



International Development Law Organization  
Organisation Internationale de Droit du Développement

## **International Law on Sustainable Development Partnership**

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

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## **Attachment A) Renewing political commitment for sustainable development**

### **I. Introduction**

The objective of UNCSD 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 issue of renewed political commitment will need to be addressed in the longer term context of how agreement among governments and other stakeholders at UNCSD could help accelerate progress towards, inter alia: (i) the demographic goal of stabilizing the global population; (ii) the developmental goal of extending the benefits of development equitably to all segments of global society; and (iii) the decoupling goal of ensuring that the use of materials and generation of wastes is within the regenerative and absorptive capacities of the planet.

### **II. Renewing Political Commitment**

#### **Experiences**

##### **1. Measuring political commitment**

###### ***a) Adherence to International Sustainable Development Treaties:***

Political commitment to sustainable development can be measured by a state's ratification, implementation and compliance to international treaties on sustainable development. 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. Following are a few major examples:

The United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC was adopted on 9 May 1992 after 15 months of negotiations. It opened for signature at the Rio de Janeiro UN Conference on Environment and Development (Earth Summit), and entered into force on 21 March 1994. It has received universal acceptance. The UNFCCC acknowledges that the climate system is a shared resource, and that human activities have been substantially increasing the atmospheric concentrations of greenhouse gas. These increases enhance the natural greenhouse effect through additional warming of the earth's surface and atmosphere, adverse effects on natural ecosystems and on humankind, and increase in extreme weather events. The Kyoto Protocol to the UNFCCC was adopted at the third session of the Conference of the Parties (COP 3) in Kyoto, Japan, on 11 December 1997. At COP16 (Cancun, December 2010), the Parties agreed upon several significant measures

under the AWG-LCA and AWG-KP, although a post-2012 regime for legally binding emission limitation or reduction targets remains unsettled.

The United Nations Convention to Combat Desertification (UNCCD) emphasizes that desertification is a major economic, social and environmental problem of concern to many countries in all regions of the world. The Convention was adopted in Paris on 17 June 1994 and opened for signature there on 14-15 October 1994. It entered into force on 26 December 1996, 90 days after the fiftieth ratification was received. 193 countries were Parties as at August 2009, which represents near universal acceptance.

The United Nations Convention on Biological Diversity (UNCBD) recognizes that the Earth's biological resources are vital to humanity's economic and social development. The Convention was adopted on 22 May 1992 at the Nairobi Conference, and opened for signature on 5 June 1992 at the United Nations Conference on Environment and Development (the Rio "Earth Summit"). The UNCBD now has 193 Parties. Further, the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* is an international agreement which aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable way, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components. It was adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 in Nagoya, Japan. The Nagoya Protocol was open for signature by Parties to the Convention from 2 February 2011.

The International Treaty on Plant Genetic Resources for Food and Agriculture emphasizes that no country is self-sufficient in plant genetic resources; all depend on genetic diversity in crops from other countries and regions. International cooperation and open exchange of genetic resources are therefore essential for food security. The Treaty was adopted in 2001, and entered into force on 29 June 2004. There are currently 127 parties to this legally binding international treaty.

An interesting area for future development of sustainable development law also relates to international treaties related to sustainable development that are negotiated but not yet in force, due to lack of ratifications by State parties. Another domain for furtherance of sustainable development law can relate to treaties that are in force, but that lack ratification and/or implementation by key State parties.

***b) National Implementation of International Sustainable Development Treaties:*** An important objective indicator of political commitment to sustainable development involves the national legal implementation of international sustainable development commitments through legislation, policy or the creation of new institutions. Legal

implementation is a complex process with unique and contextual aspects depending on the different regions involved. One useful measure of legal implementation can be financial. Assessments can focus on the degree to which legal implementation of sustainable development is financially supported by governments and the private sector, as well as the creation and implementation of legal frameworks that facilitate and incentivize the financing of sustainable development. However, costly initiatives deriving from new legislation can be prone to ineffectiveness. Effective legal implementation often involves contextual legal analysis and capacity-building.

Another important indicator will also be the extent to which national implementation of laws relating to sustainable development contributes to legal empowerment of the poor. Legal empowerment is a key aspect of the development of sustainable livelihoods. It refers to the legal protection and empowerment of the poor to advance their rights as citizens and economic actors. Access to justice, conceived in a broad manner, is central to legal empowerment. Access to justice is not limited to judicial access, and the work of law enforcement agencies and lawyers. It also involves for instance the work of paralegals, the resolution of property disputes and support for traditional justice systems. Political commitment to sustainability can aim at promoting independent judicial mechanisms active in enforcing sustainable development law.

Legal mechanisms for social accountability also constitute a valid measure of political commitment to sustainable development at the national level. Citizens must be enabled to hold their political leaders and government accountable for the services they deliver and the decisions that they make. An enabling legal framework, properly and contextually implemented, can constitute an important measure of social accountability. Social accountability is also enhanced by a healthy and organised civil society, which promotes citizen engagement. Again, a non-coercive legal framework that allows and encourages a flourishing of civil society, and punishes undue interference with civil society initiatives, can play an important role.

Objectively measurable aspects of political commitment to sustainable livelihoods also include national implementation of international treaties related to gender equity. The vast majority of the world adult poor are women. A good indicator of political commitment to sustainable development will be the degree to which the creation of enabling legislative frameworks for sustainable development involve a focus on the empowerment of women. Another important indicator involves the creation and implementation of legal tools that enable communities to protect themselves from the effects of climate change and other forms of environmental degradation. Such legislative frameworks can for example focus on granting stewardship over natural resources to local communities. Political commitment can also be measured by the degree to which vulnerable regions and communities have access to climate finance for adaptation.

In the context of the Rio+20 process, an essential aspect of measuring commitment to sustainable development also refers to legal and policy initiatives adopted in order to facilitate a transition from a traditional “brown” economy to a green economy. A green economy is one that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities. Legal and policy reforms are essential in order to enable a transition towards the green economy. Objectively measurable aspects include laws and policies geared at recognizing the full economic value of ecosystems and biodiversity, resulting in a realistic pricing of natural resources. Other objective measures involve investments into research and development and innovation for renewable energies and efficiency-based industries, decreased subsidies for fossil fuels, as well as opportunities for innovation through intellectual property laws which favour the development of efficient and sustainable technologies.

**c) Recognition of Sustainable Development Principles:** Much progress has occurred in the past 20 years with regard to developing integrated legal frameworks that respond to the challenges of sustainable development. But significant challenges remain in terms of the creation and implementation of legal frameworks based on case studies and empirical research that form the basis for a determination of best practices. A growing dialogue and exchange between legal experts on sustainable development, national as well as regional policymakers, and many other stakeholders is facilitated by international conferences and forums, and has been a hopeful development over the past 20 years. The elaboration of best practices often involves an exchange and mutual learning process between experts and stakeholders to arrive at effective policy solutions.

As a result of such international dialogue, sustainable development principles have been incorporated in a wide range of international treaties as well as regional frameworks. For example, sustainable development has been integrated as a guiding principle in the Preamble of the 1994 World Trade Organisation (WTO) Agreement. The negotiation of the Preamble is not very well documented, but the integration of sustainable development here was likely linked to the direct influence of the 1992 UNCED in Rio. Preambles are not legally binding, but can play an important role in the interpretation of treaties specifically with regard to their object and purpose. Following on these footsteps, the preamble of the 1998 WTO Geneva Ministerial Declaration recognised that sustainable development is one of the goals of the WTO itself, and not just an incidental side-effect of trade liberalization. Since 1994, several rulings of the WTO Dispute Settlement Mechanism have referred to the sustainable development concept mentioned in the Preamble and applied it in order to reach their decision. Member states to the WTO have used the sustainable development concept as a persuasive argument before the Dispute Settlement Mechanism panel, reflecting an acknowledgement and commitment to sustainable development in the WTO context. In the past 20 years, developments in the WTO indicate that the WTO understands itself as bound to its commitment to sustainable development as an objective. This commitment presents an opportunity to integrate and

reinforce sustainable development in the context of international trade negotiations. Unfortunately, little actual progress has occurred beyond the statements by the WTO and a few decisions by the Appellate Body for the Dispute Settlement Mechanism. Development issues, environmental concerns and overlap between trade and human rights remain marginal discussions in the WTO context. Nevertheless, an important formal commitment opens an opportunity for progress in future evolutions of world trade and investment law that is harmonious with the principles of sustainable development.

International Courts and Tribunals are also a significant forum for the development of international law on sustainable development, such as the WTO Dispute Settlement Mechanism mentioned above. Principles of sustainable development have arisen in the arguments made by state parties as well as the decisions of most of the major international and regional level courts in the past 20 years. Courts that have applied and considered sustainable development principles include the International Centre for the Settlement of Investment Disputes (ICSID), the NAFTA tribunal, the African Court on Human and Peoples Rights, the European Court of Human Rights, the Inter-American Court of Human Rights, the International Court of Justice, the Permanent Court of Arbitration, and the International Tribunal for the Law of the Sea.

***d) Awareness and Legal Empowerment:*** An important gain in the past 20 years relates to an increase in awareness of both political actors as well as the public regarding the global risks that international sustainable development law and policy purports to address. These risks include climate change, loss of biodiversity in ecosystems and the unsustainable development of global financial markets. Growing awareness and direct experience of these risks have encouraged most states to engage with major international conventions such as the UNFCCC and the UNCBD. International dialogue and a search for common responses has been a recurring theme of the past 20 years. Alarming scientific findings on issues such as climate change have found their way to the general public in various forms. Most actors in the political sphere do engage with the major global challenges at the heart of international sustainable development law. Expressions of political commitment to sustainable development certainly abound in the political field.

Awareness of sustainable development law and legal rights is an important aspect of measuring commitment to sustainable development law. The degree to which citizens and communities are aware of their rights and the rights of others relating to sustainable development principles is an important measure of how to move forward in this regard.

Whether a Government commits to educating its citizens about sustainable development is also indicative of political commitment. Public education on sustainable development issues and the promotion of sustainable lifestyles is useful to help instill personal responsibility and commitment in individuals and communities.

## **2. Political commitment in the countries of focus of the ISLD Partnership**

**Positive Trends despite Challenges:** Political commitment in the numerous countries of focus of the International Law for Sustainable Development (ILSD) Partnership has shown some positive development in a context marked by significant challenges. All countries are engaged in the major international sustainable development treaties such as the UNFCCC and the UNCBD. Legal knowledge and resources available to developed and developing countries for national implementation and enforcement of sustainable development law has grown considerable in the past 20 years, with the emergence of a new kind of legal professional specialized in sustainable development law along with books, practitioner manuals and other publications to guide experts as well as non-specialists. Recently, some positive signs in terms of finance available to developing countries in order to enhance their legal capacity to deal with sustainable development challenges has shown positive developments, with major commitments taken by developed countries in international forums. However, whether in developed or developing countries, significant challenges remain regarding the translation of political commitments into legally binding, enforceable and effective laws and policies as well as the implementation of these laws when they exist.

**Disorganised & Contradictory Institutional Frameworks:** Legislators and government officials charged with creating and administering laws and policy often operate within a confused framework. One example is the creation and implementation of laws aimed at reducing greenhouse gas (GHG) emissions to counter climate change. Should a framework law be constructed at the national level, which would supersede all other regulations for example regarding transport and industry? Should one agency be created and charged with enforcement? Or should the multiplicity of affected ministries propose and enforce their own legislative changes? Or perhaps some aspects should be addressed at the regional or even municipal or community-based regulatory levels? In a context where sustainable development initiatives by various ministries are often disjointed and lack coordination, or are all nominally placed under the limited purview and authority of an environment ministry, these questions do not lend themselves to simple answers. Such questions gain another layer of complexity when one considers that reducing GHG emissions is but one aspect of the transition to a green economy. Similar complexities also arise at the international level, with the complex overlap of international treaty regimes such as the UNFCCC, the UNCBD, the WTO, bilateral treaties etc. Compliance to and implementation of these treaties can be complex for states and also affected private actors. Clearer legislative and policy options complemented by contextual expertise and options that integrate in a functional manner the three pillars of sustainable development would encourage and channel political commitment in a more effective manner.

**Lack of Legal Expertise and Capacity Exacerbates other Challenges:** Expressions of political commitment have encountered legal



barriers in implementation in both developed and developing countries. Governments especially in developing countries sometimes lack the legal expertise and capacity to implement international sustainable development commitments, and lack coherent and accessible informational resources in order to train officials in charge of implementation. These legal barriers exacerbate other challenges linked to allocation of financial resources to sustainable development and opposition by vested interests. Despite an increase in expressed political commitment since 1992, commitment to sustainable development lacks the urgency required in implementation, necessary to respond to the more pressing challenges. In a context where the effects of climate change are already felt in vulnerable areas, political commitment to a green economy still lacks the priority status that it requires. The recent financial crisis, itself the result of unsustainable practices in financial markets, unfortunately led to a renewed focus on a fruitless effort to “fix” the brown economy as opposed to transitioning to a green economy. Overall, however, the new field of sustainable development law has made outstanding progress especially in the last decade and contributed to fostering and channelling political commitment for sustainable development.

## **Success Factors**

### **3. Strengthening political support**

The ILSD partnership is currently active in over 50 countries, helping to draft and implement international treaties and national laws related to sustainable development. Following are several examples of actions linked to the partnership that have been introduced in order to channel and coordinate political support for sustainable development.

**Eco-Health in the Americas:** In the Americas, the ILSD partnership under the leadership of the CISDL introduced the Americas Eco-Health Assessment Law project. This initiative aims to identify, analyse and reduce health and environment risks from economic integration for the communities and ecosystems of the Americas, by facilitating the integration of health and environment issues in assessment laws and policies of the Americas. The research project is being carried out through three inter-related streams, responding to the project’s core objectives:

- 1 First, through joint multi-disciplinary field research and information exchange, to investigate and analyse case studies on how health and environment impact assessment laws and policies are functioning in practice, and identify elements of integrated eco-health assessment methods and laws.
- 2 Second, through joint capacity building and awareness-raising workshops, to build awareness, expertise and knowledge in sub-regions and countries of the Americas on health and environment impact assessment methods and laws.

