



Connecting the dots across the SDGs: Environment, Justice and People

What can we learn from biodiversity mainstreaming?

Framing Paper

Introduction

This year's Conference of Parties (COP 13) of the Convention on Biological Diversity (CBD) will focus on Biodiversity Mainstreaming.¹

Biodiversity mainstreaming is a key action needed to support human well-being, resilience, innovation and environmental sustainability that will last for generations to come. The concept is grounded in the 1992 text of the Convention, and has been given renewed impetus through its recognition as Aichi Biodiversity Target 2 under the Strategic Plan for Biodiversity 2011-2020² and SDG 15.9 within the 2030 Agenda for Sustainable Development.³

The term “mainstreaming” refers to the process of embedding biodiversity considerations into policies, strategies and practices of key public and private actors.⁴

Mainstreaming is about addressing the underlying causes (or indirect drivers) of biodiversity loss and recognizing the core importance of healthy ecosystems to simultaneously contribute to development challenges from health, climate resilience, rural poverty, food security, conflict prevention, amongst others. In effect, it calls for a transformative shift in the way we address environmental threats, promoting prevention rather than treatment of symptoms, for more cost-effective actions that achieve outcomes with co-benefits across the development agendas.⁵

Success in biodiversity mainstreaming will require countries to commit to this new integrated approach. This will require work to ensure that tackling environmental challenges does not remain the responsibility

of environment ministries alone. Rather, environmental sustainability needs to move to the centre of agendas of the many other ministries responsible for sectors that both are responsible for continued environmental degradation and benefit from healthy ecosystems. Further, the engagement of the private sector, citizens and communities will be needed to build more effective and efficient systems for biodiversity.

There is a need to build up evidence on the interlinkages between various development agendas.

In the recent years, many countries have ratified international agreements and adopted legislation that forbids harmful practices and regulates utilisation of natural resources. Despite this, governments, corporations and individuals continue to engage in activities that damage ecosystems, over-exploit natural resources and threaten sustainable economic growth and decades of development progress.⁶ Recognition of common responsibilities and goals for healthy ecosystems can bring actors together on actions that can benefit multiple agendas.

A mix of tools and approaches are needed to facilitate collection action for biodiversity mainstreaming.

The establishment of an enabling framework of laws and policies guided by effective governance and justice institutions can act as an important piece of the national policy mix needed. However, understanding is limited on how to address the policy incoherence that can currently exist in national and international frameworks related to biodiversity issues, and ways to

¹ The main theme of the upcoming 13th Conference of the Parties of the Convention on Biological Diversity (CBD) is “Mainstreaming Biodiversity for Human Well-Being.”

² UN Decision [UNEP/CBD/COP/DEC/X/2] - Strategic Plan for Biodiversity 2011-2020, Aichi Target 2.

³ UN Resolution [A/RES/7/1]– Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, SDG 15.9.

⁴ Huntley, B.J. and Redford, K.H. (2014). ‘Mainstreaming Biodiversity in Practice: a STAP advisory document’. Global Environment Facility, Washington, DC, p.7.

⁵ IDLO, NBSAP Review – Legal Preparedness for Biodiversity Mainstreaming, The Hague, 2015.

⁶ Secretariat of the Convention on Biological Diversity, Global Biodiversity Outlook 4, Montréal, 2014.

build tailored law and justice responses to move efforts forward.

The new ambitious *2030 Agenda for Sustainable Development* provides an opportunity to renew the momentum for tackling environmental sustainability, equity and rule of law, three critical sectors that had been inadequately addressed by the MDGs. Focus is now shifting to implementation of the SDGs, yet SDG 16 remains one of the least understood goals within the 2030 Agenda framework. It is thus timely for focused discussions on how to address errors from the past, and bring together a coherent understanding on how countries can strengthen their legislation and institutions,

and build inclusive governance systems to achieve goals on sustainable development.

