on the 2011 UNEP Green Economy Report, which identifies 11 key sectors in terms of greening the economy.<sup>16</sup> They are: Agriculture, Fisheries, Water, Forests, Renewable Energy, Manufacturing, Waste, Building, Transport, Tourism, and Cities. As such, the Compendium will contain a section on legal best practices for greening each sector.

**The ILSD Partnership recommends that the UNCSD emphasize the importance of innovative, integrated and coordinated domestic law and policy initiatives to green the key sectors of the economy identified in the 2011 UNEP Report.** These policy initiatives include but are not limited to:

- Fiscal Policy Reform focusing on Environmental Charges and Green Subsidies
- Domestic Policies for Carbon Taxation
- Policies on Product Labelling favouring full Disclosure of Externalities to Consumers
- Energy efficiency and renewable energy policies, providing incentives and efficiency standards
- Land use and urban planning policies integrating sustainable development concerns
- Water management policies that guarantee access to clean water, and promote efficient water usage

A full summary of best practices in each key sector will be available in the forthcoming compendium.

### **II. International Law and Legal Preparedness for a Green Economy**

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<sup>16</sup> UNEP, 2011, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication*, [www.unep.org/greeneconomy](http://www.unep.org/greeneconomy)

The ILSD Partnership recommends that the UNCSD recognise and promote the role of international law in the transition to a green economy in the context of poverty eradication. Several aspects of International Law are particularly relevant in this respect:

**Multilateral Environmental Treaties:** As mentioned, the past two decades have seen a multiplication of international treaties aimed at addressing global challenges, many of which are particularly relevant in to the global green economy, for both developed and developing countries. For example, the 2010 *Cancun Agreements* under the UNFCCC emphasized climate finance, with pledges of \$100 billion by 2020. Climate finance, from both public and private sources, can foster and accelerate the transition to a global green economy by directly and indirectly enhancing new low-carbon industries, green capital investment, adaptive capacity building and renewable energies, for example. The Clean Development Mechanism, REDD+, and international funds such as the Global Environmental Facility, the World Bank Carbon Finance Unit and other climate funds and voluntary instruments provide finance opportunities for the transition to a green economy.<sup>17</sup> Similarly, the 2010 *Nagoya Protocol* to the UNCBD, on Access and Benefit Sharing of Genetic Resources, offers intersections with an equitable transition to a green economy in developing countries.<sup>18</sup>

**International Trade, Investment & Finance Law:** In the past decade, the ILSD Partnership has developed considerable expertise in the integration of sustainable development in international Trade, Investment and Finance Law. Integrating sustainable development principles into trade & investment agreements, whether under the WTO or Regional Trade/Investment Agreements, is an important aspect of the transition to a green economy. Many States are already taking into account social and environmental concerns in the context of international trade and investment negotiations, and these efforts should be recognised and encouraged by the UNCSD. **International finance law and regulation is regrettably lagging in terms of integrating sustainable development.** The ILSD Partnership proposes that the integration of sustainable development into international financial regulations, such as the Basel Committee on Banking Supervision Standards, would promote a more stable and sustainable international financial regime. Notably, sustainable development principles in financial regulations might promote an alleviation of the typical international “boom and bust” cycles.

**Human Rights and Legal Empowerment:** The ILSD Partnership emphasizes that the transition to a green economy in the context of poverty eradication will not function without a focus on human rights and legal empowerment. Numerous foundational international treaties emphasize commitment to core human rights. More recent initiatives, such as the Millennium Development Goals and the work of the UN Legal Empowerment of the Poor Commission, emphasize the importance of human rights, livelihood rights and legal empowerment for poverty eradication. Human rights and legal empowerment initiatives are particularly important in terms of vulnerable populations, for example the