3 Third, to provide recommendations to hemispheric policy-makers, through side events at Americas Health and Environment Ministerials, Americas Trade Ministerials, and other upcoming opportunities for consultation with policy makers related to the Summit of the Americas process.

This initiative reflects a strongly integrated approach to the three pillars of sustainable development. Numerous consultations with various communities and policy-makers have led to renewed awareness and political commitment with regard to sustainable development.

**Gender, International Law & Justice:** In Argentina, Kenya, Iran & Pakistan the ILSD under the leadership of the CISDL conducted an initiative entitled *Gender, International Law and Justice: Access to Gender Equality* (GILJ). This multi-year project was an in-depth socio-legal investigation of the gap that persists between the adoption of international laws targeted at the non-discrimination of women and the on-the-ground implementation of these laws. The project focused on international laws relevant to women’s human rights, in particular the binding commitments made under the International Convention on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), along with other relevant international agreements and non-binding commitments with gender equality aspects. In particular, the GILJ project looks at the role that Civil Society Organisations (CSOs) played in creating, introducing, applying and enforcing international law in the area of women’s human rights. The project examined the meanings attributed by CSOs and civil society to international law and the ways in which CSOs perceive and rely upon the role of international law in their work. The interplay of the juristic understandings of the scope and applicability of law and the factual realities in society and culture provided the foundational basis of the research efforts. Through this focus on the work and impact of CSOs, this project also aimed at strengthening the role of CSOs in promoting and supporting political commitment for gender equality, as an important facet of sustainable development.

**Legal Preparedness for Climate Change:** In Vietnam, Mexico & Zambia, the ILSD Partnership under the leadership of the IDLO has introduced the Legal Preparedness for Climate Change Initiative (LPCCI) that aims to ensure the meaningful participation of developing countries in the mechanisms created under the umbrella of the UNFCCC, while supporting the development of a legal environment that promotes adaptation. The LPCCI is a unique methodology that systematically identifies legal and governance barriers, and recommends and implements consensus-based solutions tailored uniquely to each country for adaptation & mitigation regarding climate change and access to international climate funding. The direct beneficiaries of the LPCCI are governmental actors at national, regional and local levels, policy-makers, legal and judicial professionals, NGOs and local communities, as well as international actors. These beneficiaries currently include Vietnam, Mexico and Zambia with expected future collaborations with Mali, Senegan, CARICOM member states, Indonesia, Pakistan and Colombia. In the

context of this programme the IDLO & CISDL have recently co-published a *Compendium of Legal Best Practices* on climate change policy. This publication details numerous case studies of various new legal and policy initiatives currently being attempted and implemented in several different regions, including developing and developed countries. The LPCCI has the potential to become an important feature in terms of facilitating political commitment to combating climate change through effective legal reform and implementation as well as access to climate finance for developing countries.

**Legal Preparedness for the Green Economy:** The ILSD Partnership is also currently developing a new Legal Preparedness for the Green Economy Initiative (LPGE) that aims to ensure the meaningful participation of developing countries in the opportunities presented by the global green economy, while supporting the development of a legal environment that promotes sustainable use of biodiversity and equitable access to its benefits. Potential beneficiaries of this initiative include China, Colombia, Ecuador and Senegal.

**Water Supply Management:** In India, the ILSD Partnership under the leadership of the IDLO is assisting in the development of new legal and institutional frameworks in order to improve water supply management for the 22.5 inhabitants of New Delhi. The IDLO has promoted commitment to sustainable practices through direct consultations with local partners to deepen understanding of laws and standards on water management. The IDLO also developed India's first comprehensive legal best practices compendium to assist local senior water management strengthen implementation of Delhi's water management laws and policies as well as build capacity to institute improved standards. An important feature of this initiative also involved improving coordination and communication between the 9 different institutions managing water resources in Delhi. On a local level, this initiative is successful in engaging political commitment to sustainable water resource practices.

**Sustainable Development in International Tribunals:** The ILSD Partnership, under the leadership of the ILA International Law on Sustainable Development Committee, has also developed a complete online research tool of sustainable development principles in international courts and tribunals from 1992 to 2012. This tool serves several practical purposes, as well as documenting commitment to sustainable development principles in international courts and tribunals and allowing a comprehensive analysis of the interpretation of sustainable development in international courts ever since the first Rio conference in 1992. Aimed at jurists, this tool could become a significant vector in terms of highlighting the growing importance of sustainable development principles in international law, thereby increasing the likelihood of political commitment to sustainable development.

**Integration as a Guiding Principle:** These few examples of actions provide a sample of the broad array of initiatives conducted by the ILSD Partnership that are linked to fostering and strengthening political commitment to sustainable development. Some of these initiatives focus

on a specific aspect and can succeed in targeting political commitment and energies to a particular challenge related to sustainable development, for example urban water resource management laws and policies. Other initiatives are wider in scope. An integration of the three pillars of sustainable development in terms of fostering an enlightened form of political commitment remains essential even for the more targeted initiatives, however. For instance, reform of water management laws cannot be successful without taking into account a diverse array of factors which include environmental, social and economic concerns. Initiatives surrounding the green economy are particularly promising in terms of promoting an integrated approach to sustainable development. The ILSD partnership intends to focus on best practices for legal reforms that can help prepare countries for participation in the global green economy. Legislation and policies surrounding mechanisms such as Payment for Ecosystem Services for instance are integral to addressing the important structural challenges of current economic system with a fundamentally new approach that reconciles the economic, social and environmental concerns.

#### **4. Specific sectors and areas where national political commitment to achieve sustainable development goals has been especially strong**

##### **Engagement with International Sustainable Development Treaties:**

National political commitments have been reflected through engagement with international treaty regimes on sustainable development, such as the UNFCCC and the UNCBD. Under the Kyoto Protocol to the UNFCCC, many states committed to reducing GHG emissions to a certain target. National implementation of a target based treaty approach encountered significant obstacles, and has not reflected a strong commitment to sustainable development in most regions. Even states which failed to achieve their Kyoto Protocol targets do remain engaged with the UNFCCC process, and an integrated approach that provides for reduction of GHG emissions within the context of the transition to a green economy might provide more awareness of a way forward in terms of countering climate change that integrates social, economic and environmental concerns. Recent development in UNCBD negotiations have led to the Nagoya Protocol on Access and Benefit sharing, a key step forward in terms of the sharing of benefits arising from genetic resources and traditional knowledge in a fair and equitable manner. These included access to genetic resources and technology transfers. The recent advances under the UNCBD have reflected a stronger commitment to sustainable development and specifically the preservation of biodiversity, though again national implementation of international commitments requires investment of energies and financial resources on the legal and administrative level. Repeated commitments on the international level reflect increasing national awareness of the growing threats linked to unsustainable lifestyles, as well as the interactive forum provided by the UN that allows policymakers, scientific and legal experts, members of affected and vulnerable communities and the media to interact and exchange. Commitment to sustainable development is also fostered by the work of legal experts who can translate the vision of sustainable development into

international treaties which can lead to effective laws and policies at the national level, based on an integrated view of sustainable development.

**Progress in National Sustainable Development Laws & Policies:**

National developments on a sectoral level have reflected in some regions a consistent commitment to sustainable development. Several countries are currently collaborating with the IDLO and CISDL on the LPCCI, and showing a strong commitment to national legal reform to foster low-carbon development. The past 20 years have also seen significant efforts in terms of strengthening the rule of law and judicial independence in some regions. For instance, in the Kyrgyz Republic the IDLO has assisted in the development and upcoming transition of a government appointed to an examination-based judicial corps trained through a judicial capacity building project. The IDLO also assisted in capacity building for members of the Lebanese judiciary in terms of international law, terrorism and money laundering. In Sudan, the IDLO has been actively engaged in post-conflict reconstruction of judicial capacity in order to promote the rule of law through stronger judicial institutions and legal training, for example by publishing the first editions of a *Southern Sudan Law Report*. Legal empowerment and rule of law promotion is a central concern in terms of sustainable development in many developing nations, and in some contexts has benefited from strong political commitment. Overall, it is unfortunately difficult to point to one specific area in sustainable development law where national commitments around the world have uniformly and consistently been particularly strong. Positive and consistent commitments have emerged in some areas, such as the rule of law and legal empowerment of the poor, and often reflecting the most pressing development needs of these areas. Care must be taken to view sectoral legal developments in the broad scheme of policy frameworks which can lead to the emergence of a green economy.

**5. Examples and experiences from other areas (such as MDGs or climate change) that demonstrate how political support for critical issues was enhanced**

Importantly, the ILSD Partnership does not view the MDGs or climate change as “other areas” in terms of sustainable development. The concerns reflected in the MDGs, which include human rights and environmental aspects, as well as laws and policies related to climate change form an integral part of sustainable development. Political support for sustainable development law has been significantly enhanced by its incorporation into international treaty regimes and national laws and policies.

**Importance of incorporating Sustainable Development Law in all International Negotiation Forums:**

Experiences in the past 20 years do point to national implementation of sustainable development principles in terms of effective and enforceable laws and policies as constituting a key challenge, which remains largely unresolved. International negotiations and treaties cannot substitute for political commitment to legal reform and implementation at the national level. Nevertheless, the past 20 years have also shown that international negotiations and treaties can have a

significant impact in terms of influencing political commitment at the national level, as well as entrenching sustainable development in the relations between states such as in the WTO context. An important feature of international negotiations for sustainable development which constitutes an important lesson and experience on how political support for sustainable development can be enhanced remains openness and inclusiveness of dialogue between states in a forum that emphasizes equality. For example, one factor that explains the greater progress achieved in the UNFCCC COP16 in Cancun as opposed to the COP15 in Copenhagen was the transparent approach adopted by the Mexican hosts to the COP16. The “significant actors” approach of the COP15, which focused on developing agreement between several key states proved to constitute a setback which delayed and hindered consensus between the parties. Political commitment at the national level will be fostered by international negotiations which occur on a transparent and equal basis between member states.

## **Challenges**

### **6. Priorities for accelerating progress over the next 10 years**

Looking forward to the next 10 years, the objectives of the ILSD Partnership could fit into 4 broad and interrelated categories, with 6 main thematic focus areas as well as cross-cutting issues:

- 1) International Sustainable Development Law Treaties:** The ILSD Partnership will continue its research and engagement with international sustainable development law in international treaty regimes. The integration of sustainable development into international treaty frameworks has seen major progress in the past 20 years. The ILSD partnership intends to continue to provide expertise in terms of raising awareness as to sustainable development law and also monitoring and disseminating best practices in terms of the continued development of existing sustainable development treaty regimes, the creation of new sustainable development treaties and the integration, recognition and enhancement of sustainable development in existing treaty regimes linked to sustainable development. Members of the organizations forming the ILSD partnerships are among the founders and leading international experts and researchers in international sustainable development law. Their research has created a novel and innovative perspective on how legal instruments and policy can be used in order to confront the imminent risks and challenges of prevailing unsustainable practices and lifestyles. Key publications in the past 20 years have included M.C. Cordonier Segger & A. Khalfan, *Sustainable Development Law: Principles, Practice and Prospects* (Oxford: Oxford University Press, 2004); *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005); or *International Law and Policy of Sustainable Development*, D. French (Manchester: Manchester University Press, 2005). The

ILSD Partnership is committed to continued excellence in research as well as providing practical legal assistance and expertise.

- 2) **National Implementation of International Sustainable Development Treaties:** National implementation of international law on sustainable development has been a major challenge in both developed and developing countries over the past 20 years. The ILSD partnership intends to continue developing and refining its expertise and providing it in national and regional settings in a contextualized manner. The ILSD partnership is the only one primarily concerned with sustainable development law. It was started at the Johannesburg world summit in 2002 due to the growing recognition of a serious gap in the legal knowledge and best practices required for the successful implementation of sustainable development at the national level. The ILSD Partnership intends to expand its focus on implantation especially in the areas of climate change, the green economy, legal empowerment, natural resources management, biodiversity & biosafety, health, trade & investment, human rights as well as governance.

Building on two decades of pioneering research by its members, the ILSD Partnership will continue documenting, conducting & publishing case studies and empirical research, as well as discussions and objective analysis of case studies and empirical research, in order to assist in the determination of best practices for the legal transition to a green economy through the implementation of international sustainable development law. Effective legal change is an essential aspect of the green economy. The ILSD partnership is committed to guiding policy-makers at the national level with regard to determination of the most effective approaches to legal reform and national implementation of international treaty regimes related to the green economy.

- 3) **Recognition of Sustainable Development Principles:** The principles of sustainable development described in the International Law Association (ILA) New Delhi Declaration have found increasing application in both international treaty regimes and international tribunals. The ILSD partnership intends to document the use of sustainable development principles in international treaties and courts in the past 20 years in order to assess their conceptual evolution as well as their practical application. Through this assessment the ILSD partnership will also develop a practical toolkit for international and national legal practitioners on accepted and emerging uses of sustainable development principles in order to assist them for example in the preparation of cases before international tribunals. This work will contribute to raising awareness and expertise about sustainable development law among legal practitioners. The ILSD partnership will also be in a favorable position to determine which sustainable development principles benefit from a good understanding and application, and other principles which require further clarification.

- 4) **Building Awareness and Legal Empowerment:** Building awareness at all levels about sustainable development law is a key aspect of the ILSD partnership's activities in the next 10 years. Building on tremendous progress since its official recognition 10 years ago at the Johannesburg world summit on sustainable development, the ILSD partnership intends to continue bridging the knowledge and best practices gap in sustainable development law at the national and international levels. This objective requires a focus on different levels of communication in order to reach legal experts but also government officials, community leaders, local NGOs as well as the general public through powerful new means such as social media and also continued input and participation in national and international legal forums.

The ILSD partnership intends to focus on legal empowerment and the rule of law, specifically in developing countries. 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. An alternative model, as compared to the traditional top-down rule of law approaches, 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.