Acknowledging the recent calls for more integrated cross-cutting solutions to implement the SDGs, there is a new opportunity to define a law and justice vision that bridges sectoral and cross-sectoral approaches to sustainable development. Officials and experts working on sustainable development and governance issues such as climate change, disaster risk reduction, sustainable trade and investment, biodiversity and production sectors need to build innovative partnerships to explore interlinkages across agendas, and review the wealth of experience accumulated on law and justice approaches.

This framing paper aims to generate debate on:

- What connections and synergies can help achieve interlinked goals across respective agendas?
- What is SDG 16 and how can it contribute to achieving the environmental sustainability goals under the 2030 Agenda?
- What are elements of a “law and justice” approach to achieving environmental sustainability under the SDGs?
- What kind of actions and partnerships can catalyse commitments to use “law and justice” approaches to implement the 2030 Agenda?



What connections and synergies can help achieve interlinked goals across the respective agendas?

The 2030 Agenda brings together a range of environmental sustainability goals that have been addressed to date across various agendas.⁷ This represents a significant shift in the way “environmental sustainability” is viewed, from a stand-alone goal under the Millennium Development Goals (MDGs) to integrated targets across the SDGs.

Implementation of the SDGs will require integrated national approaches capable of achieving development co-benefits. To meet this challenge, an important first step is to understand the interlinkages across agendas and opportunities for integration. Various agendas are now focusing on the need to “mainstream” and “integrate” issues such as biodiversity, climate change, and disaster resilience into broader national policies, planning and programming, a priority action reflected in the 2030 Agenda.⁸ These efforts focus on identifying opportunities for synergies and reciprocal mainstreaming so that implementation of one agenda increasingly contributes to the progress of others.

Examination of experiences with biodiversity mainstreaming under the CBD can provide insight. Mainstreaming of biodiversity concerns lies at the heart of implementing the 1992 Convention on Biological Diversity. The comprehensive character of the Convention and its wide scope clearly distinguished it from earlier “nature

conservation” treaties signalling a move towards a treaty on “sustainable development.”

Sectors are recognizing the importance of ecosystems and committing to preserve them. Progress is being made at the global level to recognize that biodiversity conservation should not be the domain of only environment ministries.

- **SDG 15.9** specifically calls for integration of biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts;
- The *Paris Agreement on Climate Change* notes the importance of ensuring integrity of ecosystems to address climate change, and promotes ecosystem-based climate adaptation;
- The *Principles for Responsible Investment in Agriculture and Food Systems*⁹ notes that viable agricultural investments depend on well-functioning ecosystems;
- The *Sendai Framework*¹⁰ calls for adopting ecosystem approaches to DRR that can build up the disaster resilience of communities through sustainable use and management of ecosystems;
- Negotiations are currently ongoing on the relationship between the **World Trade Organization (WTO)** and the Multi-lateral Environmental Agreements (MEAs);¹¹ and

⁷ UN Resolution [A/RES/7/1]– Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015. SDGs 13, 14 and 15 call for action on climate change, biodiversity and desertification, while other SDGs highlight the importance of planet issues to achieve goals on poverty, food security, gender, water, energy, sustainable economic growth, infrastructure, cities, sustainable consumption and production.

⁸ The 2030 Agenda highlights the need for integration in its Preamble. In particular, SDGs 13.2, 15.9, and 11.b, call for, respectively, countries to integrate climate change measures and ecosystem values into national policies and planning, and build integrated policies towards inclusion, resource efficiency,

mitigation and adaptation to climate change, disaster resilience and risk management.

⁹ Committee on World Food Security, [CFS 2014/41/4 Rev.1] Principles for Responsible Investment in Agriculture and Food Systems, 2014.

¹⁰ UN General Assembly, Sendai Framework for Disaster Risk Reduction 2015-2030.

¹¹ The World Trade Organization recognizes that sustainable development and environmental protection are amongst its goals. Its Committee on Trade and Environment provides a forum for dialogue on trade and environment. See https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm.