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<sup>17</sup> See Annex 3 for IDLOs Legal Preparedness for Climate Change Initiative, and S Mason-Case and MC Cordonier Segger, ‘International Law and Climate Finance’ (2010) IDLO Policy Brief, [http://www.idlo.int/Publications/5\\_MasonCaseSarahMCCordonierSegger\\_internationallawandclimatefinance.pdf](http://www.idlo.int/Publications/5_MasonCaseSarahMCCordonierSegger_internationallawandclimatefinance.pdf)

<sup>18</sup> See Annex 4 for more information on the CISDL Biodiversity Program.

growing number of environmental migrants.<sup>19</sup> The ILSD Partnership encourages the UNCSO to recognise the central importance of international human rights and legal empowerment initiatives for the green economy agenda.

## **C) Institutional Structure for Sustainable Development: ILSD Recommendations**

Laws and policies frame institutions. They provide institutions with everything from their source of authority, scope of engagement to daily management, and influence practices and cultures within institutions. The ILSD Partnership wishes to strongly emphasize the central role of law in the reform of international and domestic institutional structures for sustainable development. **Overall, the ILSD recommends that the UNCSO emphasize the integration of sustainable development into the laws, policies and operational guidelines of institutions related to sustainable development, both at the national and international level.**

### **I. Law and the Domestic Institutional Structure for Sustainable Development**

In many countries only the ministry for environment is in charge of the sustainable development law strategy, if such a strategy is in place. Environment ministries typically do not have the required authority to enforce existing sustainable development law policies, or policies related to the green economy specifically. Furthermore, important cross-sectoral issues such as climate change cannot be handled effectively by one ministry that does not have authority transport and industry, for example. Poor coordination between ministries can lead to barriers in the promotion of a sustainable development law agenda.

Domestic institutional laws and policies need to address and adopt best practices in terms of the transition to a green economy. **Green economy policies and regulations need to be streamlined at all levels of domestic governance in order for green reform to be effective.** Indeed, the key sectors identified in the 2011 UNEP Green Economy Report are often regulated at different levels of government, whether national, regional or municipal. Further, initiatives at different levels of government need to be coordinated at a higher level to promote synergies and avoid redundancies or conflicts. Adapting domestic institutional structures to the green economy requires innovative and bold solutions.

**ILSD also recommends a focus on legal empowerment at the domestic institutional level.** The transition to a green economy will fail if it does not include vulnerable populations. The poor depend most on, and are disproportionately vulnerable to the availability of natural resources for their income, subsistence and socio-economic resilience. Domestic institutions, including judicial institutions, must focus on protecting and promoting the

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<sup>19</sup> See Annex 2 and B Mayer, 'Fraternité, responsabilité et développement durable: Différentes pistes pour la protection des migrants climatiques' (2011) CISDL Conference Proceedings, <http://cisdl.org/gonthier/public/pdfs/papers/Conf%C3%A9rence%20Charles%20D%20Gonthier%20-%20Benoit%20Mayer.pdf>

human and livelihood rights of the poor. These include access to justice, labour rights, property rights and business rights. Without legal empowerment, the poor will once again be left behind and not benefit from or contribute to the transition to a green economy.<sup>20</sup>

## **II. Law and International Institutions for Sustainable Development**

**Streamlining International Initiatives:** At the international level, streamlining is important in order to capture the synergies between different sustainable development initiatives. There is too much duplication on certain types of initiatives between UN agencies, NGOs and other international stakeholders. While competition between international development agencies is healthy in order to develop effective and optimal initiatives, streamlining energies would allow for a more optimal amalgamation of multidisciplinary expertise. Legal issues at the institutional level in international agencies also tend to have a marginal role, save for the few organizations specialized in legal aspects. Sustainable development law must be considered in the initiatives of international development agencies.