## **7. Strengthening support through international cooperation & Expectations for the UNCS D**

**Urgency & Action Plans for Legal Reform:** Sustainable development must be an international endeavour. By necessity, confronting phenomena such as climate change or loss of biodiversity requires an international approach, as improvements in one region can easily be annulled by detrimental practices in another. The predecessors of the Rio+20 conference, with hindsight, have emerged as key moments in terms of



setting agendas, attaining consensus on principles between states, and strengthening cooperation, commitment as well as goodwill between states in terms of sustainable development. The ILSD partnership hopes that the UNCSD will constitute a cornerstone where states will agree upon the fundamental building blocks and an action plan to transition towards a global green economy. The process of transition must be recognized as urgent if the world is to avoid and adjust to some of the imminent perils caused by the brown economy. States should commit to legal reform in order to facilitate the emergence of a green economy, and also commit financial resources to the transition. States at the UNCSD could also strengthen international cooperation by committing to technology transfers for clean technologies, as well as finance and legal capacity building, especially to support vulnerable states and regions. Overall, the ILSD has high expectations for the UNCSD in terms of renewing political support for legal and policy reform in order to guide the transition to the global green economy.

## **Risks**

### **8. ILSD Partnerships' predominant view of the three pillars of sustainable development**

**An Integrated Approach:** The ILSD Partnership views successful and effective international sustainable development law as the result of an integrated approach towards the three pillars of sustainable development. Legal reform is obviously a complex process, which can yield benefits for some while harming the interests of others. Legal empowerment of the poor, for example, will decrease the power of entrenched elites, or might empower the poor in terms of access to justice while failing to address other pressing concerns. An integrated approach to legal reform that views the three pillars as complementary will result in a more holistic approach to sustainable development. For instance, an impact assessment for the construction of a mine is inadequate if it only takes into account purely environmental concerns. The impact assessment should also assess the effect of the projected mine on local health, on economic opportunities, and on the local social fabric for example to determine the risks associated to the plan and necessary precautions. Impact assessment laws should be tailored and implemented following this integrated approach, as should for example building codes. Legal reform can ensure that the three pillars of sustainability are complementary rather than in conflict with each other. So-called trade-offs, for example between economic and environmental concerns, are linked to paralytic thought processes characteristic of the traditional brown economy worldview. The green economy recognizes the deep intertwinement between the three pillars of sustainable development. Sustainable development involves simultaneous and coordinated progress including the three pillars, and not one progressing at the expense of another.

## **Attachment B) Assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development**

### **I. Introduction**

1. Agenda 21 (A21) is a comprehensive and detailed programme for sustainable development, adopted by consensus at UNCED in Rio de Janeiro in 1992. JPOI was adopted at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002. It builds upon A21 by concentrating attention on implementation, especially by introducing additional ways of reducing fragmentation and integrating all three dimensions of sustainable development into policy clusters, which in turn laid the foundation for the subsequent programme of work of the CSD.

2. An important, and perhaps the core, framework for assessing progress is the extent to which economic, social, and environmental goals (the “three pillars” of sustainable development) begin to converge. Indeed, the consistent message of sustainable development is that these represent not three separate goals but a single integrated one. The goal, and indeed the ultimate test, of sustainable development is the convergence among the three trajectories of economic growth, social development, and environmental protection. In this regard, UNCSO provides an important opportunity to assess what has worked, and what has not.

3. Some information on trends is available from the history of national reporting on sustainable development, including for the Commission on Sustainable Development and in various Trends in Sustainable Development reports on the DSD website<sup>1</sup>. On poverty and the social pillar in particular, information on MDG indicators has been tracked since 1990 and has been described in detail in the Secretary-General’s report for the high-level event on the MDGs to take place in September 2010.<sup>2</sup>

### **II. Progress and remaining gaps to date**

#### **Experiences**

##### **1. Assessing gaps and progress towards sustainable development**

- Economic Indicators (e.g., GDP growth, trade performance)

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<sup>1</sup> [http://www.un.org/esa/dsd/resources/res\\_publtrends.shtml](http://www.un.org/esa/dsd/resources/res_publtrends.shtml)

<sup>2</sup> Keeping the promise – a forward-looking review to promote an agreed action agenda to achieve the MDGs by 2015.

- 1 Comprehensive Indicators (e.g., HDI, MDGs)
  - Poverty Indicators (e.g., Headcount or other measure, please specify)
  - Environmental Indicators (e.g., ESI, Footprint, other, please specify)
  - Social Indicators (e.g., Unemployment, life expectancy)
  - Other (please specify)

Comprehensive indicators that integrate economic, environmental and social dimensions are most useful to developing an integrated approach, which allows for the design of effective legal frameworks and policies. These indicators can take various forms depending on their context and purpose. For instance the ILSD Partnership recently created an informational matrix tracking the use of sustainable development principles in international courts and tribunals from 1992-2012. This website allows users to research how international courts and tribunals have, in the past two decades (1992-2012), referred to, or used, the concept of sustainable development, and related international legal principles, notably the seven principles of sustainable development found in the ILA New Delhi Declaration 2002. The tool is available at [http://www.cisd.org/sustainable\\_development/index.htm](http://www.cisd.org/sustainable_development/index.htm).

## **2. Most useful integrated goals and strategies**

- 3) Outcome indicators (e.g., correlation between indicators of economic, social, and environmental change)
- 2) Commitment indicators (e.g., fiscal or other support for integrated sustainable development programmes)
- 1) Institutional indicators (e.g., use of integrated strategies, establishment of coordination mechanisms)
- 4) Information-related indicators (e.g., development of analytical and assessment tools, collection of data, investment in research)

Institutional indicators can take an important place in the work of the ILSD partnership considering our focus on legal change in terms of new or reformed legal and policy frameworks. Other indicators, however, are just as important in terms of granting substance to the concept of sustainable development. Unfortunately, direct statistics in terms of the prevalence of sustainable development law are still rather uncommon and are not collected on a regular basis by international agencies. Instead, researchers must rely on national government or NGO reports detailing legal changes to laws and policies, in an attempt to determine how these integrate principles of international sustainable development law. Similarly, for international treaties researchers must document the integration of sustainable development principles in agreements between states, or as in the new ILSD online tool in the judgments of international courts.

### **3. Progress made over the past 18 years (1992-2010) in the countries of interest of the ILSD Partnership, and globally.**

**Progress in Sustainable Development Law:** The focus of the ILSD Partnership is the development and implementation of sustainable development law. From that perspective, there has been explosive progress over the past 18 years at the international, regional and national levels. The progress can be measured by the sheer number of laws, regulations and policies which now exist that contribute to the objective of sustainable development. Many states now have sustainable development acts and policies, and have incorporated sustainable development concerns into existing laws. From our assessment of implementation, however, the greatest gap now exists between the formal adoption of laws on sustainable development and their focused implementation at the local, sub-national and national levels. This is spoken to by a number of environmental indicators which show continued and increasingly rapid decline, notably those relating to the atmosphere, land, water (oceans and fresh), natural hazards and biodiversity, as well as failures to significantly alter course in key areas for sustainable development, such as consumption and production, global economic partnership, economic development, demographics, poverty and education.

**Documenting Progress:** The ILSD Partnership has striven to document and study the progress and challenges in sustainable development law over the past 18 years. Following is a limited selection of available publications that reflect this effort:

**Major Publications:** Some of the most relevant publications in regards to our field, all produced by members of the ILSD partnership, include the following:

- The work of the International Law Association's International Law on Sustainable Development Committee, notably their New Delhi Principles (UN Doc.A/57/329). The Committee has met four times since 2002 and their reports may be found at: <http://www.ila-hq.org/en/committees/index.cfm/cid/1017>
- The seminal publication entitled *Sustainable Development Law: Principles, Practices, and Prospects* by Marie-Claire Cordonier Segger and Ashfaq Khalfan, 2004, Oxford University Press
- Marie-Claire Cordonier Segger, Markus W Gehring & Andrew Newcombe, eds, *Sustainable Development in World Investment Law* (Kluwer Law International 2010).
- Charlotte Streck & David Freestone, eds., *Legal Aspects of Carbon Trading: Kyoto, Copenhagen and Beyond* (Oxford: OUP, 2009)
- Michael Kerr, Richard Janda & Chip Pitts, *Corporate Social Responsibility: A Legal Analysis* (New York: LexisNexis, 2009)
- M. Gehring & M.C. Cordonier Segger, eds., *Sustainable Developments in World Trade Law* (The Hague: Kluwer Law International, 2005).

**Working Paper Series:** The ILSD partnership has also produced many reports and studies on sustainable development issues. Recently, the

CISDL and IDLO co-published a working paper series on climate change in preparation for the UNFCCC COP16, which can be found at <http://cisdl.org/publications/collaborative005.html>. This working paper series documents recent progress and challenges regarding climate change law. Also recently the CISDL has released a working paper series on Eco-Health Law. Canada and the countries of the Americas are proceeding with Summits and many economic liberalisation negotiations, which, if realised, will transform the political, environmental, social and economic geography of the Western Hemisphere. This new paper series is part of a larger CISDL initiative, the Eco-Health Americas Law Project, which seeks to identify, analyse and reduce health and environment risks from economic integration for the communities and ecosystems of the Americas, by facilitating the integration of health and environment issues in assessment laws and policies of the Americas. It can be found at <http://cisdl.org/publications/collaborative005.html>

The CISDL and IDLO have also recently published a **Compendium of Legal Best Practices on Climate Change Policy**, which highlights the means for domestic governments to implement their international commitments on climate change. It gathers 12 recent best practices in legal and institutional reform that exemplify promising methods of addressing mitigation, adaptation and finance at the domestic level. Several of these best practices involve reform to facilitate engagement with mechanisms under the UNFCCC multilateral regime. Others represent countries' independent and voluntary measures that go well beyond their international commitments. In both cases, they are informative of the many opportunities for legal and institutional preparedness for climate change that can be reproduced or adapted elsewhere. It is available at [www.idlo.int/Publications/ClimateChangeCISLMay2011.pdf](http://www.idlo.int/Publications/ClimateChangeCISLMay2011.pdf)

The **Compendium of Legal Best Practices on Food Security and Sustainable Management of Natural Resources** also compiled by CISDL and IDLO provides a brief legal compendium on best practice laws relating to food security and sustainable integrated resource management. The laws chosen have a particular emphasis on cases where the lawmakers faced pressures to address serious food security and natural resource management challenges. Many of these laws are from developing countries, where rural communities and indigenous peoples are particularly vulnerable societal components, and thus in greater need of policy attention.

Lawmakers can benefit from the learning curve of other states' in examining what legislation worked, how it was successful, and how it was not successful. Innovative new laws from around the world can inspire creative legal responses even if that legislation is not practicably transferable to another state. In looking at the context in which laws are enacted, policy makers can inform themselves on what other legislators have done when under similar pressures from comparable societal actors.

## **Success Factors**

#### 4. Progress in implementation

- 1 Use of integrated strategies
- 3 Generalized economic growth and prosperity
- 1 Investment in technical and institutional capacity
- 2 Financial support from international sources

Support for technical and institutional capacity in terms of legal reform and empowerment is a cornerstone of the work of the ILSD initiative. The use and general sensitivity to strategies that integrate the three pillars of sustainable development are also at the heart of all initiatives linked to sustainable development law. As such, both appear equally important.

#### 5. Integrated planning and decision making for sustainable development?

ILSD Partnership members have supported the development of a number of national development strategies. Following are several examples.

**Sustainable Institutional Development:** In Ethiopia, the IDLO has implemented a training and technical assistance programme that supports sustainable institutional development in agriculture, trade, investment, and intellectual property (IP). These are key sectors to reduce poverty and improve the enabling business environment. IDLO partnered with the Ministry of Agriculture and Rural Development to attract more agricultural investment and assisted the Ministry in revising drafts of the Seed Proclamation to strengthen Ethiopia's agricultural regulatory framework. Also in Ethiopia, IDLO is implementing a two-year project to strengthen the capacity of the Ethiopian Human Rights Commission (EHRC) to monitor and protect human rights, especially those of women and vulnerable groups. The IDLO is also collaborating with the EHRC to produce a *Complaints Handling Manual*.

**Empowerment for Financial Inclusion:** The IDLO is also involved in bridging the divide between microfinance institutions, policy makers, law, and legal professionals in order to enable sustainable financing sources for poor entrepreneurs in developing countries. Between 2006 and 2009, IDLO implemented a Microfinance Program to build inclusive financial sector and supportive regulatory frameworks. IDLO succeeded in creating a global community of microfinance and legal professionals actively engaged in sharing knowledge and experiences with legislators and policy makers. This community uses its knowledge to advocate for global financial inclusion. In November 2009, IDLO awarded six grants to IDLO alumni from Argentina, Cameroon, Kenya, Mauritania, Peru, and Uganda to empower microfinance stakeholders and improve existing legal, regulatory, and institutional frameworks for financial inclusion. In Argentina, for instance, IDLO helped strengthen RADIM, the largest microfinance network, to become a sustainable institutional forum in which authorities and microfinance institutions engage in dialogue, identify common problems, and propose alternatives to overcome legal and regulatory obstacles. RADIM was invited to participate in legislative

discussions within the Finance Committee of the House of Representatives and presented its reform proposal for the Financial Entities Act.

**Sustainable Development Strategy Commentary:** The CISDL in collaboration with the Université du Québec à Montréal released in 2010 a commentary on Canada's new federal sustainable development strategy, which has a particular importance insofar as it proposes a concrete definition of sustainable development for all Canadians, with the goal of expressing their values and concerns. Despite a remarkable effort on the behalf of the Canadian federal government and a real desire to improve sustainable development governance in Canada, the Strategy has several shortcomings that the partners wished to communicate to the government in the context of this consultation. Thence, we hoped to contribute to the improvement of this strategy. The full text of this communication is available at [http://cisdl.org/pdf/CDIDD\\_Commentaires\\_2010.pdf](http://cisdl.org/pdf/CDIDD_Commentaires_2010.pdf)

**Integrating Sustainability in the Hungarian Constitution:** In 2011, the CISDL provided expert advice on integrating principles of sustainable development in the new Hungarian Constitution, styled *Magyarország Alaptörvénye (Fundamental Law of Hungary)*, the first to be adopted within a democratic framework and following free elections. It is scheduled to enter into force on January 1, 2012. This new Constitution places a new emphasis on the rights of future generations, and includes a right to a healthy environment. A deputy environmental ombudsperson is also to be elected directly by the legislature. Altogether the new Constitution creates a better legal basis for sustainable development in Hungary than the previous framework.

