

A COP16 Legal Policy & Research Dialogue  
Report  
January 2011

CISDL



IDLO



The Centre for International Sustainable Development Law,

The International Development Law Organization,

& The Colegio de Abogados para el Ambiente

*present :*

**Building Bridges, Filling Gaps: The Law &  
Policy Research Agenda on Climate Change  
Governance and Sustainable Development  
towards Rio+20**

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.

With the International Law Association (ILA) and the International Development Law Organisation (IDLO), under the auspices of the United Nations Commission on Sustainable Development (UN CSD), CISDL chairs a Partnership Initiative, International Law for Sustainable Development that was launched in Johannesburg at the 2002 World Summit for Sustainable Development, to build knowledge, analysis and capacity about international law on sustainable development.

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**The Colegio de Abogados por el Ambiente (“CAAM”)** is a group of young, up & coming Mexican lawyers who share a passion for the practice of Environmental Law and who are involved with the protection of the environment, the mitigation of climate change and the promotion of sustainable development.

Our purpose is to encourage analysis, review and participation in environmental public policies and regulations. CAAM and its members call for and participate in discussion forums and actively work in formulating avant-garde proposals in environmental public policy.

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**Building Bridges, Filling Gaps: The Law & Policy Research Agenda on Climate Change Governance and Sustainable Development towards Rio+20**  
**An IDLO/CISDL/CAAM Law & Policy Research Dialogue**

16:00 - 18:00 / Thursday, 09 Dec 2010

Hyatt Regency Hotel / Cancun, Mexico

**Summary**

In this Law & Policy Research Seminar, leading developed and developing country negotiators and experts identified key priorities for the emerging law and policy research agendas on climate change governance and sustainable development in the lead-up to the 2012 Earth Summit. Participants included academic partners from Taiwan University, University of Warsaw, McGill University, the University of Ottawa, the Université de Montréal, the University of Cambridge, Yale University, the University of Sidney, the University of Costa Rica, the University of Chile, the University of Capetown, the University of Hanoi, and the Indonesian Society for Environmental Law, among others. Collaborators included the International Development Law Organization, the Centre for International Sustainable Development, Sustainable Prosperity, the International Law Association, the World Conservation Union (IUCN) and the Colegio de Abogados Ambientales de Mexico.

*Chair: Myron Frankman, Institute for the Study of International Development and Department of Economics, McGill University.*

*Key Intervenors: Marie-Claire Cordonier Segger, CISDL/IDLO; Dr Charlotte Streck, Lead Counsel for Climate Change, CISDL / Director, ClimateFocus; Me Sebastien Jodoin, Lead Counsel, CISDL / Yale University; Prof Markus W. Gebring, Tutor in Sustainable Development Law, Cambridge University / Lead Counsel, CISDL / University of Ottawa Jean Monnet Chair in Sustainable Development Law; Paul Crowley, Head of Social Programs Unit, IDLO; Hector Velasco Perroni, President, CAAM.*

**The 2012 Earth Summit in Rio de Janeiro**

The purpose of this collaborative roundtable was to set the participants' research agendas in preparation for the 2012 Earth Summit. The 2012 Earth Summit will take place on the 20<sup>th</sup> anniversary of the United Nations Conference on Environment and Development held in 1992 in Rio de Janeiro. The 1992 Earth Summit was a landmark event in the establishment of multilateral frameworks for environmental protection, including the Rio Declaration on