**A Comprehensive Review of the Institutional Structure for Sustainable Development:** Effective synergies between the CSD and other intergovernmental instruments would be facilitated by a comprehensive review of the institutional framework for sustainable development. The last such review occurred in 1992, and only periodic reviews have taken place since. The ILSD Partnership agrees with the 2006 Report of the UN Secretary General's High-Level Panel on System-Wide Coherence, which noted the importance of elevating sustainable development within the UN institutional architecture and in country activities. The recognition of law as a central tool for sustainable development must also be furthered in UN agencies and intergovernmental agencies, where it is all too often given a subaltern and marginal place. A reform that would ensure synergies between the CSD and other intergovernmental institutions by strengthening the place of sustainable development, as suggested by the Secretary General's High Level Panel, has yet to take place despite its importance in coordinating efforts within the UN. This call was emphasized by the UN "Delivering as One" conference in Hanoi in June 2010.

**Analytical Tool for International Legal Obligations:** Institutional challenges often stem from a lack of knowledge, capacity or understanding on international treaty regimes and their impact and interplay in a given situation. The application of international treaty regimes can be quite complex. Further, few legal experts can understand the implications of several international treaty regimes in one given situation. This type of analysis requires a rather sophisticated understanding and research on international treaties. As such, the ILSD partnership is interested in developing a GIS mapping system that would in effect constitute a toolkit for non-specialists to navigate international treaty requirements in different contexts.

### **An International Experts Panel to Examine the Advancement of International Law for Sustainable Development in the Past 20 Years:**

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<sup>20</sup> See Annex 3 for more details on ILSD initiatives for Legal Empowerment of the Poor.

Institutions and organisations require effective informational tools in order to create and implement effective and up to date policies. An expert's panel on international sustainable development law established under the UNCSD could provide key information to policymakers in domestic and international institutions, especially with regard to sustainable development in international treaties and in the decisions of international courts and tribunals. This panel would produce a full report as well as a practical legal toolkit for decision-makers.

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IDLO Environment and Sustainable Development Law Programs at <http://www.idlo.int/english/WhatWeDo/Programs/Environment/Pages/default.aspx>

ILA International Law for Sustainable Development Committee Reports available at <http://www.ila-hq.org/en/committees/index.cfm/cid/1017>

## **Annex 1) Profile of International Law for Sustainable Development Partners**

### **The International Development Law Organization (IDLO)**

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IDLO is an intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in transitional and developing countries. Founded in 1983 and one of the leaders in rule of law assistance, IDLO believes that legal reform occurs alongside economic and social development, and that it is driven by societal demand. By involving stakeholders at all levels of society, IDLO helps develop sustainable, equitable solutions that reflect a society's broad needs and desires.

IDLO's comprehensive approach achieves enduring results by mobilizing stakeholders to drive institutional change. Since its establishment, IDLO has worked with more than 20,000 legal professionals in 175 countries. Its network of 46 independent national alumni associations, with membership drawn from legal, business, academic and civil society communities, gives it a unique ability to create opportunity for those most in need.

IDLO is based in Rome, with project offices in Afghanistan, Kyrgyzstan and Sudan, and a permanent observer office at the United Nations in New York.

### **The Centre for International Sustainable Development Law (CISDL)**

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The mission of the Centre for International Sustainable Development Law (CISDL) is 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 collaborates with the McGill Law Faculty in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. The CISDL also works in cooperation with a network of developing country faculties of law, and has close ties with the University of Cambridge, the Université de Montreal, Capetown University and the University of Costa Rica. 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, and a memorandum of understanding with the International Institute for Sustainable Development (IISD) and the International Development Law Organization (IDLO).

### **The International Law Association (ILA) Committee on International Law on Sustainable Development**

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The ILA, as the international association of judges, academics and legal professionals in international law, supports the ILSD Partnership by providing an open international forum for deliberations on matters of law related to sustainable development, and a network of specially nominated and appointed legal experts on this topic from over 80 countries.

### **The Lauterpacht Centre for International Law (LCIL- Cambridge University)**

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LCIL is part of the Faculty of Law in the University of Cambridge and one of the Faculty's specialist law centres. The Centre is the scholarly home of international law at Cambridge University. The Centre's objectives are promote the development of international law through research and publication and to serve as a forum for the discussion of current events and issues in international law.