**Legal Empowerment for Food Security:** In Ecuador, the IDLO is developing an integrated programme on Legal Empowerment for Food Security and Sustainable Resources Management. Food insecurity, especially when coupled with poorly managed resources, is another worrisome global issue that undermines development and the well-being and livelihoods of millions of people. IDLO's pilot project reinforces food security and sustainable development, prevents malnutrition, and reduces poverty in rural indigenous communities in Chimborazo. In partnership with FAO and IFAD, IDLO is improving legal and governance frameworks for securing land rights; managing natural resources; improving access to traditional knowledge on food security; improving legal capacity to form and operate business enterprises; and accessing benefits under international legal regimes, including the UN Convention on Biological Diversity and the UN Framework Convention on Climate Change. In 2011, FAO, IFAD, local authorities, and IDLO will lead an Inception Mission to identify gaps in the existing legal frameworks of the region and to recommend training and support for small producers to gain access to new markets in the green economy. IDLO's *Compendium of Best Practice Laws and Policies on Sustainable Resources Management and Food Security* will be the basis for training Ecuadoran stakeholders in 2011. The compendium includes examples of innovative legal measures that have opened opportunities for Latin American indigenous cooperatives; promoted more sustainable local water and seed resources management;

secured land rights; and promoted growth of sustainable small and medium-sized enterprises for food security.

**Lessons from Integration:** Overall, the lessons learnt from integrated planning and decision making projects for sustainable development include the necessity of involving all affected stakeholders into the programme-building and decision-making related to sustainable development. Integrated planning and decision making further involves as a prominent but often neglected aspect rule of law aspects, which are unfortunately often seen as secondary rather than foundational. The need for legal and regulatory development assistance that adopts an integrated approach or methodology constitutes a significant gap in the global context. The ILSD Partnership purports to address this issue.

## 6. Public-private partnerships for sustainable development

**Corporate Social Responsibility and Engaging with the Private Sector:** The ILSD Partnership includes leading world experts on sustainable development and Corporate Social Responsibility (CSR). In 2009, CISDL members published the first legal textbook on CSR entitled *Corporate Social Responsibility – A Legal Analysis*. It examines the hard and soft laws that ground CSR to show that responsible corporate behaviour has become a matter of important legal concern for virtually every corporation. This book answers four essential questions:

- What is CSR?
- What is driving it?
- What are the legal dimensions of CSR?
- What are its likely future legal developments?

In the 2 short years since its publication, this book has become a seminal legal text on global CSR and has led to further collaborations involving partners from the private sector, notably the law firm Fasken Martineau in Canada.

**Sustainable Supply Chains:** The CISDL over the past few years has engaged in an ongoing collaboration with Accenture Supply Chain Academy in order to elaborate courses on sustainable development law and policy for the private sector. For many businesses, extended supply chain activities make up most of their carbon footprint. Supply chain executives must balance cost, reliability, timeliness and customer service with issues of sustainability. CISDL has provided legal expertise to Accenture to help its clients develop more sustainable supply chains—without sacrificing efficiencies or service levels. The approach is to supply chain optimization on an integrated view of supply chain processes and the delivery of pragmatic solutions aimed at delivering short- and long-term gains.

**Programs with the Private Sector:** The IDLO has engaged in many fruitful development partnerships with the private sector, focusing on a



variety of areas. For instance, the IDLO received funding from the telecommunications service leader AT&T for a project to enable the Indian capital New Delhi to manage its water resources through better legal and institutional frameworks and to increase compliance in delivering safe, clean water for 22.2 million inhabitants. IDLO will continue its work in 2011 to improve access to clean water and promote sustainable water resources management. The IDLO has also received support from the Bill & Melinda Gates foundation in order to protect consumer rights in the microfinancing sector in Cameroon, Colombia, Egypt, India and Kenya, thereby increasing the economic, social and environmental sustainability of microfinancing endeavours in these countries. Legal information and access to justice has shown to be a key element of achieving consumer protection objectives in this context.

## **7. Areas where technical assistance proved to be a key factor in explaining progress with sustainable development**

- MDGs
- Water
- Energy
- Health
- Agriculture
- Biodiversity
- Forests
- Climate change
- Jobs creation
- Other (please specify) **Legal Empowerment for Sustainable Development Law**

As mentioned, the key area of focus for the ILSD Partnership is legal reform and legal empowerment for sustainable societies. Technical assistance is key in explaining progress for sustainable development law in 2 key manners, in which the ILSD partnership are deeply involved:

- **International Treaty Regimes:** Members of the ILSD Partnership are involved in all aspects of technical assistance regarding the incorporation of sustainable development law into international treaty regimes, in accordance with best practices based on experiences and lessons learnt in the past 20 years. As such, ILSD members have been involved with negotiations and technical assistance to treaty negotiators regarding international treaties on sustainable development over the past 20 years and have played a key role in enhancing and raising awareness about the role of sustainable development law in this context.
- **National Implementation of International Treaties on Sustainable Development:** The ILSD partnership has striven over the past 20 years to develop its expertise and resources in order to provide the urgent and much needed technical assistance in order to build capacity for contextualized legal frameworks and institutions to

implement international law on sustainable development at a national level. Technical assistance for national implementation takes many forms depending on the contexts, from commentaries on national sustainable development strategies or training local communities regarding REDD compliance to programs aiming at legal empowerment of the poor for sustainable livelihoods.

## **Challenges**

### **8. Major barriers to implementation**

- 1 Inadequate coordination between ministries
- 3 Low political priority for integrated decision making
- 2 Problems created by slow growth & poverty
- 6 Lack of data
- 4 Inadequate or unpredictable international support
- 5 Inadequate public awareness or engagement

Issues surrounding governance for sustainable development remain a strong concern for the ILSD Partnership. Legal frameworks addressing sustainable development are often disjointed and placed under the purview of various ministries with a lack of collaborative outlook. Legal reform in this context is challenging, and even the effective implementation of existing laws which aim at addressing different aspects of the same problem from the perspective of various public authorities is difficult. New outlooks on governance of sustainable development are required in some contexts, in order to strengthen interdepartmental coordination regarding the administration of policy.

Low political priority is directly related to the political commitment objective of the UNCSA. Legal aspects of sustainable development are directly relevant to political commitment. Indeed, politicians can engage with sustainable development at the national level mainly through the enactment of new laws and policies, and the supervision of the administration and enforcement of these laws and policies. Without clear, effective and realistic legal options, political commitment has no grounding and will remain at a rhetorical level. Sustainable development law can present best options and legal practices to policymakers in order to propose steps forward and thereby help solidify political commitment to sustainable development.

We could also note the challenges linked to overlaps between international treaty regimes, along with a lack of legal information and best practices on treaty implementation to guide national actions. States sometimes lack legal capacity in order to manage the interconnections between the various treaty regimes that they are party to, and understand their obligations in a particular context that creates an interplay between several international treaty regimes.

### **9. Addressing barriers to bridge implementation gaps**

**Addressing Legal Gaps:** More efforts and resources must be invested in terms of addressing the legal gaps, which are currently considered secondary in most sustainable development efforts. Without a focus on legal and institutional change, the multiplicity of programmes undertaken by international agencies, governments and NGOs might lack durability. Sustainable development initiatives, like most development endeavours, are often limited in time and space. Attention to legal and institutional change will enhance the impact of sustainable development efforts by ingraining sustainability within the framework of governments at the national and local levels. Legal empowerment of the poor must also be highlighted as a primary aspect of sustainable development, requiring capacity building in the legal community, the judiciary as well as communities.

**Integrated National Implementation Strategies:** Political barriers between ministries need to be broken down with the goal of developing integrated and harmonized implementation strategies. 'Ownership' of sustainable development goals needs to be placed in high level cross-cutting ministries or the prime minister's office so that the implementation of those goals can be undertaken in a holistic fashion that overcomes the tendency to marginalize the role of the ministry of environment within most governments (and the sustainable development agenda, accordingly).

**International Coordination:** International initiatives for sustainable development arguably suffer to a certain degree from a similar lack of coordination than at the national level. At the 18<sup>th</sup> session of the CSD, delegations noted the lack of coherence in policy instruments and missed opportunities to realize synergies between existing initiatives for sustainable development at the global level. The UNCSD could also constitute a platform where initiatives and programmes by international organisations, NGO, governments and the private sector are rationalised and synergised in order to focus energy and resources in an effective manner for sustainable development.

## **10. Difficulties in promoting integrated planning and decision-making?**

Legal frameworks are often not built in a manner that is consistent with sustainable development. At best, laws will most often focus on one of the pillars of sustainable development without taking into account other important aspects. For example, trade laws might not integrate social or environmental concerns (see *Sustainable Development in World Trade Law* edited by Cordonier Segger & Gehring). Legal schemes are disjointed and focused on particular ministries in a manner that lacks cohesion or a holistic perspective. Laws and regulatory frameworks similarly lack participatory mechanisms or opportunities for direct social feedback as to their impact or effectiveness. Sustainable development laws and plans tend to be focused at the level of environmental ministries, where they can have no real impact on crucial areas such as finance, trade and health for example. Communities may also lack capacity for effective

participation in the elaboration of and feedback regarding new or reformed legal frameworks.

### **11. Promoting effective voluntary actions and multi-stakeholder partnerships**

**Interdisciplinary Dialogue:** More interdisciplinary dialogue must be encouraged in governments, but also in international organisations between legal experts and other fields. At the moment, legal expertise is all too often confined to the technical creation of contracts or other instruments, and is not considered at the strategic level. Creating and enabling legal and regulatory frameworks for sustainable development should be considered as a primary focus level. Experts in economic, social, environmental and legal fields all too often speak a different technical language, and their initiatives though aimed at the same objectives are akin to ships passing in the night. Different stakeholders from various areas of expertise should operate in a synergistic and collaborative manner within governments and international agencies to achieve the best results in terms of promoting sustainable development. Similarly, multi-stakeholder approaches should focus on developing capacity for community based input into legal reform processes, as well as feedback in terms of legal implementation.

**Engaging with the Financial Sector:** Greater engagement with the financial sector needs to be undertaken to promote voluntary actions which are socially and environmentally responsible. This is occurring by the development of social and environmental investment policies at banks, large institutional investors and even small investors through shareholder advocacy and shareholders' resolutions. Multi-stakeholder partnerships require compromise by all parties involved, which means that they need to be the most attractive option for all involved. The benefits of cooperation and perils of going at it alone need to be clarified by governments, civil society and the private sector in the future.

### **Risks**

### **12. Risks to sustained progress towards convergence among the 3 pillars of sustainable development**

There are a number of risks to sustained progress towards convergence of the three pillars from a legal perspective. Failure to address concerns regarding legal empowerment risks exacerbating patterns of inequality and poverty. Importantly, failure to address the lack of effective national legal implementation of climate change will significantly jeopardize efforts for convergence among social, economic and environmental pillars. Climate change is among the greatest risks currently facing humankind. Conflicts, mass migrations, desertification and water scarcity are all challenges that are exacerbated by the growing phenomenon of climate change, which must be addressed on a global level. Progress towards convergence of the 3 pillars of sustainable development law requires strong and functional institutions on the national and international levels. Yet, the risks which

sustainable development law aims to address, risks which are already becoming reality, will weaken national institutions in many regions. Therefore, perhaps the key risk to identify here is the lack of urgency in the creation and implementation of sustainable development law.

## **Attachment C) Addressing new and emerging challenges**

### **I. Introduction**

Although there is no such thing as a definitive list of “new and emerging challenges”, the following are widely agreed to be significant ones:

- Climate change, as new evidence has emerged to suggest that the danger is a more imminent one than previously thought
- Rising water scarcity and increased desertification
- The unfolding of the financial crisis in developed countries, and its global transmission through financial markets as well as through global recession
- Persisting inequalities between rich and poor
- Halting progress towards MDGs despite consistent political support
- Difficulties in the implementation of Human Rights, including gender issues
- Food crisis, caused by the rapid escalation of food prices
- Energy crisis, precipitated by the unprecedented volatility in energy prices
- Other environmental trends that have worsened more rapidly than anticipated, including concerns that some “planetary boundaries” have been exceeded, especially biodiversity
- Degradation of marine ecosystems
- Inefficient and wasteful patterns of consumption and production, and
- A succession of disasters, prevalence of wars & conflicts in some regions.

All countries face these challenges, but they differ widely in their ability to cope with the risks and shocks inherent in them. Challenges have been exacerbated in developing countries by poverty, competition for scarce resources, the rapid pace of rural/urban migration, and the concomitant challenges to provide food, infrastructure and access to basic health, water and energy services.

The sustainable development challenge posed by climate change illustrates well the importance of a holistic response from the international community.

### **II. Addressing new and emerging challenges**

#### **Experiences**

##### **1. New and emerging challenges**

The ILSD Partnership would like to point to six persistent challenges that will be key for sustainable development in the coming decade:

- 1) **Lack of Focus on Legal Empowerment:** One overarching concern is that lack of focus on legal empowerment and legal and policy reform in terms of developing international sustainable development law and integrating it into national laws and policies. Legal frameworks must be built to integrate economic, social and environmental policies, instead of a reductionist approach based on “trade-offs.”. The lack of integration will cause existing threats such as climate change and loss of biodiversity to persist and gain momentum, as government and other authorities will remain unable to address challenges effectively.
- 2) **Climate Change:** Climate change and atmospheric pollution are of growing concern. The effects of climate change are already documented in many regions, and more vulnerable areas such as small island states are now suffering dire consequences. The effects of climate change are likely to spread and gain in intensity as the great majority of states have as of yet failed to implement laws and policies to curb greenhouse gas (GHG) emissions. Climate change will very likely increase the number of international conflicts over natural resources and precipitate new waves of climate migrants. These phenomena will in turn impede that capacity of governments to address endemic social, economic and environmental concerns.
- 3) **Basic Human Needs:** Rising water scarcity and food crisis, linked to the rapid escalation of food prices in vulnerable economies. Legal and institutional responses to the growing scarcity of essential resources in vulnerable areas is key to conflict prevention and sustainable development in these areas. These issues are also linked to unsustainable patterns of consumption in developed countries which require a legal response.
- 4) **Loss of Biodiversity:** Degradation of ecosystems and loss of biodiversity as a result of inefficient, unhealthy and wasteful patterns of consumption and production. Regulatory frameworks that govern markets do not enable the valuation of key natural resources and ecosystem services, which remain under or devalued and result in their irresponsible and unsustainable exploitation.
- 5) **Weak Financial Regulations:** Global vulnerability to shocks in the financial, trade and investment sectors, due to a weak and unsustainable regulatory framework and institutional control at the international and national levels. The recent financial crisis was without precedent in its magnitude, and the efforts to control its impact led to massive government investments that otherwise could have been used for a transition to a green economy. The lasting effects of the recent financial crisis in terms of a looming monetary crisis and resulting stark inflation risks remain present. The ever growing movements of populations, investment and goods result in an increasing vulnerability to the viral spread of international shocks.