What is SDG 16 and how can it contribute to achieving goals on environmental sustainability under the 2030 Agenda?

A key innovation of the 2030 Agenda is the recognition of “peace” as one of its five interlinked pillars. The lack of focus on law, governance and justice was a missed opportunity during the era of the MDGs, allowing marginalization and inequity to continue in the distribution of resources and development gains.¹³ The absence of any meaningful targets and indicators on the rule of law, human rights and democratic governance significantly reduced the development impact of the MDGs¹⁴, especially for the most poor and vulnerable people and communities.

The 2030 Agenda recognizes justice essential for development, as both an end in itself and an enabling factor for a wide range of other development goals. SDG 16 establishes “peace, justice and strong institutions” as a stand-alone development goal. SDG 16 promotes the rule of law, accountable institutions, inclusive decision-making, equal access to justice for all, and public access to information - making clear that justice for development means recognizing rights and responsibilities for people across society.¹⁵ It calls for non-discriminatory laws and policies for sustainable development¹⁶ - to ensure that the SDGs leave no one behind.

Law and justice elements are noted as key for achieving goals across the SDGs - from equal rights to services, resources and opportunities; policy coherence and integration; gender equality; equitable benefit sharing, and inclusive decision-making.¹⁷ These elements indicate that the rule of law envisioned under the 2030

Agenda is nuanced, calling for more than simply ensuring procedural certainty to also achieving substantive outcomes that are more just and equitable.

The rule of law requires more than drafting good laws. Capable institutions and empowered people are needed to make laws work. Rule of law approaches need not be prescriptive, rather countries can design tailored approaches to the rule of law aligned with national contexts. These approaches can focus on three actions:¹⁸

- **strengthening laws** to limit overexploitation of resources and incentivize sustainable choices;
- **building institutions** capable of guiding, regulating, administering and enforcing laws; and
- **empowering people** through a balanced set of rights and responsibilities to become active agents for sustainability.

These approaches can incorporate principles of non-discrimination and equity, participation and accountability, fundamental to supporting rights-based approaches to sustainable development.

Awareness is raising across “environmental” agendas of the need for a renewed focus on the rule of law. The draft text for the High Level Segment of the 13th Conference of the Parties to the *Convention on Biological Diversity* (CBD) prioritizes the strengthening of legal and institutional frameworks to achieve biodiversity mainstreaming.¹⁹ The *Paris Agreement on Climate Change* recognizes for the first time the importance

¹³ IDLO, *Doing Justice for Sustainable Development*, Rome, 2014, p. 9. See also UNDESA, UNDP, TST Issues Brief – Conflict Prevention, Post-conflict Peacebuilding and the Promotion of Durable Peace, Rule of Law and Governance, 2014, p. 1.

¹⁴ *Ibid.*

¹⁵ *Supra* note 7, SDGs 16.3, 16.6, 16.7, 16.10.

¹⁶ *Supra* note 7, SDG 16.b.

¹⁷ *Supra* note 7, SDG 1.4, 1.b, 2.3, 2.5, 3.8, 3.b, 4.5, 4.7, 5.6, 5.a, 5.c, 6.1, 6.2, 6.5, 7.1, 8.8, 9.2, 10.3, 10.5, 10.6, 11.1, 11.3, 11.7, 11.b, 12.7, 13.2, 14.4, 14.6, 14.c, 15.6, 15.9, 16.

¹⁸ *Supra* note 13, IDLO, p. 14-20.