## **Annex 2) Sustainable Development in International Courts & Tribunals 1992-2012**

The ILSD Partnership has launched an initiative to analyse and summarize the incorporation of international law principles of sustainable development in the jurisprudence of international courts and tribunals. The analysis focuses specifically on the sustainable development principles expressed in the 2002 ILA New Delhi Declaration of Principles of International Law relating to Sustainable Development, and the progress and challenges in the integration of these principles over the past 20 years. This analysis represents a concrete effort to assess the progress to date and renew political commitment on sustainable development on a global scale. This CISDL-IDLO initiative aims to make a unique contribution to the knowledge sharing at the Rio+20 conference by:

publishing a book, *Sustainable Development Principles in the Decisions of International Courts and Tribunals 1992, 2012*, outlining the key findings of this analysis by several international experts and;  
launch an online research tool that enables easy searching of the relevant decisions.

These can serve as tools for developing country jurists to argue for the further integration of sustainable development principles in international and national cases, and promote such integration on a global scale in general.

Over the past 20 years, the principles of sustainable development have been integrated in numerous international legal treaties, instruments and conventions. The growing use of the sustainable development principles in the decisions of international courts and tribunals reflects the increased importance of sustainable development in legally binding and justiciable international conventions, but also acceptance by international actors such as States, which refer to sustainable development principles more and more regularly in their pleadings before international courts. This trend, for example in the context of international trade disputes at the World Trade Organisation, is helping to lay the foundations for the emergence of a global green economy. The International Law for Sustainable Development (ILSD) Partnership, launched by the IDLO, the CISDL and the ILA at the 2002 WSSD, was the only Partnership registered with a focus on monitoring and strengthening legal and regulatory elements of sustainable development. Understanding, documenting and analysing the progress and application of sustainable development in international treaties as well as international courts and tribunals over the past 20 years is one of the important contributions that the ILSD Partnership can make to the upcoming UN Conference on Sustainable Development.

## **Annex 3) IDLO Legal Preparedness for Climate Change Initiative**

In 2009, in response to the complex legal questions raised by international efforts to address climate change, IDLO launched the Legal Preparedness for Climate Change Initiative (LPCCI) to ensure the meaningful participation of developing countries in the international regime while also enabling institutions for domestic adaptation. The LPCCI provides a cross-sectoral approach to legal reform that responds to emerging climate policy, while giving priority to

strategies that are built from existing laws, regulations and strategies rather than solutions that require new resources.

The LPCCI offers recipient countries tailored legal services to overcome legal and institutional barriers to adaptation and mitigation, including through participation in international climate finance. Several such projects are currently underway with requests from countries in Africa, Asia, and Latin America and the Caribbean and ongoing implementation in Vietnam, Mexico, Indonesia and Zambia. IDLO implements the LPCCI with support from a network of donors and cooperating partners, including the Netherlands, IFAD, UNDP, UNEP, the FAO and USAID.

**Special areas of focus:**

- [Legal Preparedness for Adaptation](#)
- [Legal Preparedness for Mitigation](#)
- [Legal Preparedness for Climate Finance](#)

**Annex 4) CISDL Biodiversity Research Program**

The Centre for International Sustainable Development Law (CISDL) biodiversity program seeks to develop and define the inter-linkages between different biodiversity-related policies and law in economic, environmental and social regimes. It also seeks to strengthen connections between biodiversity initiatives at the national, regional and international levels. The programme focuses its research on the conservation and sustainable use of biodiversity, access to genetic resources and benefit-sharing (ABS), and biosafety.

Our Sustainable Development Law Research on ABS follows the ongoing discussions on this topic taking place at the Convention on Biological Diversity, the UN Food and Agriculture Organization, the World Trade Organization, and the World Intellectual Property Organization. Our projects and writings have examined the implementation of ABS measures, existing gaps in ABS systems, and future research priorities on ABS.