- 6) **Urbanization:** Growing urbanization and rural exodus that poses a challenge to the realization of MDGs. Legal and regulatory frameworks as well as strong institutional controls are necessary for a sustainable process of global urban environments, which take into account the variety of basic determinants of human well-being. Urbanization is the most significant urban shift globally, and poses challenges to the sustainable supply of basic needs such as water, food, sanitation, shelter, energy and transportation. Urbanization can constitute an opportunity for development and poverty alleviation. Regulatory frameworks for sustainable development in the context of urbanization are key to the realization of MDGs and alleviating poverty.

## **2. Mechanisms implemented by the ILSD Partnership to address these challenges at the national/regional and global levels**

The members of the ILSD Partnership have put in place numerous mechanisms to address these challenges, as indeed the purpose of the Partnership is to address the legal challenges to sustainable development. Many have already been detailed in this questionnaire.

**Legal Frameworks & Legal Empowerment:** Overall, the ILSD Partnership supports countries to develop greater resilience to the above challenges by strengthening their legal and institutional frameworks, and by developing legal empowerment and promoting rule of law. The ILSD partnership comprises leading experts in the creation and implementation of legal frameworks and institutional reform that comprises the three pillars of sustainable development.

**LPCCI in Mexico & Latin America:** For example, in Mexico and Latin America, the IDLO in collaboration with the CISDL have engaged in an initiative to promote legal preparedness for climate change and sustainable rural development. The project supports and documents the development and implementation of a new regulatory framework to address climate change in Mexico; enhances technical capacity to learn from the experience; and forges partnerships to stimulate pro-poor legal and institutional reform on climate change across Latin America. This initiative involves strong collaboration and a strong mutual learning process with regional authorities and institutional capacity-building with state-level officials.

**CISDL Research Programs:** In terms of its research orientation, the CISDL has created 6 main research programs aimed at addressing the above challenges in an integrated manner, as well as several cross cutting research programs. The international legal issues at the intersection of international law related to economic and social development, and to the protection of the environment, inspire strong interest in the upcoming generation of international lawyers and academics. These issues include:

- Trade, Investment and Finance
- Biodiversity and Biosafety
- Health and Sustainable Development Law



- Human rights and poverty eradication in sustainable development law; and
- Natural Resources Stewardship
- Climate change

There are also programmes for cross-cutting sustainable development law issues (e.g. global governance, corporate social responsibility and accountability, legal empowerment, financing mechanisms, and criminal and constitutional law aspects of sustainable development).

Through its practical and empirical research, the ILSD Partnership hopes to provide information to policymakers on best practices regarding sustainable development law and help design an international sustainable development pathway that can gain the attention and adherence of major stakeholders.

### **3. Areas in which support by the international community been forthcoming, new or enhanced**

Support and awareness from the international community for sustainable development law has been growing significantly especially in the past decade. The ILSD Partnership has engaged with a variety of international and national actors, including the International Development Research Counsel, GTZ, CIDA, Accenture, the Bill & Melinda Gates Foundation, IFAD, UNEP, UNDP, the World Bank, Omidyar Network, AusAID, the Ford Foundation, the European Union, the governments of Canada, China, Japan, the Netherlands, France, Ireland, Italy & the United States, the Arab Bank for Economic Development in Africa, UNHCR, the World Trade Organization, and many others. More support is urgently required, however, especially with regard to legal empowerment for a green economy. The ILSD Partnership growingly engages with partners from developing and developed countries in order to support practical initiatives and empirical research to facilitate a legal transition towards the green economy.

### **4. New and emerging challenges that should be acted upon at UNCSD**

All of the challenges listed above are emerging, insofar as they are dangerously gaining in momentum, impact and gravity. It is difficult to categorise them as new, however, as most were already known 20 years ago. As an international forum aimed at addressing political commitment to sustainable development in a comprehensive manner, the UNCSD should aim at addressing commitment to the legal aspects of all of these challenges. Most urgent, and also the greatest source of hope, remains the legal capacity for the transition to the Green Economy. By focusing on a roadmap for the Green Economy, the UNCSD will contribute to all of the urgent challenges listed above.

### **Success Factors**

## 5. Success factors in addressing new and emerging challenges

3-adequate financial resources

1-strong government leadership

6-investment in essential infrastructure

2-dedicated government programmes

6-literacy and awareness among the population

4-effective communication systems

4-availability of data and technical capacity

3-speed and adequacy of international support

4-leadership by international organizations

5-south-south cooperation

6-regional cooperation

All of the above factors are important. Importantly, the ability to address new and emerging challenges strongly depends on enabling legal and institutional frameworks.

## 6. Enhancing the success factors

**Legal Empowerment for the Green Economy:** The ILSD Partnership is engaging with new initiatives to promote legal empowerment as a necessary aspect of a green economy, as well as legal and institutional preparedness for the green economy and climate change in particular. The objective is to provide legal expertise and frameworks for the Green Economy. By making the value of nature visible and by raising awareness on the link between poverty and the loss of ecosystems and biodiversity, the initiative presents a new approach for realizing growth and employment opportunities. Based on the UNEP Green Economy Report, proposed legal and institutional mechanisms include payment for ecosystem services, reforming environmentally harmful subsidies (for example for fossil fuel industries), introducing tax breaks for conservation and creating new markets for sustainably produced goods and ecosystem services. The Green Economy Initiative is thus premised on activities designed to reshape and refocus policies, investments and spending towards a range of sectors, such as clean technologies, renewable energies, water services, green transportation, waste management, green buildings and sustainable agriculture and forests.

**The Green Economy as an Effective Response to Challenges linked to Sustainable Development:** The Green Economy, by promoting an integrated approach to sustainable development that is 1) easy to understand on a cognitive level, 2) integrates environmental, social and economic concerns as opposed to engaging in the doubtful process of "trade-offs", 3) proposing a clear and actionable agenda for legal and institutional reform, constitutes a way forward that can address in a satisfactory manner all of the challenges listed in C1. Criticisms of the approach are certainly possible in light of some of these challenges, however the Green Economy perspective does appear to constitute the most promising way forward. Further, the green economy is a fundamentally pro-poor agenda for sustainable development. Activities

linked to the green economy promote the fair distribution of benefits arising for instance from the utilisation of biodiversity. Those living in poverty are the most vulnerable to the environmental hazards and health risks posed by pollution, inadequate housing, poor sanitation, polluted water and lack of other basic services outlined in the above challenges. Legal and institutional reform will play an important role to ensure that the global green economy can deliver development opportunities for the poorest and post-conflict countries.

## Challenges

### 7. Strengthening the link between science, education, law and policy

**An International Response:** Increasing global vulnerability to the challenges listed above does call for an international response in order to coordinate and provide an effective strategy. Such responses have increased in the past 20 years through negotiations for example at the UNFCCC or the UNCBD. One of the main challenges remains at the level of national implementation, however. The link between science, education and policy can be strengthened by legal and institutional reform at the national level. Specifically, the ILSD partnership is strongly engaged with developing policies based on reliable and valid scientific findings. Further, the ILSD Partnership provides multiple opportunities for education to policymakers, researchers, civil servants and the general public, through the following endeavours that focus on a pedagogical and multidisciplinary approach:

- Provision of **e-learning courses** on sustainable development law and the green economy. Both the CISDL and IDLO have developed successful online e-learning courses on sustainable development, including climate change, international human rights law and the green economy. These courses have become very popular with legal practitioners in the private and public sector as well as students and experts from developed and developing countries.
- **Publication of online research**, available freely through the world wide web on cutting edge issues in sustainable development law. The CISDL and IDLO have collaborated to produce numerous working paper series in the past decade which are available free of charge and [www.idlo.int](http://www.idlo.int) and [www.cisdl.org](http://www.cisdl.org). These papers have become widely employed policy tools and inspirations for further research in the field. The CISDL also has published numerous books and peer-reviewed scholarly articles on sustainable development law. The reports of the International Law on Sustainable Development Committee of the ILA are also widely used in terms of connecting in a meaningful way policy, science and education.
- **Organisation of international symposiums and roundtables** on sustainable development law has also been a major activity of the ILSD Partnership. Events have been organised all around the world in academic settings, in vulnerable communities, at major UN summits

and conferences, or in collaboration with governments and local NGOs in order to raise awareness, build capacity and provide a 2-way expert-stakeholder educational experience, where legal experts and stakeholders can learn from each other in an interactive manner.

The ILSD Partnership aims at providing solid empirical, scientific research to educate and help in policymaking in an informational but non-partisan and non-political manner.

## **8. Harnessing international support**

**Improved Coordination:** International support needs to operate in a more coordinated banner under a similar set of policy objectives linked to the transition to a green economy. A focus on the legal aspects is very important. For example, laws are essential to ensure that international finance for climate change does not undermine the rights of local populations.

Many states will determine that the costs of *not* transitioning to a green economy and ongoing unsustainable development do exceed the costs of adopting a sustainable development approach at all levels. International support can be harnessed effectively by tapping into the desire of particular actors at the international level to move forward on addressing these challenges in a unified, harmonious, and mutually supportive fashion. These actors include States, multilateral organizations, major groups, and the private sector. Their support might be harnessed effectively through legally binding or voluntary means.

## **Risks**

### **9. Fundamental risks to the prospects of economic growth and development**

The challenges above present numerous fundamental risks to prospects of economic development in all regions where the ILSD Partnership is active. One obvious aspect is the continued and worrisome vulnerability to shocks in the financial sector linked to poor regulations or natural resources crises. Following are some very few examples, among many that we have encountered, of emerging challenges posing a risk to economic development:

- **Unsustainable Use of Natural Resources:** Over a billion people in developing countries rely on fish as a major source of food, but the Food and Agricultural Organization (FAO) estimates that more than three quarters of the world fisheries have already been fished to their biological limit or beyond.
- **Weak Rule of Law and lack of Capacity in the Legal Sector:** In many regions, the rule of law remains an aspiration rather than a reality. Weak rule of law affects the poor most of all, and hinders the distribution of benefits linked to economic growth to the poor,

who prefer to remain in the informal economic realm due to the high costs and poor functionality of legal systems underpinning the formal economy in these regions. Weak rule of law is often paired with a lack of capacity in the legal sector, which is unable to engage with necessary legal reforms and assist with legal empowerment of the poor. Weak rule of law and lack of legal capacity is perhaps one of the most fundamental risks to economic growth in developing countries.

- **Threats to Biodiversity:** About 80% of people in developing countries rely on traditional medicines, the majority of which are derived from plants. But the 2007 IUCN Red List of Threatened Species estimates that 70% of the world's plants are in jeopardy. The World Health Organization has for example estimated that 60% of children suffering from fever in Ghana, Mali, Nigeria and Zambia are treated at home with herbal medicines.<sup>17</sup> And in China, over 5,000 of the 30,000 recorded higher plant species are used for therapeutic purposes. The health of a population is further obviously linked to opportunities for economic growth.
- **Deforestation and Human Health:** In the Peruvian Amazon, mosquitoes associated with malaria were observed to bite people 278 times more frequently in deforested areas than those in areas still predominantly forested. This will similarly impact prospects for economic growth.
- **Economic Impacts of Ecosystem Degradation:** Coral reefs face multiple threats including from overfishing, pollution from land-based sources, dynamiting of reefs, disease outbreaks, "bleaching" from warmer sea temperatures as a result of climate change, and ocean acidification linked to higher concentrations of dissolved carbon dioxide as a consequence of human induced atmospheric emissions. Coral reefs are important factors for eco-tourism in many areas, and their destruction impacts economic opportunities.
- **Loss of Ecosystem Services:** Pollination services by forests in Sulawesi, Indonesia, are estimated at 46 Euros per hectare. Ongoing forest conversion is expected to reduce pollination services and thus coffee yields by up to 18% and net revenues per hectare by up to 14% over the next two decades. Haiti, a country that was once fully forested, has lost 97% of its forest cover. It is now the poorest country in the Western Hemisphere, with 65% of Haitians living on less than \$1/day. The country also has the highest rates of infant, under-five and maternal mortality in the Western hemisphere and 90% of its children are chronically infected with intestinal parasites, which they acquire from the water they drink. This tragic situation is linked to the loss of ecosystem services (rainfall, prevention of soil erosion, water purification) provided by forests.

These are but a few examples of the many impacts of the challenges listed in C1 on economic development. Environmental, social and

economic aspects are necessarily linked, and setbacks in one area will necessarily affect the other two in a detrimental manner. Sustainable development law aims at creating and implementing stable and durable legal and institutional framework that promote integrated development, harmonizing social, economic and environmental aspects. Law in this sense is an effective tool to counter the situations arising in the examples listed above. s

## **10. Addressing risks to the poor and other vulnerable populations**

**Access to Benefits through Legal Empowerment:** Risks to the poor can and must be addressed through equal access to benefits from green economy revenues linked to biodiversity and natural resources for example, and also through legal empowerment of the poor. The importance accorded to legal empowerment in development and environmental policy and projects has grown considerably in recent years. As defined by the High Level Commission on Legal Empowerment of the Poor, legal empowerment primarily entails strengthening access to justice and the rule of law as well as securing property rights, labour rights, and business rights for all individuals, especially those hailing from marginalized and disadvantaged communities. A growing body of research and practice stresses the important role and benefits of legal empowerment for poverty eradication, economic development, environmental protection, and resource conservation.