¹⁹ Non-Paper (Mexico), Elements for the Possible Inclusion in the Cancun Declaration on Mainstreaming, 2016.

of “climate justice” when taking action to address climate change.²⁰ The *Sendai Framework for Disaster Risk Reduction* outlines “strengthening disaster risk governance” as one of its four priorities.²¹

A rule of law approach offers both a technical and moral impetus for action on environmental sustainability. The reflection on the progress made under the CBD

provides a salient example of the need for a rule of law approach. While much progress has been made in raising awareness of biodiversity values²², building up scientific information²³ and promoting new forms of biodiversity financing²⁴, the missing link is to support and scale-up this progress with clear, enabling legal frameworks backed by accountable institutions and empowered people.

Focus questions:

- What evidence exists of “environmental sustainability” agendas recognizing the importance of rule of law, justice and governance?
- What key elements are needed in a rule of law approach to environmental sustainability?



²⁰ UN Decision [FCCC/CP/2015/L.9/Rev.1], Preamble.

²¹ *Supra* note 10, pp. 17-18.

²² See the CBD Secretariat on Communication, Education, Public Awareness (CEPA) <https://www.cbd.int/cepa/>.

²³ The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) is a mechanisms to provide

scientific information in response to requests from policy-makers. Over 100 scientists contribute to the work of IPBES on a voluntary basis.

²⁴ See for example, UNDP’s BIOFIN Initiative, which works with countries to leverage increase biodiversity investments from national budgets. <http://www.biodiversityfinance.net/>

What are elements of a “law and justice” approach to achieving environmental sustainability under the SDGs?

Law and justice approaches to environmental sustainability have evolved with our deepening understanding of environmental challenges.²⁵ The early generation of environmental laws and policies were mainly instruments targeted at single-issues such as air pollution, wildlife protection, forestry, and fisheries. These instruments often used a command and control approach, focused on putting limits on resource use to counter overexploitation. These initial regulatory efforts have been successful in reducing pollutants, preserving conservation spaces and species, and stimulating innovation in new environmental goods and services.

New environmental laws and regulations have often been accompanied by the fear of economic loss and have been seen as a deterrent for businesses. As a result, they were often subject to political compromise which limited their scale and ambitions. However, recent studies indicate that the costs of environmental regulations have shown to be minimal, making small difference to productivity and employment and only marginally affecting international competitiveness. On the other hand, benefits drawn from these reforms outweigh the costs, reaping social benefits and spurring innovation in green technologies.²⁶

New regulatory approaches are emerging that recognize the interlinkages of environment with other societal values. Environmental issues are increasingly being addressed in sectoral and cross-sectoral instruments on issues of climate change, tax and property law, trade and investment,

intellectual property, and human rights. These approaches are also triggered by the need to raise ambitions, because despite the gains made, ecosystems continue to be deteriorated at a rate that threatens human development. To do so requires going beyond simply limiting destructive action, to incentivizing and ultimately, mainstreaming sustainable actions across sectors and society.

This next generation of laws recognize that there is no “one-size-fits-all” approach to achieving environmental sustainability. The societal change required is transformational, requiring nuanced regulatory approaches that combine limits with incentives in a balance that can be adapted as progress is made. Rather than one legal instrument, often a framework of laws and policies are needed that “speak the language” needed to engage the broad sectors needed to be involved.

Pockets of progress are being made in advancing understanding on how law and justice can build environmental sustainability. Several recent studies have aimed to bring together thinking on how to build effective legal frameworks to achieve goals on climate change²⁷, disaster risk reduction²⁸, sustainable trade and investment²⁹, and biodiversity³⁰, still however within their own thematic siloes. Bringing this knowledge together holds the potential to define a “law and justice” approach to implementing the environmental sustainability goals of the SDGs.

²⁵ European Environment Agency, The changing context of European environmental policy, 2015.

²⁶ Dechezlepretre A, *The impacts of environmental regulations on competitiveness*, Policy Brief, November 2014.

²⁷ Nachmany M et al., *The 2015 Global Climate Legislation Study*, UK, 2015.

²⁸ IFRC, *The Handbook on Law and Disaster Risk Reduction*, Geneva, 2015

²⁹ Cotula, L., *Foreign investment, law and sustainable development; A handbook on agriculture and extractive industries*. Natural Resource Issues No. 31. IIED, London, 2nd edition, 2016.