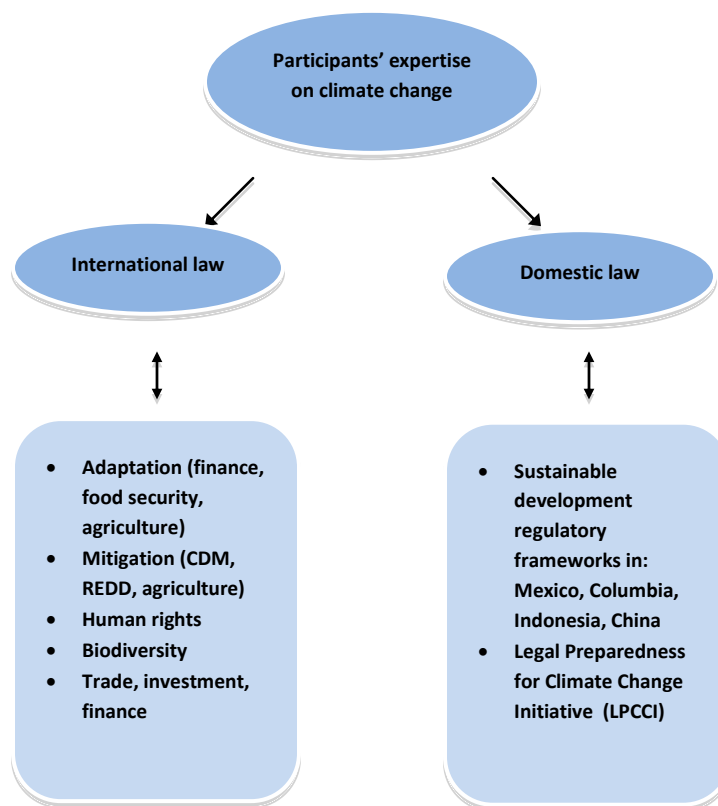


Environment and Development, Agenda 21, the United Nations Framework Convention on Climate Change (UNFCCC), and the Convention on Biological Diversity (CDB).

The upcoming Earth Summit follows in that tradition with its five objectives and themes: (a) securing political commitment to sustainable development; (b) assessing progress towards internationally agreed commitments; (c) new and emerging challenges; (d) green economy in the context of poverty eradication and sustainable development; and (e) institutional framework for sustainable development.

### Legal research agenda for the 2012 Earth Summit

The roundtable chair, Prof. Myron Frankman, commenced the session by identifying the participants' areas of expertise relevant to the 2012 Earth Summit agenda with a focus on climate change. The participants included academics, country negotiators and jurists and their expertise was accordingly diverse. Nevertheless, all were concerned with the role of law in environmental policy making. Therefore, the ensuing discussion centered on the participants' potential contributions to the 2012 Earth Summit within a legal framework.



Given their interests and expertise, the participants opted to emphasize two of the 2012 Earth Summit themes for their own future legal research agendas: (a) the green economy in

the context of poverty eradication and sustainable development and (b) the institutional framework for sustainable development.

### **Green economy for poverty eradication and sustainable development**

The green economy approach to sustainable development attempts to create a unified portfolio of economic instruments. To date, there is no working definition of the green economy. However, in the Report of the Secretary General A/CONF.216/PC/2, the UN General Assembly recognized at least four strands of related economic analysis:

- Addressing market failures A
- Adopting a systemic view of the economic structure and its impact on sustainable development A
- Reconciling social goals and other economic objectives R
- Identifying dynamic pathways toward sustainable development through a macro-economic framework I

One legal objective for the green economy is to assist policy makers realize the above four strands of economic analysis by improving pricing tools, procurement, eco-taxes, sustainable investment, and support for research and development; removing subsidies; and valuing natural capital and resources. In particular, the law has a special role to play with respect to trade and investment agreements by ensuring, *inter alia*, conditional financing, equitable benefit sharing, environmental impact assessments and enforceability of contracts.

### **Institutional framework for sustainable development**

The 2012 Earth Summit seeks to reform global governance for sustainable development or so-called 'international environmental governance' (IEG). On that subject, the roundtable participants expressed concern with the fragmentation of governance over climate change within the existing model of IEG. Climate change governance is multilevel (international, regional, national, sub-national), multi-actor (private, public, hybrid) and also involves a multitude of UN and other international law regimes (UNFCCC, WTO, ILO, UNCBD, UNCCD). Moreover, there is considerable overlap in disciplines that study climate change governance (law, economics, political science).

In attempting to single out the unique contribution of legal research, the participants focused the discussion on the necessity of **regional, national and sub-national legal structures** to implement effective commitments to climate change mitigation and adaptation.

Beyond the UNFCCC process, climate finance commitments are increasingly applied in regional trade and investment agreements, which must be drafted to take into account diverse interests relating to sustainable development. The participants queried whether the

success of regional agreements is capable of being scaled-up as a means to reinvigorate the global approach to IEG.