**Pro-poor Development & the Informal Economy:** Society cannot develop without the inclusion of all of its members. This is especially true in terms of the emerging global green economy, which requires the involvement of all sectors of society in order to encourage new investment into sustainable livelihoods, access the benefits of carbon markets and appropriate low-carbon technologies, and properly value the ecosystem services upon which the poor depend for survival. Indeed, though the UNDP and the UNEP's joint Poverty-Environment Initiative highlights the importance of currently undervalued environmental services to improving the lives of the poor, many new sources of financing for access to biological resources or clean, low-carbon development are going untapped by the countries that need them in Africa, Latin America and Asia. An important part of the problem involves finding new ways to help the poor gain access to sources of finance and investment. Micro-entrepreneurs, small business owners, vendors and others who are self-employed – operating at varying degrees in the informal economy and outside of formal legal regulation and protection, lacking adequate access to the advantages of formal business and financial support systems – contribute significantly to the economy in many countries. They could be contributing to the new green economy. But informality is often linked to legal and political vulnerability, which can limit opportunities for sustainable economic development at both the individual and community levels.

The Legal Empowerment of the Poor agenda has directly recognized the relationship between legal empowerment of the poor and development, including the building of sustainable markets. For example, it has been

estimated that the legal status of the poor – and issues impacting on them, such as business registration and corruption – has resulted in the loss of \$74 billion US to the formal economy of Peru. Further, it has been demonstrated that the ability to claim tenure over land among Ghanaian farmers results in greater investment in that land, including participation in reforestation and other climate finance schemes. The place of lawyers – and law students – in this legal empowerment of the poor agenda is perhaps best summarized by Hernando de Soto who explained: “The law is not something you invent in a university; the law is something that you discover. Poor people already have agreements among themselves, social contracts, and what you have to do is professionally standardize these contracts to create one legal system that everybody recognizes and respects.” As highlighted in the second report of the Commission on Legal Empowerment, there is a critical need for practical, grassroots legal education in order for the poor to understand and assert their rights and place within society. Legal empowerment holds an essential place in addressing the risks to the poor highlighted earlier in this questionnaire. Without such empowerment, the poor risk being left behind in the transition to the green economy.

## **Attachment D) Green economy in the context of sustainable development and poverty eradication**

### **I. Introduction**

1. The concept of the green economy is one of the several closely related constructs that have emerged in recent years to enhance convergence among the three pillars of sustainable development. While the idea has an intrinsic appeal, questions have been asked regarding conceptual clarity, precise definition, and implications for key social and economic goals.

2. One specific question pertains to the difference between the ideal concept of a "green economy" and the near-to-medium term implications of the "transition to a green economy".

3. In the literature, most treatments invoke the term in order to outline elements and actions that should normally be described as "greening of the economy". The more comprehensive of such treatments seek to unite under a single banner a broad suite of economic policies that are relevant to achieving sustainable development.

4. The Prepcom also raised a number of questions regarding the impact of the "transition to a green economy" on other goals, notably macroeconomic outcomes (especially income growth), trade competitiveness, protectionism, aid conditionality and poverty and livelihoods. In addition, the delegates asked for sharing of experiences, success factors, challenges, and risks in the practical application of some of the recommended instruments.

### **II. Legal Elements of Preparing for the Green Economy**

#### **Experiences**

#### **1. The ILSD Partnership's understanding of "green economy in the context of sustainable development and poverty eradication"**

**Legal Aspects of the Green Economy Transition:** The ILSD partnership focuses on the legal processes linked to successful transition to a Green Economy. The Green Economy Initiative was launched by the United Nations Environment Programme (UNEP) in 2008 and has since gained increased credence and support within the international community. It aims at linking economic growth with social and environmental sustainability. By making the value of nature visible and by raising awareness on the inextricable link between poverty and the loss of ecosystems and biodiversity, the initiative presents a new approach for realizing growth and employment opportunities. Proposed mechanisms include payment for ecosystem services, reforming environmentally harmful subsidies, introducing tax breaks for conservation and creating new markets for sustainably produced goods and ecosystem services.



Other initiatives of interest to the ILSD partnership include legal frameworks to encourage innovation and the promotion of equitable tax systems to ensure the redistribution of wealth. The Green Economy Initiative is thus premised on activities designed to reshape and refocus policies, investments and spending towards a range of sectors, such as clean technologies, renewable energies, water services, green transportation, waste management, green buildings and sustainable agriculture and forests. As articulated by UNEP “greening the economy refers to the process of reconfiguring businesses and infrastructure to deliver better returns on natural, human and economic capital investments, while at the same time reducing greenhouse gas emissions, extracting and using less natural resources, creating less waste and reducing social disparities.” This is the approach adopted by the ILSD Partnership.

## 2. Examples of green economy policies

**A New Legal Framework for the Economy:** A green economy is generally characterized by increased investments in green investments by both public and private sectors. These investments must be supported by an enabling legal and institutional framework. A new legal approach to economic systems is necessary. For instance, valuing and pricing environmental services aims at making their benefits to human well-being visible and at encouraging sustainable use of environmental services. Translating the value of an environmental service in economic terms can for example help to conduct a cost-benefit-analysis in a planning decision (conservation of a site or conversion of the landscape for economic purposes). However, it needs to be acknowledged that estimating the economic value of ecosystem services poses many difficulties especially considering the fact that ecosystems provide many services and thus capturing all as well as their interactions with others is a complex task – if not impossible. Moreover, the planning horizon poses new challenges, especially with regard to capturing the value of the capacity of ecosystems to provide services over a long time (and in the face of complex changing environmental conditions).

**The Legal Preparedness for the Green Economy Initiative (LPGE)** undertaken by the IDLO and CISDL is a current example of a green economy policy currently being implemented by the ILSD Partnership. It aims to ensure the meaningful participation of developing countries in the opportunities presented by the global green economy, while supporting the development of a legal environment that promotes sustainable use of biodiversity and equitable access to its benefits. The LPGE is a unique methodology that systematically identifies legal and governance barriers, recommend, provided legal and regulatory training and technical assistance, and implements consensus-based solutions tailored uniquely for each recipient country for:

1) Participation in the new global bio-economy, with updated regulatory frameworks for access to genetic resources and the fair and equitable sharing of benefits for bio-prospecting, and for biosafety for trade in bio-technology;

2) Access to international green economy markets, with legal measures to promote new trade and investment opportunities for sustainable goods and services, to reduce disincentives for sustainable development, and to encourage payments for ecosystem services.

### **3. Considering poverty and other possible social impacts in the design of green economy policies**

**Poverty & Healthy Ecosystems:** Legal frameworks outlining green economy policies must be explicitly pro-poor in order to ensure that the poor are not left behind in the process of transition to the Green Economy. Poverty is a symptom of unhealthy natural ecosystems. The poor depend the most on and are disproportionately vulnerable to the availability of natural resources for their income, subsistence and socio-economic resilience. Whereas the international approach to sustainable development once held poverty as responsible for increased pressure on environmental resources and economic growth as the solution to environmental degradation, the relationship could very well be the inverse. Most recently, the UN has recognized the strong importance of natural capital as a springboard for socio-economic development because of the services that ecosystems provide to human-well being—such agriculture, aquaculture, forestry and climate. However, many ecosystems are nearing critical thresholds beyond which their services to the poor will be drastically reduced.

**Natural Capital as Economic Assets:** The ILSD Partnership sees the green economy approach to environmental policy as promoting a portfolio of economic instruments that increase the co-benefits of natural capital and poverty alleviation. It sees investment in natural capital as a critical economic asset for the poor. The green economy is not limited to UN initiatives, such as the Kyoto Protocol. Instead, it includes all financial instruments that level the playing field for green products through subsidies, incentives, market-based mechanisms and redirected public and private investment. Climate finance, in particular, involves low-carbon and climate resilient pathways that are already being employed in Official Development Assistance for sustainable growth and disaster risk management; foreign direct investment in renewable and efficient energy; and many other trade and investments in key sectors (energy, agriculture, transport, forests, tourism). Even the UN Cancun Agreements on climate change confirm that pledges of \$100 billion by 2020 will constitute public and private, bilateral and multilateral, and alternative funding sources.

**Enabling Legal Frameworks:** However, it is only under specific enabling legal and institutional conditions that those benefits are channeled to the most in need. Legal barriers to climate finance can be overcome using an LEP methodology for legal and institutional reform. Much work lies ahead to amend climate finance instruments and domestic legal systems in order to realize a pro-poor green economy. At least the first steps must involve: sharing legal best practices; conducting context specific impact assessments; consulting with stakeholders to build consensus on desired

outcomes; amending regulatory frameworks; and, above all, building capacity for ongoing reforms driven by the poor themselves.

#### **4. Policy implementation and strategy**

The ILSD Partnership is finalizing the development of a coherent green economy strategy between the members of the partnership. As of yet a coherent green economy strategy enshrined in an agreement or roadmap on an international level does not appear to exist. The ILSD Partnership is committed to advancing international and national legal frameworks in order to allow transition towards a global green economy, through the provision of legal best practices especially for developing countries. The IDLO has drafted a concept note to develop the legal preparedness for the green economy initiative, which is available at [www.idlo.int/Publications/GreenEconomyConcept.pdf](http://www.idlo.int/Publications/GreenEconomyConcept.pdf).

#### **5. Benefits of implementing a national/regional green economy strategy**

National implementation of a legal framework consistent with a Green Economy can hold multiple benefits for national and regional economies.

**Green Economy Sector Growth:** Some sectors of the Green Economy are already thriving on a global level, without having necessarily benefited from investments linked to the public sector. Ecotourism, for example, is the fastest growing area of tourism industry with an annual growth rate exceeding 20% annually according to the International Ecotourism Society. As a benefit of the increased awareness surrounding ecosystems and threats to biodiversity as well as human health, global sales of organic food and drink have recently been increasing by over 5 billion per year to reach 46 billion in 2007. Despite the financial crisis, the organic food and drink market showed impressive resiliency in 2009 and maintained a growth rate of 5%. The economic benefits of international fair trade include increased incomes and additional employment opportunities. In Uganda, for example, organic agriculture uses 30% more labour than conventional agriculture, resulting in job creation. Also in Uganda, the prices for organic pineapples, ginger and cotton are respectively 80%, 185% and 33% higher than their non-organic counterparts. The Green Economy can result in higher profits as well as job creation.

#### **Current Investment & Legal Reform towards the Green Economy:**

Some economies are already benefiting from significant investments in the Green Economy. In 2010, China invested \$51,1 billion in low carbon energy, a boost of over 30% making China the most attractive market for renewable energy entrepreneurs according to the global accounting firm Ernst & Young. Renewable energy in China is based upon a successful legal framework. In 2005, the Chinese government passed a Renewable Energy Law that serves as the principle framework for development in this sector. The law offers a creative variety of financial incentives for the development of renewable energy, such as a national fund to promote

renewable energy development, preferential lending and tax discounts for renewable energy projects, and a successful feed-in tariff legislation developed based on best practices from the European Union. According to a UNEP report, since the passage of the new law:

- Wind power has grown by over 100% per year from 2005-2009. The Chinese government further implemented targeted legislation to encourage joint ventures and technology transfers in large wind turbine technology.
- By 2009, China was the largest Solar PV manufacturer in the world with about 45% of the global solar PV. China is also now the world's largest market for global hot water, with over two-thirds of the global capacity. The rapid increase in the solar hot water industry is due to its profitability for businesses that manufacture the units as well as the households that install them.
- The renewable energy sector employed an estimated 1.5 million people in China by the end of 2009, and in 2009 alone 300,000 new jobs were created in this thriving new sector.

The experience in China provides a startling example of the power and opportunity linked to new legislative frameworks that facilitate the transition towards the green economy. Well designed laws can enable the creation of entire new sectors of green industries resulting in increased profits, job creation on a massive scale and an entrepreneurial renewal in the business community.

## **6. Key economic sectors**

A multi-sectoral approach is essential for the development of a Green Economy. Some sectors are significant in terms of their economic, environmental, and poverty reduction potential and should benefit from particular attention in terms of the construction and implementation of legal frameworks.

**Some Sectors of Interest:** The renewable energy sector in particular has tremendous economic potential in both developing and developed countries. The Chinese example described above shows the immediate positive benefits of a new legislative framework that prompts government and private sector investment into renewable energies. Renewable energies are particularly essential in terms of reducing greenhouse gas emissions and atmospheric pollution, as they offer a clean alternative to fossil fuel energy. Other industries that remain particularly resource intensive, such as the construction sector, the agro-food industry and the metal manufacturing sector require prioritized legislative reform in order to bring about greener practices.

**Contextualised Approach:** Overall, the choice of sectors to focus on is naturally highly contextual, depending on the industries and activities dominant in a given region as well as opportunities for green growth. Further, sectors of the economy are strongly interdependent, and

legislative reforms affecting one sector will likely impact many other sectors directly or indirectly. The transition to a green economy will be a complex process and requires an adaptive and tailored legal framework based on best practices.

## **Success Factors**

### **7. Effective green economy policies**

There are already numerous examples of highly successful green economy policies based on solid legal frameworks. The Chinese renewable energy example certainly speaks to opportunities in the energy sector. It also highlights the fact that the most successful, durable and widespread green economy initiatives are based on new or reformed legislative frameworks inspired from best practices.

**Opportunities through Legal Reform:** Economic incentives for a green economy can be established through legislation. Amendments to fiscal laws are an important step to encouraging green practices through tax credits and subsidies. Fiscal laws can also be amended to introduce greater taxes on fossil fuel industries, that reflect the true cost that they impose on society. Similarly, feed-in tariffs have proven effective at promoting renewable energies in developing and developed countries. For example, Kenya's feed-in tariff policy covers wind, biomass, small hydro and geothermal sources of energy. The policy is expected to result in job creation as well as much needed and significant renewable addition to the Kenyan power grid.

**Functional Rule of Law:** Legal reform is useless without a functional rule of law, which remains a challenge in many regions. Legal reform for the green economy with need to be accompanied by capacity-building in the legal sector in order to deliver on rule of law in all its aspects, focusing on legal empowerment of the poor.