³⁰ IDLO, *Toolkit on Legal Preparedness for Achieving the Aichi Biodiversity Targets* (forthcoming).

A reflection on the experience of biodiversity mainstreaming can provide insight. A recent legislative survey³¹ to identify instruments that support biodiversity mainstreaming across sectors shows that countries are taking a wide array of law and justice approaches.

a) Strengthening Laws

Innovative policies on issues of climate change, poverty reduction and sustainable development are bringing together the many elements of biodiversity mainstreaming and linking it to core societal goals. These policies are informing the developing of new types of integrated laws on spatial planning, and landscape approaches. Law can be used to set “sustainable limits” by linking science to policy, and designing a mix of tools to influence the actions of broad actors to contribute to meeting the limit. It can further ensure biodiversity principles and safeguards are considered in public decision-making and the design of new financing mechanisms.³² Understanding is growing that a well-designed and inclusive law-making process itself offers an opportunity to raise the awareness and buy-in needed across society to make laws work.

b) Building institutions

Biodiversity mainstreaming requires collaboration across ministries and sectors not traditionally used to working together. Thus, institutions play a key role in building new alliances and common understandings. Countries are making choices to assign environmental issues to cross-cutting ministries with greater political influence. Others are creating inter-ministerial bodies on sustainable development issues. A notable innovation is the creation of independent biodiversity institutions capable of informing policy-making in the long-term. The engagement of national justice

institutions has been minimal to date, even though enforcement remains an issue in a majority of countries. Effective implementation will require looking at approaches that facilitate the ability to prosecute and bring legal actions, including options to:

- building on the jurisprudence of the regional human rights courts, like the Inter-American Court for Human Rights, in progressing environmental rights;
- strengthening the capacity of justice institutions in tackling time-consuming, unpredictable and ineffective enforcement mechanisms;³³ and
- developing civil administrative authorities to impose administrative fines to prevent over-reliance on the judiciary.

c) Empowering people.

Governments cannot act alone for biodiversity, the engagement of the private sector, communities and citizens is key. Efforts to establish rights of citizens, local communities and indigenous peoples to manage and participate in decision-making on natural resources can provide incentives for sustainable choices. These are being realized through the development of frameworks that support community protocols³⁴, protect traditional knowledge and promote benefit sharing.³⁵ Biodiversity financing and certification programs with legal backing can provide the certainty to support sustainable businesses.

Further lessons learned can be drawn from the law and justice experience in other fields related to environmental sustainability. Identifying common themes and approaches can inform the development of a “law and justice” approach to implement the SDGs.

³¹ IDLO, Biodiversity mainstreaming – scoping of law and policy trends intFAOLEX, (forthcoming).

³² UN Note [UNEP/CBD/COP/12/INF/27] Biodiversity Financing and Safeguards: Lessons Learned and Proposed Guidelines, 2014.