Our Sustainable Development Law Research into Biosafety follows the processes of the Cartagena Protocol on Biosafety and the WTO in particular. Our projects and writings include work on the implementation of national biosafety regimes, case studies of innovations in biosafety law, analyzing pressing sustainable development questions in biosafety law and policy including food aid and socio-economic considerations, and surveying the current state-of-play of biosafety law.

Our Sustainable Development Law Research into the Green Economy follows the United Nations Commission on Sustainable Development and its work on further understanding the nature of a green economy that furthers sustainable development and alleviates poverty. Our work includes contributing to the preparatory process for the 2012 UNCSO conference in Rio and collaborating with the International Development Law Organization.

## **Annex 5) Environmental Migration: The prospects of sustainable development**

The CISDL has a focused project on the sectoral priority of climate migration, considered to be one of the most critical issues to be faced by the international community with relation to climate change for which no comprehensive legal framework is in place. The CISDL has launched a project to compare case studies, identify best practices and integrate different legal approaches within the concept of sustainable development. In particular, the project will look at two main issues: (a) to what extent the present legal framework on political refugees can be used to address the issue of climate migration; and (b) what opportunities does the current climate change framework offer in this area. The work will focus on consolidating the existing research and move towards consensus on an integrative legal framework based on sustainable development, while promoting concrete action. An initial workshop to flesh out the issues will be held in Montreal in spring 2012.

While climate change was once considered an environmental problem, it now impinges on every aspect of human life, including the international economy, public health, migration, employment, and, ultimately, international peace and security. As the IPCC noted in 1990, the greatest single impact of climate change could be on human migration – with millions of people displaced by shoreline erosion, coastal flooding, and agricultural disruption. The World Commission on Environment and Development (WCED) had the foresight to recognize the need for both mitigation and adaptation two decades ago. There is no doubt that climate change will undermine many (if not all) of the protected rights including the right to life. Despite the clear link between climate change and human rights, the international community has been slow to study this link. According to Greenpeace, approximately 125 million people in South Asia could be rendered homeless by climate change by the year 2100. Of this, 75 million would be from Bangladesh alone. Additionally, small island states, home to 5% of the world's population,<sup>21</sup> are particularly vulnerable to sea level rise as these islands are only a few feet above sea level. Thus, the number of people, living on these islands alone, who would be affected by rising sea levels due to climate change would be considerable.

The key points to be considered with relation to the issue of climate migration are:

- Environmental and climate change will put million additional people on the move, and there is no specific international legal framework governing them;
- Many existing normative regimes address certain aspects of environmental migration (cf. norms on human rights, statelessness, humanitarian relief, disaster management, development, state and human security, polluter responsibility, etc.), but a comprehensive synthesis is needed;
- Sustainable development could generate an integrative normative framework on environmental migration;

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<sup>21</sup> See Robert McLeman, *Climate Change Migration, Refugee Protection, and Adaptive Capacity-Building*, 4 McGill Int'l Journal of Sustainable Dev. Law & Pol'y 1, 11 (2008).

- The best possible way to implement such a framework is through national adaptation strategies with the assistance of a global adaptation fund;
- Addressing climate migration within the framework of the UNFCCC is another option, which would leave the administrative aspects to the Conference of Parties;
- Where people have to cross international borders, international law will have to protect these migrants in the host country;
- Nationality, language, and culture, particularly in relation to indigenous communities, will be some of the critical issues that will have to be addressed; and
- The establishment of an “International Coordinating Mechanism for Environmental Displacement” merits consideration.

## **Annex 6) Legal Empowerment and Sustainable Development: ILSD Approach**

Legal empowerment lies at the intersection of many of the chief challenges of our era. It cuts across the main international cooperation agendas: development, security, and human rights. Evidence overwhelmingly suggests a strong correlation between rule of law and sustainable development. Legal empowerment is simply indispensable to achieve global sustainability. Legal and judicial institutions must uphold the rule of law, and provide legal empowerment, for all citizens across all three interdependent and mutually reinforcing pillars of sustainable development: economic development, social development, and environmental protection.