**The Legal Preparedness for Climate Change Initiative (LPCCI)** conducted by the IDLO and CISDL is currently involved in assisting developing countries with expertise in legal best practices for mitigation and adaptation to climate change. Importantly, this initiative also helps developing countries access international financing available from various funding sources, for instance the Clean Development Mechanism (CDM) offset market or the new UNFCCC Adaptation Fund. These funding sources can be useful for developing countries to access sources of financing that will facilitate the transition to a green economy and green growth. The IDLO and CISDL have developed a strong expertise in legal best practices for climate finance, which have allowed countries to overcome common barriers to the primary mechanisms for climate finance.

#### **Best Practices:**

- **Environmental Fund in Chiapas:** For example, the IDLO and CISDL have studied the 2010 *Adaptation and Mitigation Law to Respond to Climate Change* enacted in the Mexican province of Chiapas. The law focuses not only on climate change but also the

sustainable use of natural resources. The law establishes an Environmental Fund, which is a financial mechanism designed to finance mitigation measures using forest carbon sinks and providing for the adaptation needs of the most vulnerable communities. Through this law, Chiapas addresses both the social and economic equalities endemic in the province linked to significant rural and indigenous poverty as well as environmental concerns regarding the conservation of its rainforests.

- **Green Imports in India:** Laws can also focus on lifting or reducing customs charges for certain types of green imports. For example, in 2010 the Indian government removed customs levied for the imports on essential components used in electric vehicles, and complemented this initiative with an incentive package for manufacturers.
- **Government Spending & Norway's Ethical Guidelines:** Reforming environmentally harmful subsidies, such as those to fossil fuel industries, is also an importance aspect of the transition to a green economy. Laws outlining government spending and subsidies are an important aspect of this type of reform. An example of best practices outlining responsible investments of government resources could be found in the Norwegian Pension Fund-Global. The Norwegian government established ethical guidelines for its investments in 2004, which involved negative screening and exclusion of investment opportunities deemed unethical. The strategy used by the fund is characterized by a belief that sustainable development will benefit financial return, and understand investment in sustainable development as both a responsibility and a vested interest. Regulatory frameworks outlining public spending are also important in terms of promoting Green Economies. Public procurement represents a large portion of government spending – between 8% and 30% of national GDPs. A shift towards green public procurement, such as the 50% goal set by the European Union for 2010 and achieved in some of the member states, represents a significant opportunity for the transition to a green economy.

In the short term, legal frameworks that encourage financing for the green economy appear to be most urgent in terms of facilitating initiatives. The initial impulse of investment and opportunity through legal frameworks based on best practices will allow the green economy to gain momentum and expand on a massive scale. As detailed below, measures concerning legal empowerment of the poor are essential to the development of green economies. Legal empowerment of the poor is one of the most promising agendas in terms of poverty eradication, and should form an integral part of green economy initiatives.

## **8. Contribution of these policies to poverty eradication and other specific sustainable development goals**

Legal frameworks for the transition to a green economy contribute to poverty eradication by creating jobs in many sectors.

**Employment:** The green economy results in more opportunities for employment for example in the construction or the agricultural sectors, which can provide a steady revenue stream for the poor.

**Entrepreneurs:** The green economy can also create opportunities for poor entrepreneurs. A key aspect of the transition to the green economy is legal empowerment of the poor. In order for a green economy to function, 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. The poor share the particular form of vulnerability brought about by exclusion from the law. They often lack even a legal identity, and are bereft of legal security and protection when it is needed the most. Law-induced exclusion and poverty go hand in hand. The law is often used as a tool against the poor by entrenched elites. Too often the law or the lack thereof acts as a barrier to the economic, social and political enhancement of poor.

**The Green Economy & Legal Empowerment:** The Commission for the Legal Empowerment of the Poor, chaired by Madeleine Albright and Hernando de Soto, released in 2008 a comprehensive Report on Legal Empowerment of the Poor (LEP). The ILSD Partnership sees legal empowerment of the poor as an important aspect for the emergence of green economies. Specifically, legal frameworks must be reviewed and institutional barriers removed to allow the poor to enjoy access to justice, business rights, secure property rights and labor rights. Legal empowerment does not simply mean the ability to appear before a judge. It means strong institutions and laws that can allow poor entrepreneurs to incorporate businesses and access formal credit markets by recognizing their property rights and the ensuing ability to securitize assets. Access by the poor to a formal economy is essential for the development of green economies. If the poor remain in the informal economic realm they will not benefit from the transition to the green economy. Further, the informal economic sphere, as it is by definition unregulated, can constitute a barrier to the transition towards a green economy. Legal empowerment of the poor is a condition for the existence of sustainable societies.

## **9. Reasons for success**

**Including the Poor in the Green Economy:** The legal empowerment of the poor agenda is a successful measure insofar as it ensures a pro-poor background to the development of the green economy. Legal empowerment lies at the intersection of many of the chief challenges in our era. It cuts across the main international cooperation agendas: development, security and human rights. Legal empowerment of the poor aims at allowing the poor the opportunity to participate in the development of the formal green economy. The great majority of the

world poor operate in the insecurity and vulnerability of the informal economic realm.

**A Contextualized Approach:** The legal empowerment agenda is successful greatly because it is a bottom-up endeavour. It does not aim to be prescriptive, and does not propose the introduction of a preset package of formal laws and institutions. Formalization will be effective only if it builds a meaningful bridge between the informal realm in which the poor operate and the formal economic realm which they are meant to integrate. Formalization presents significant opportunities in terms of developing green economies. Indeed, formalization can be viewed as a contextualized transformatory process through which economic practices can be integrated with a sustainable development worldview. The legal expertise and sensitivity required for such change requires experience with best practices. Also, formalization is a long term and iterative process. So far, only one-quarter of states with Poverty Reduction Strategy Papers (PRSPs) have elaborated separate strategies for the rule of law sector, showing a significant gap in development strategies. In the context of the transition to the green economy, the ILSD Partnership is setting up international Partnerships with leading universities in developing countries in order to promote legal empowerment of the poor.

Following are some characteristics of a successful legal empowerment of the poor approach:

**Bottom-up and pro-poor:** LEP is based on the needs of the poor and geared at empowerment.

**Affordable:** in the sense that measures are within the means of the poor population involved.

**Realistic:** endeavours need to be contextualised and take into account obstacles and opportunities.

**Liberating:** the focus is more on removing legal and institutional barriers to empowerment.

**Risk-Aware:** potential harm as a side-effect of LEP measures should be minimised and monitored to allow compensatory mechanisms.

Overall, the legal strategies or a green economy work because they transform resource allocation procedures, include the poor in development and are based on a durable legal framework as opposed to an initiative limited in time and space.

## **10. Building political and popular ownership for green economy measures**

**Ownership & Consultations for the Green Economy:** Ownership is enhanced through participation and input into decision-making at all stages of the process of legal reform and transformation leading towards a green economy. Popular ownership and awareness of legal frameworks is greatly improved through processes of consultation. Laws aiming at a transition towards a green economy need to be elaborated in a contextualized manner, and in collaboration with affected stakeholders. Popular ownership will further enhance political ownership in democratic



regions as politicians feel popular pressure to enforce and develop green economy measures.

### **Importance of Community Education & Capacity-Building:**

Education and capacity-building at the institutional and community levels are also central in terms of building ownership for green economy measures. Affected and vulnerable communities can be empowered through legal education and pro bono legal services as well as education and capacity building for leadership and representation in order to engage with the formal judicial and political processes of their region. Capacity building at the institutional level, in both governments and the private sector helps raise compliance and awareness of the benefits of new laws for the green economy. Public officials especially must possess a good knowledge of legal frameworks and their enforcement. Communities with a greater awareness of existing or possible legal frameworks to respond to challenges are also more empowered to lobby for change with their leaders.

### **Challenges**

#### **11. Relevant regional and national studies that identify success factors, challenges or risks associated with green economy policies**

##### **Legal Empowerment for Sustainable Development Working Paper Series:**

There is a growing literature on green economy issues, that the ILSD Partnership will contribute to in the coming year with the online publication of a legal working paper series on Legal Empowerment for Sustainable Development. As defined by the High Level Commission on Legal Empowerment of the Poor, legal empowerment primarily entails strengthening access to justice and the rule of law as well as securing property rights, labour rights, and business rights for all individuals, especially those hailing from marginalized and disadvantaged communities. This Legal Working Paper Series will gather scholarship focusing on the law and policy aspects of different pillars of legal empowerment and on the cross-cutting effects of legal empowerment on both the environment and development.

The IDLO has also published a **concept note on legal preparedness for the green economy**, outlining the key legal challenges and prospects in terms of preparing legal frameworks for the green economy. It is available at <http://www.idlo.int/Publications/GreenEconomyConcept.pdf>

The CISDL also prepared a **discussion paper for legal empowerment of the poor for sustainable livelihoods**, in order to stimulate a discussion and further action on behalf of significant Canadian stakeholders in the development field. The paper builds on legal empowerment of the poor in terms of health and HIV, climate finance and food security. It is available at <http://www.idlo.int/DOCNews/CanadaRoundtable.pdf>.

The discussion paper is meant as a basis for engaging Canadian stakeholders with international legal empowerment initiatives, in order to promote a pro-poor transition to the green economy.

## 12. Key outcomes

**A Clear Legal Roadmap for Change:** The ILSD Partnership believes that the key outcome from the UNCSO Rio+20 with respect to a green economy in the context of sustainable development and poverty eradication would be a recognition and the elaboration of a clear roadmap regarding the legal side of the transition to a green economy. This outcome has two key aspects:

- A roadmap for the elaboration of a **legal framework for the transition to the green economy**. This roadmap must emphasize best practices in terms of transition to the green economy, while recognizing the areas in which research on best practices are urgently needed. The roadmap should also clarify the urgency with which the legal toolkit for assisting governments and the private sector in the transition is required. The roadmap should clarify the contextualized nature of transition to the green economy and provide a financial mechanism for assistance in the development and implementation of legal best practices for the green economy.
- **Legal empowerment of the poor** in the context of the transition to the green economy is required so that the green economy develops in a pro-poor manner. Legal empowerment of the poor is an essential agenda in terms of poverty eradication and inclusive development. The poor will not benefit from the transition to a green economy so long as they remain confined to the informal economic realm, with its attending vulnerability and insecurity.

## Risks

### 13. Relationship of green economy policies to other policies and policy domains

The green economy is inherently related to other policy domains related to economic, social and environmental development. The green economy approach emphasizes the fundamental interdependency of these domains, and moves beyond the perceived conflict between the economy and the environment, for example.

Conflict is more likely to arise and barriers to transitioning to the green economy will be encountered with regard to stakeholders with a significant vested interest in the brown economy, who do not necessarily perceive the greater benefits of the green economy. Particular efforts must of course be invested to co-opt these stakeholders into the green economy approach. Reformed legal frameworks can play an important role here, in terms of accentuating the benefits of green economy initiatives. Also, with sufficient public and private investment, green

economy approaches will be “kick-started” and all reasonable stakeholders are likely to follow in stride in order to count among the beneficiaries. The coercive nature of legal frameworks must also be developed in certain sectors in order to curb the worst excesses of the brown economy, for example through regulation in the financial sector and stronger laws regarding environmental conservation.

## **Part E) Institutional Framework for Sustainable Development**

### **I. Introduction**

Institutional support for sustainable development works horizontally across different domains, agencies, ministries, functional groups, and countries, while the traditional organization of authority and action is vertical, precisely along the lines of the same agencies and ministries and other specialities. So, the challenge is to identify institutional elements that can facilitate integration, on a continued basis, across existing lines of authority and programme structures, without undermining or displacing them.

At the international level, UNCED led to the establishment of three main institutional structures to pursue sustainable development, namely the Commission on Sustainable Development (CSD) for political leadership, the Inter-Agency Coordination on Sustainable Development (IACSD) for coordination within the UN system, and the High Level Advisory Board on Sustainable Development (HLB) for intellectual guidance. CSD remains the principal policy making institution on sustainable development within the UN system, but the other two structures were discontinued. Since Rio, many UN bodies and international organizations have aligned their work with the principles of sustainable development, which is referred to in the 2005 World Summit Outcome (GA Resolution A/RES/06/1) as “a key element of the overarching framework of United Nations activities”.

At national levels, early innovations include national sustainable development councils (NSDC), and integrated strategies. The experience with NSDCs needs to be assessed to identify lessons of success as well as failure. The process of developing integrated strategies has taken root, including in the form of national sustainable development strategies (NSDS), but there is a need to review this experience to assess how best the goal of integration can be advanced, and in particular whether the existence of several competing strategy processes (e.g., PRSP, development plan, national conservation strategy) can undermine the very goal of integration.

At local levels, Local Agendas 21 were developed by local institutions and urban municipalities, and again there is a need to draw lessons from this experience.

### **II. Strengthening the Institutional Framework**

#### **Experiences**

##### **1. Avenues for reform**

The following avenues for reform were considered:

Strengthen existing institutions

Improve coordination among existing institutions

Streamline institutions

Change mandate(s) of institution(s)

**Ineffective Institutional Structures:** In many countries only the ministry for environment is in charge of the sustainable development law strategy. Environment ministries typically do not have the required authority to enforce existing sustainable development law policies with regard to the portfolios of other ministries. Furthermore, important cross-sectoral issues such as climate change cannot be handled effectively by one ministry that does not have authority over transport and industry, for example. In a number of initiatives, the ILSD partnership has encountered situations where poor coordination between ministries led to barriers in the promotion of a sustainable development law agenda.

**Strengthening Responsible Authorities:** The way forward for national governments is to enact a national green economy legislative framework affecting all ministries. Alternatively or in addition, governments may choose to systematically reform existing laws in order to promote the emergence on a green economy. Institutionally, the impetus for change towards a green economy must come from a consequential level of authority which can bind various institutional departments of a given government. One solution in this regard is legal. Legislative reform to transition towards a green economy can include binding institutional reform to strengthen the authority of institutions working on sustainable development and to enhance cooperation between institutions.