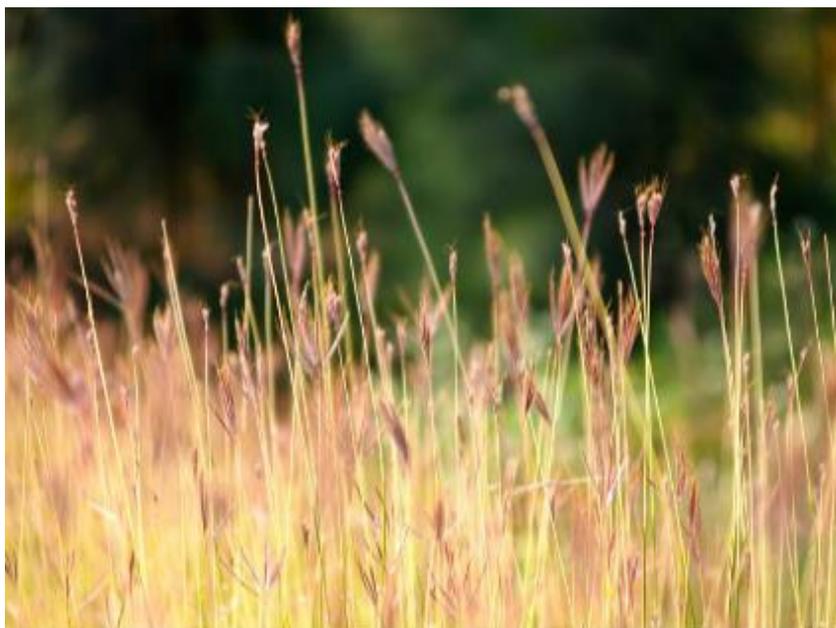
³³ In India, special green tribunals were created to handle the expeditious disposal of the cases pertaining to environmental issues.

³⁴ Bavikatte K, Jonas H. (2009) Bio-Cultural Community Protocols – A Community Approach to Ensuring the Integrity of Environmental Law and Policy.

³⁵ Parks, L. and Morgera, E., An Interdisciplinary Model for Mapping the Normative Diffusion of Fair and Equitable Benefit-Sharing (July 29, 2015). BENELEX Working Paper N. 7.

Focus questions:

- What law and justice tools have been developed on biodiversity mainstreaming, that could strengthen law and justice approaches in other development fields, and vice versa, particularly on:
 - integrated, enabling policy and regulatory frameworks?
 - cross-cutting law and justice institutions?
 - empowering legal tools for citizens and the private sector?
- What are common lessons learned that can inform the design of a “law and justice” approach to implementing the environmental sustainability goals under the 2030 Agenda?
- What benefits can be realised from taking a rule of law approach to goals on environmental sustainability?



What kind of actions and partnerships can catalyse commitments to use “law and justice” approaches to implement the 2030 Agenda?

The Sustainable Development Goals can only be realized with a strong commitment to global partnership and cooperation. SDG 17 calls for enhanced and revitalized partnership to harness synergies across sectors. Rule of Law has been recognized as one of the key cross-cutting areas where there is a need to identify common actions and address critical gaps for implementation. Effective and durable multi-stakeholders partnerships can play an important role for mobilizing human and financial resources, expertise, technology and knowledge.

“Implementation of one will contribute to the progress of others”.³⁶ As we have seen, recent global agendas have reaffirmed the need for all stakeholders to take account of economic, social and environmental challenges, including the loss of biodiversity, natural disasters and climate change, and to enhance policy coherence across all three dimensions of sustainable development. Commitment by all countries to pursuing policy coherence and an enabling legal environment for sustainable development is essential. It calls for renewed efforts from governments with the support of the private sector, civil society, scientific community, academia, philanthropy, parliaments, local authorities, local communities and other stakeholders.

SDG 17 identifies four types of targets to be achieved by the international community in the area of finance, technology, capacity building and trade. The Addis Ababa Action Agenda called for the mobilisation of domestic and international resources and the implementation of this commitment will require efforts from developing and

developed countries. The environment sector has seen the expansion of innovative financing mechanisms (environmental fiscal reform, payment for ecosystem services, biodiversity offsets, market for green products, green bond, carbon pricing, biodiversity in international development finance) as well as the rapid growth of philanthropic giving. Funding for policy support has been growing over the years as well as awareness that “democratic, transparent and stable governance systems” are a key pre-requisite for biodiversity mainstreaming projects.³⁷ However the number of programs and projects being implemented at the country level continue to be limited.³⁸ This indicates a lack of understanding of strong policy support responses, and the partners to engage in implementing such programs. Building multi-stakeholder partnerships will help leverage greater investment and long term commitment for rule of law, as a means to improve environmental goals.