Although the international community is increasingly recognizing the critical role legal and regulatory reform can play in achieving broader development objectives and there is extensive growth of international law in the form of treaties and international trading regimes to guide domestic legal orders, the rule of law aspects of sustainable development are often forgotten or considered as secondary rather than as foundational. Historically, when rule of law has been considered, development assistance has often favored a prescriptive approach. This approach is characterized by taking institutional models or legal reform processes from countries with effective rule of law and good governance and attempting to replicate them in those countries where rule of law and consistent good governance have not yet been achieved. The underlying assumption of this approach is that the introduction of pre-set institutions and processes can result in legal change and provide a platform upon which economic and social development can take place. This understanding has been criticized as overly rigid and static as well as inconsistent with the manner in which legal change actually occurs. In addition, the adoption of rule of law terminology to discuss legal reform has at times obscured what is really required to improve the legal systems of developing countries.

An alternative model has now emerged based on the findings of leading social scientific and historical studies of legal change. This new model shows legal change to be non-linear, long term and iterative. This view also recognizes that legal change is driven by societal demand that emerges on a rolling basis alongside the process of economic and social development. This model also

implicates that, as a practical matter for sustainable development assistance purposes, the notion of rule of law must be disaggregated. Improving rule of law is an incremental process, not one that occurs at once through a great leap forward. As such, rule of law progress requires comprehensive and sustained development of the many layers of legal institutions from national to local.

In addition to these high-level trends within the global context of rule of law approaches, very specific indicators of the need for legal and regulatory development assistance are visible. For example, only one-quarter of states with Poverty Reduction Strategy Papers (PRSPs) have elaborated separate strategies for the rule of law sector. In the areas of social development and environmental protection, evidence suggests that many rule of law considerations remain unanswered. Worldwide governance indicators developed by multilateral agencies also note that for a significant number of nation states, sizeable improvements in regulatory quality, rule of law and government effectiveness remain possible. Such improvements are indispensable for global sustainability.

### **The ILSD Partnership's Approach to Rule of Law for Sustainable Development**

Aligned to the United Nations' rule of law agenda,<sup>22</sup> the Agenda 21 / Johannesburg Plan of Implementation and the Millennium Development Goals, the ILSD Partnership works to promote the rule of law and ensure the sustainability of development efforts in recipient countries.

IDLO, CISDL and the ILA have more than 25 years of experience leading programs around the world to address the legal and institutional elements of reducing and eliminating the most extreme cases of poverty, promoting social inclusion and securing the legal underpinnings of decent jobs. The partners recently hosted an Experts Workshop on the legal elements of securing the Millennium Development Goals on poverty reduction, at the 2010 ILA Biennial Conference in The Hague. IDLO is leading new initiatives on Legal Preparedness for the Green Economy (LPGE) and Legal Preparedness for Climate Change (LPCCI) which assist developing countries to undertake legal and institutional reforms to secure better access to climate finance, and engagement in the global green economy, and continues to assist countries in addressing legal aspects of sustainable resources management (LASR). IDLO and CISDL recently co-authored and will soon publish a legal Manual on Sustainable Development in Project Finance. With partners, IDLO and CISDL are also developing new e-learning courses on Legal Preparedness for Climate Change and Legal Preparedness for the Green Economy for developing country decision-makers and senior legal officials. Finally, CISDL is organizing a judicial roundtable with Canadian and developing country judges in order to foster a dialogue and share experience on the theme of legal empowerment.

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<sup>22</sup> See in particular UN General Assembly resolution 64/116 of 15 January 2010 and the report of the Sixth Committee to the General Assembly, A/65/473 of 11 November 2010.