**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 agencies. 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.

## **2. Ensuring effective synergies between the CSD and other existing inter-governmental instruments and processes**

**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 review 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.

### **3. Ensuring effective coordination among different agencies and organizations responsible for aspects of sustainable development**

**An Umbrella Organisation for Sustainable Development:** Coordination requires authority, which the CSD currently lacks just as national environment ministries lack authority within governments. Development coordination does take place at the UN, the most advanced of which can be found in the "delivering as one" projects which are being driven from the country level, which has the added co-benefit of fostering country ownership of these initiatives. However, experience shows the importance of an umbrella organization within an institutional context, responsible for coordinating the efforts of various actors and filling gaps in institutional responses to sustainable development practices. This institutional umbrella can be strengthened through legal initiatives both at the national and international levels:

- At the international levels member states at the UNCSO can agree to **strengthen the role of the CSD or another international mechanism** to act as an international coordinator of sustainable development endeavors.
- At the national level, authority for sustainable development can be placed at high levels in government in order to raise its profile and the scope of actions available. Commitment to sustainable development is indicated by responsibility for sustainable development being placed at high ministerial levels or as a cross-cutting issue between several ministries. For instance, direct involvement of the Ministry of Finance will strengthen cooperation between government agencies at the national level.

#### **4. National sustainable development councils (NSDC)**

Most countries where the ILSD Partnership is active have an NSDC in place, though not all. An active NSDC can facilitate preparations for the UNCSD by undertaking in-country consultations to evaluate progress at the country level and presenting a view of sustainable development within the country that reflects the views of a variety of stakeholders. They can serve as a focal point for state communications to the UNCSD, so long as they are also well connected to the relevant governmental ministries. Inclusive NSDCs can include a variety of stakeholders such as aboriginal representatives or leaders from vulnerable communities.

#### **5. Promoting integrated decision making**

NSDC are important forums in terms of bringing together multiple stakeholders at the national level including civil society, the private sector and governments to ensure a broad discussion as a basis for policymaking that integrates social, economic, cultural and environmental aspects into national action plans for sustainable development. It is important to note that there is a wide variation in the form, function and authority of NSDC's. They can be viewed as mirroring the CSD's mandate as trustee's of the "spirit of Rio."

**Importance of the Legislative Structure Establishing NSDC:** The effectiveness of NSDC in promoting integrated decision-making has really depended on their role as defined in each nation and the context that they operate in. Some NSDC have been virtually invisible at the national level, while others have had a significant impact on national policies. Overall, the success of an NSDC in promoting integrated decision-making depends on the support it receives from stakeholders, which in turn can depend on the legislative or policy structure that established the NSDC. For instance, the level at which the legislation integrates the NSDC's is important. They will tend to be more effective if tied to executive functions at a high level of authority, for example the ministry of finance. Also, the framework legislation that supplements them needs to unify the different aspects of concern at the regional level, for example forestry, taxation, and water management; in effect taking a 'constitutional' approach that can unify existing and sometime conflicting aspects of national legislation.

#### **6. Developing and implementing local agendas 21**

The purpose of the ILSD Partnership is to implement Agenda 21 at the international, national, and local level. As such, members of the ILSD Partnership have been involved in the implementation of local agendas 21 in multiple areas at the regional or municipal levels.

For example, CISDL members were involved as legal experts in the development of the agenda 21 for Hamburg, Germany. Adopting the principle of a viable lifestyle for today and future generations, the Hamburg Future Council (*Zukunftsrat Hamburg*) was set up in April 1996. Since then more than 120 organizations, initiatives and companies

located in Hamburg have joined forces to support Hamburg's Agenda 21 process. They make up a sustainable network in which information, competence and initiatives from major areas of human life unite: energy and transport, the private sector, environmental protection, agriculture, education and science.

Every year the Future Council organizes regular council meetings that are open to the general public and encourages cooperative moves between its many members. One of the council's major accomplishments is the creation and application of over 30 sustainability indicators HEINZ (**H**amburg **E**ntwicklungs-**I**ndikatoren **Z**ukunftsfähigkeit). The HEINZ is an important tool to monitor and evaluate Hamburg's ecological, social and economic development - HEINZ studies have been conducted and published by the council on an annual basis since 2003.

## **7. Role of sub-national and local sustainable development councils**

**Addressing Local Needs & Priorities:** Sub-national and local sustainable development councils have a central role in implementing sustainable development since Rio. They are ideally placed to address local needs and priorities, and to affect direct action with their constituents. The ILSD Partnership is active in providing legal expertise to regional sustainable development authorities. For example, in Mexico, the IDLO and CISDL are actively engaged in collaborating with 6 Mexican state governments in order to promote legal preparedness for climate change. The project supports and documents the development and implementation of a new regulatory framework to address climate change in Mexico; enhances technical capacity to learn from the experience; and forges partnerships to stimulate pro-poor legal and institutional reform on climate change across Latin America.

**Example of Feed-in Tariff Legislation in Canada:** Similarly, in Canada sub-national authorities have been at the forefront of implementing sustainable development policies through the enactment of new legislation, for example concerning feed-in tariffs. For example, the government in Prince Edward Island, which traditionally depends heavily on energy imports, has vigorously pursued renewable energy strategies, in particular wind energy. In 2004, the *Renewable Energy Act* was implemented and with it the province became the first in Canada with feed-in tariffs. Nova Scotia suffers from similar dilemmas in energy supply and has passed its *Renewable Energy Plan* and regulations, which include Community FITs forthcoming in 2011 aimed at municipalities, indigenous communities, cooperatives, universities and non-profits. Two of Canada's most populous provinces have done or are also in the process of passing FIT legislation. Ontario enabled its programme under the *Green Energy and Green Economy Act, 2009*, which allows for purchases from large energy developers as well as MicroFITs that even extend to homeowners. The province of British Columbia is expected to pass similar regulations in 2011 under the *Clean Energy Act*.



## **8. Participation of major groups and other relevant stakeholders in national decision-making processes on sustainable development**

- 1** participation in policy development
- 2** public hearings
- 3** partnerships
- 4** scientific panels
- 6** inclusion in international delegations
- 5** multi-stakeholder consultations for international meetings

## **9. Governments in close collaboration with the ILSD Partnership**

The ILSD Partnership has developed a very close partnership with numerous national and regional governments all over the world. The Partnership is currently active in over 50 countries, and has worked in over 170 countries. Many collaborations could be qualified as close collaborations.

### **Success Factors**

## **10. Examples of significant positive outcomes in other related areas (for example MDGs)**

As noted earlier, the ILSD Partnership does not view MDGs as a policy domain related to sustainable development, but as a part of the sustainable development agenda.

**International Institutional Frameworks:** Effective institutional frameworks have been set up at the international level, for example in order to facilitate carbon trading, an area in which designated national authorities for Kyoto Protocol Clean Development Mechanism (CDM) projects have played a critical role in the development of CDM in some regions. The CDM mechanism allows countries with emissions targets (Annex B Parties) to earn credit towards their targets by participating in emission reduction projects in developing countries, providing a cost-efficient means to fulfill Kyoto Protocol commitments while also facilitating investment and technology transfer for sustainable development. The CDM is an emission 'offset' instrument because developing countries *do not have targets* under the Kyoto Protocol and because CDM projects must provide emission reductions that are *additional* to what would otherwise have occurred. The majority of registered CDM projects relate to the energy industries, while only a small minority have successfully registered as Agriculture, Forestry and Other Land Use (AFOLU) projects because of the rigorous baseline and monitoring methodologies approved to date.

**National Institutional Frameworks:** At the national level, an interesting example of the development of an effective institutional framework has occurred in Bangladesh. This is a very low-lying country, with 80% of the territory made of fertile alluvial lowland prone to flooding. Climate change has largely increased the pre-existing environmental vulnerability. The government of Bangladesh adopted a comprehensive

adaptation and mitigation plan of action in 2008, the *Bangladesh Climate Change Strategy and Action Plan*, where it estimated that financial efforts going to adaptation and mitigation should represent 0.5 to 1% of the GDP. Establishment of the Strategy and Action Plan was led by the Ministry of Environment and Forests, but it also involves most of the other interested ministries, such as the ministries of: Food and Disaster Management (including the Disaster Management Bureau and the Comprehensive Disaster Management Program), Water Resources (including the Bangladesh Water Development Board and other research and forecasting organizations), local government, rural development and cooperatives (including the Local Government Engineering Department and the Department of Public Health Engineering), Agriculture, Livestock and Fisheries, Energy, and the Ministry of Health. This constitutes an excellent example of institutional cooperation within and between government agencies for sustainable development. The *Strategy and Action Plan* has also been closely linked with other governmental actions, such as the *National Poverty Reduction Strategy*. Implementation of the plan relies on climate change cells within different ministries, coordinated by the climate change secretariat of the Ministry of Environment and Forests, with an “overall coordination” by the National Steering Committee on Climate Change of the same Ministry, and with strategic guidance and oversight of the National Environmental Council, an interdepartmental group chaired by the Prime Minister. It has also led to the adoption of an extremely ambitious 134 point adaptation and mitigation plan, which the Prime Minister of Bangladesh presented at the United Nations as requiring “enormous funds.” In the result, although it is still underfunded, in 2010, the European Union promised EUR 8.5 million in finance as a start to the realization of Bangladesh’s efforts.

## **11. Lessons learned**

**Lesson 1)** Legal reform should grant clear authority and responsibility for sustainable development to a high level of government.

**Lesson 2)** Institutions need to be strengthened through capacity-building for sustainable development.

**Lesson 3)** Cooperation around priority areas is key to institutional success for sustainable development. Legal frameworks defining the role of institutions must emphasize the cross-cutting nature of many challenges and the need for coordination. Laws and regulations can also directly establish collaborative mechanisms between agencies.

**Lesson 4)** Ownership of institutions through openness and consultations when setting up new initiatives and laws are key to the effectiveness of sustainable development. Institutions must be designed to remain sensitive to input and feedback from their stakeholders.

These lessons are directly relevant to the UNCCSD, which is itself an institutional framework to support political commitment for sustainable development.

## **12. Using these lessons to enhance the effectiveness of international environmental governance/policy guidance**

International environmental governance is part and parcel of the sustainable development institutions described above, and the same lessons apply to enhance its effectiveness. A green economy approach seems particularly suited to strengthening the impact of international environmental governance.

## **13. Effective means of strengthening major groups' and other stakeholder's participation in national sustainable development efforts**

Engaging stakeholders is essential in the experience of the ILSD Partnership in terms of successful sustainable development initiatives. The ILSD Partnership has extensive experience in engaging with local communities, NGOs, governments and other groups in order to conduct major sustainable development projects. For example, the CISDL is currently leading an inter-disciplinary coalition of eight research institutes from across the Americas, who have a demonstrated track record of successful collaboration, have joined in partnership to refine and develop an essential new tool – health and ecological impact assessment laws and guidelines - through a four year research and capacity-building project with the International Development Research Council and other partners.

The ILSD Partnership is acutely aware of the need to engage with partners and communities in order to conduct successful and effective sustainable development projects and research. Actively seeking to engage with partners from the public, private or non-profit sector is an effective way of strengthening participation in sustainable development. Similarly, holding public consultations, conferences and other events in order to raise awareness is a very important manner to increase the profile of important issues in the sustainable development agenda and.

### **Challenges**

## **14. Challenges faced in international organizations in the promotion of sustainable development**

**Lack of Awareness of Sustainable Development Law:** One significant problem facing the ILSD Partnership, despite tremendous progress made in the past 20 years, remains the lack of awareness and recognition of sustainable development law as a field and of law in general as a primary tool and focus for the advancement of a viable and durable sustainable development agenda. At the international level, law must take its central place in sustainable development agendas and priorities if the field is to encounter success in the years to come.

Other challenges facing international institutions have been largely detailed in other sections of this report. We should re-emphasize the following:

- **There is a lack of a common and clear international sustainable development agenda**, even amongst the international institutions that attempt to promote sustainable development initiatives. The green economy, a central theme of the Rio+20 process, does offer promise to be a common ground that could unite all of the threads of sustainable development international endeavours under a clear common purpose and orientation.
- **International institutions lack coordination.** The UNCSO does not have a clear enough mandate to constitute an umbrella organization that could facilitate synergies between efforts and fill significant development gaps. Even for example in terms of coordinating efforts for climate finance the global framework remains confused and confusing save for experts, with a variety of funds under a multiplicity of organizations with a lack of coordination. Institutional mandates tend to be narrow, which impedes their effectiveness.
- **There is a lack of resources and capacity to allow significant progress on the scale that matches the urgency of the challenges.**

## **15. Challenges facing national institutions charged with promoting sustainable development**

Again, we need to reemphasize the lack of clear legal best practices and legal expertise regarding the national implementation of international treaty regimes and commitments for sustainable development. National implementation strategies do not focus enough on the legal instruments, which are often the primary means for politicians to advance a national sustainable development agenda. As a result, confusion over legal options can hinder the progress of sustainable development initiatives at the national level. Investment in research on contextualized legal best practices and institutional capacity building is needed at the national level. Initiatives akin to the IDLO and CISDL Legal Preparedness for the Green Economy and Legal Preparedness for Climate Change are in strong demand and require better support and greater means.

Other challenges to remind at this stage include:

- Lack of coordination within governments, between relevant ministries and lack of authority for the responsible ministry.
- Lack of awareness of pressing sustainable development issues among many stakeholders, despite tremendous progress in the past 20 years.
- Opposition by groups of stakeholders with vested interests in the brown economy which must be overcome.
- Lack of participation by key groups in legal and institutional reform processes (i.e. vulnerable communities, aboriginal populations, urban poor)

## Risks

### 16. Goals and risks

#### **Highlighting the Importance of Legal Reform & Implementation:**

Decisions by the UNCSD should overall aim to address the challenges mentioned above. Specifically, the UNCSD should highlight the importance of law and legal reform in establishing effective institutional frameworks at the national level. At the international level, the UNCSD should clarify coordination mechanisms between different organizations engaged with sustainable development law.

Concrete results are expected from the UNCSD process, and the main risk would be of failing to establish a concrete institutional process in order to facilitate and promote the international transition towards a green economy.

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- International Law for Sustainable Development Committee of the International Law Association
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Country(ies) or region(s) of interest to your Group: International