For this reason, SDG 17 also identifies policy and institutional coherence, multi-stakeholder partnerships and data, monitoring and accountability as three systemic issues that need to be addressed. It encourages the international community to transform and engage many shifts, from North-South interaction to universal action, for global partnerships to be more complementary and less duplicative, for greater engagement of citizens in the monitoring of progress and accountability. Integration, implementation, evidence-based decision-making should be the basis for agenda setting, legislative actions and

³⁶ UN Resolution [A/RES/69/313] Addis Ababa Action Agenda of the Third International Conference on Financing for Development, 2015.

³⁷ GEF Assembly Document [GEF/A.5/07/Rev.01], GEF-6 Programming Directions, 2014. GEF Presentation “At the

coalface: Experiences from the GEF biodiversity portfolio” by Mr. Mark Zimsky made at the International Expert Workshop on Biodiversity Mainstreaming, 17-19 November 2015, <https://www.cbd.int/doc/?meeting=IMPWS-2015-01>.

³⁸ *Ibid.*

operational activities at the national level, along with enhanced multilateral cooperation.³⁹

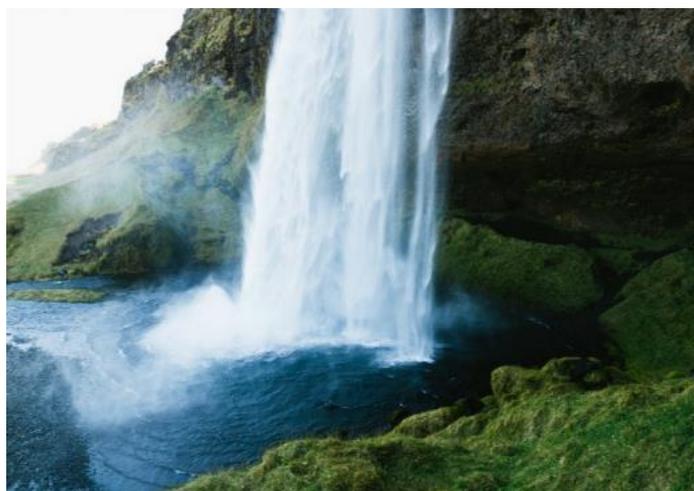
Capacity development will be a key supporting factor for national governments and stakeholders to translate the SDGs into transformative action at country level. It will have to support country-driven priorities and strategies, building on lessons learned and available expertise. The new programmes to be developed under the 2030 Agenda should focus on capacity building, technical assistance and institutional development, benefiting people and institutions. Increased attention should be directed to building national leadership on technical issues but also include areas such as planning, management, evidence-based monitoring

and evaluation, communication and advocacy.

The multi-disciplinary efforts and multi-sectoral approaches required by the SDGs also call for the creation of new hub of knowledge and information. Collaboration will have to go behind issue-based coalitions to embrace a wide spectrum of issues. Capacity development will therefore have to combine support to strengthen specific skills, to institutional governance, to the developments of new analytical and methodological tools for the planning and design of innovative public policies and to build new networks for interactive learning and peer-to-peer experience sharing.

Focus questions:

- What are the most promising law and justice tools that could be put into practice to foster effective actions for environmental sustainability?
- What innovative programming approaches can be taken to test, measure and develop coherent law and justice responses for environmental sustainability?
- How to develop innovative forums to support continuous peer-to-peer learning and adaptation to support implementation?



³⁹ UN Chronicle, “Goal 17 – Enabling a Sustainable Future through the Joint Action of Countries and Communities”, Vol. LI No. 4, 2014, April 2015, [http://unchronicle.un.org/article/goal-](http://unchronicle.un.org/article/goal-17-enabling-sustainable-future-through-joint-action-countries-and-communities/)

[17-enabling-sustainable-future-through-joint-action-countries-and-communities/](http://unchronicle.un.org/article/goal-17-enabling-sustainable-future-through-joint-action-countries-and-communities/)

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