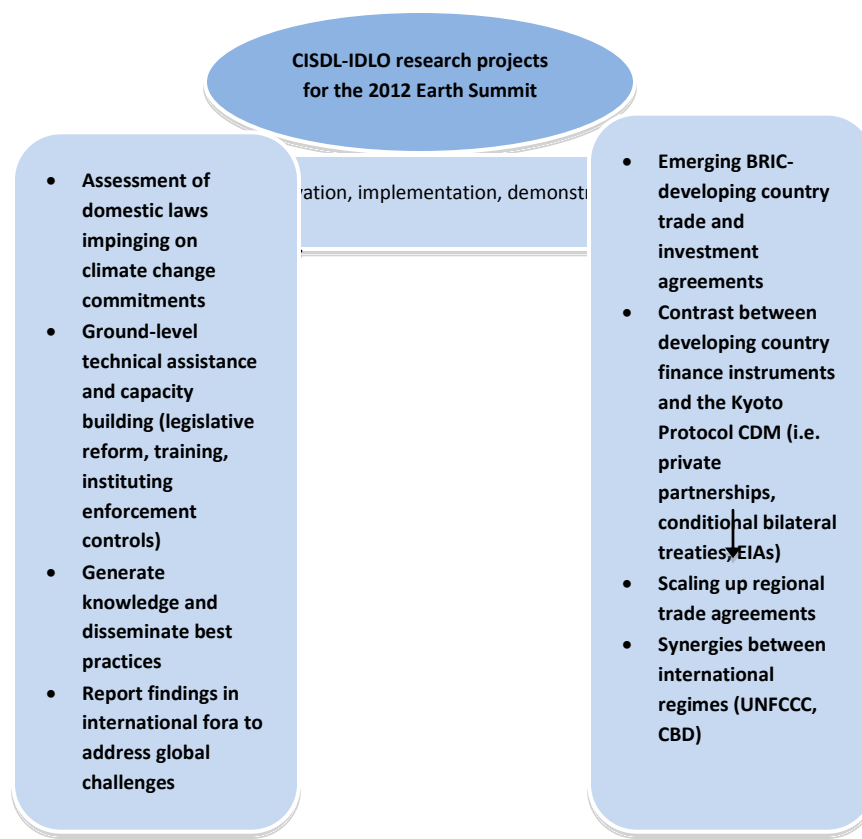
Respecting national-level governance, several gaps in existing IEG are readily apparent including: monitoring and evaluating the impacts of international commitments at the national-level; reform of domestic legal systems to be amenable to international commitments and; understanding the role of emerging economies in creating South-South partnerships (i.e. BRIC- developing country linkages).

Rising issues that are of particular importance on the sub-national level include: progress on the Reducing Emissions from Deforestation and Forest Degradation program; equitable benefit sharing; improving access to the Clean Development Mechanism and; empowering the poor in environmental decision-making.

### CISDL-IDLO collaborative research projects for 2011

Broadly speaking, legal research can assist in addressing the abovementioned gaps and issue areas in three respects: innovation (i.e. in the types and conditions of agreements that are utilized), implementation (i.e. creating effective regulatory processes) and demonstration (i.e. evaluating implementation and enforcement). In furtherance of those three goals, the participants formulated specific collaborative research projects to be undertaken in conjunction with the CISDL and the IDLO during the lead-up to the 2012 Earth Summit.

The joint CISDL-IDLO Legal Preparedness for Climate Change Initiative (LPCCI) provides an opportune foundation for future work concerned with the capacity of states to implement international commitments at the national and sub-national level. Moreover, other research projects will include: assessing emerging alliances between BRIC and developing countries, the potential of scaling-up regional trade agreements for IEG, and evaluating the synergies among various international environmental regimes (UNFCCC, CBD, WTO ILO).



## Conclusions

In the result of this Law & Policy Research Seminar, legal experts from around the world successfully established a common action plan for future research leading up to the 2012 Earth Summit in Rio de Janeiro. Attendees representing diverse interests and expertise and including country negotiators, academics and jurists, together designed the common action plan in the spirit of interdisciplinarity and collaboration.

Of particular importance to all was the unique role of legal systems in realizing effective climate change mitigation and adaptation for sustainable development. Therefore, the participants focused their efforts on identifying the law's potential contribution to the 2012 Earth Summit objectives and themes.

The law is fundamental to innovation, implementation and demonstration of sustainable development policies. Respecting the 2012 Earth Summit agenda, the law has particular utility for improving, *inter alia*, the (a) green economy in the context of poverty eradication and sustainable development and (b) institutional framework for sustainable development. A variety of legal tools—from contracts and trade agreements to the legislative delegation of climate-related functions—facilitate efficiency and effectiveness in the green economy and international environmental governance. The IDLO and CISDL will oversee the application of the participants' common action plan for legal research.

The IDLO Legal Preparedness for Climate Change Initiative provides an opportune forum to address the legal barriers that arise when international climate change mitigation and adaptation commitments are channeled to national and sub-national governments. Adequate national and sub-national governance are essential to IEG, including for emerging climate finance instruments and REDD+. The LPCCI offers a significant response to the 2012 Earth Summit theme of improving the international framework for sustainable development.

The CISDL's strong international network of legal counsel and researchers also provides ample resources to address knowledge gaps in other novel issues of importance, including: South-South trade and investment agreements; synergies in international regimes; comparing ground-level climate-finance in developing countries to the Kyoto Protocol CDM; and scaling-up the success of regional agreements for climate-finance.

The partnerships established in this Law & Policy Research Seminar amongst the IDLO, CISDL and other international legal experts are meaningful and long-term. Nevertheless, the common action plan on the above specific research questions will doubtless provide timely findings and recommendations in preparation for the 2012 Earth Summit and, therefore, make an important contribution to definitions of sustainable development for the future.