

# Climate Law and Governance Initiative: Research Announcement

## Countries stress the importance of legal and institutional reforms and capacity building in their iNDCs

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## **COUNTRIES STRESS THE IMPORTANCE OF LEGAL AND INSTITUTIONAL REFORMS AND CAPACITY BUILDING IN THEIR INDCS**

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A central tenet of the 2015 Paris Agreement is its “bottom-up” approach, which is executed through the (intended) Nationally Determined Contributions (iNDCs).<sup>2</sup> While the agreement has been widely celebrated for finding consensus among the 197 State Parties to the UN Framework Convention on Climate Change (UNFCCC), much of its success will also depend on the rules adopted to flesh out the Paris Agreement, its effective implementation and enforcement in domestic legal systems and sufficient domestic contributions through the bottom-up approach. Ensuring domestic climate law and governance capacity is thus pivotal to the implementation of the new international climate regime that this nationally-determined contribution approach represents. This imperative, along with the increasing likelihood of rapid entry into force of the agreement, intensifies the need for ongoing research in this area by the law and governance community to inform the development of the Paris Agreement ‘Rulebook’.

A new cross-cutting analysis of the iNDCs submitted to the UNFCCC to date, recently undertaken by an international team of legal researchers from the Centre for International Sustainable Development Law (CISDL). This review underscores the evidence base for the call for both legal and institutional reforms and capacity building. The research was undertaken as part of the Climate Law and Governance Initiative which hosted the inaugural Climate Law and Governance Day at La Sorbonne Law School in Paris during COP21. The 2016 CISDL legal review of the iNDCs aimed to assess the level of priority given to legal and institutional reform in the implementation of the Paris Agreement's bottom-up approach to a post-2020 international climate regime and to assess the need for legal and institutional capacity building required for effective implementation. As discussed in more details below the review came to

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<sup>1</sup> CISDL Legal Research Team: This review was undertaken by Ms Mirjam Reiner and Ms Alexandra Scott, Cambridge University graduates and CISDL Associate Fellows, under the direction of Dr Marie-Claire Cordonier Segger, CISDL Senior Director, Centre for Energy, Environment and Natural Resources Governance (CEENRG) and Lauterpacht Centre for International Law (LCIL) fellow at the University of Cambridge, with expert advice from Dr Markus Gehring, CISDL Lead Counsel, Lecturer in Law at the University of Cambridge Faculty of Law, LCIL and CEENRG Fellow, and Director of Studies in Law for the University of Cambridge Hughes Hall, and Dr Robert Kibugi, CISDL Lead Counsel, Lecturer in Law at the University of Nairobi Centre for Advanced Studies in Environmental Law and Policy (CASELAP) and Member of the Board, IUCN Academy for Environmental Law.

<sup>2</sup> The UNFCCC COP, by its decisions 1/CP.19 and 1/CP.20, invited all Parties to communicate to the secretariat their intended Nationally Determined Contribution (iNDC) towards achieving the objective of the Convention as set out in its Article 2. iNDCs were invited in advance of COP 21 in a manner that would facilitate the clarity, transparency and understanding of the iNDC, and in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties (UNFCCC, 2016). This invitation was made without prejudice to the legal nature of the contributions. By December 2015, and the completion of the COP21 negotiations in Paris, a total of 160 submissions had been made, reflecting 187 countries including the European Union member states, covering around 95% of global emissions in 2010 (excluding LULUCF) and 98% of global population (Climate Action Tracker, 2015). Since the adoption of the Paris Agreement, and the commencement of the ratification process by several Parties, some Parties have re-submitted a finalised Nationally Determined Contribution (NDC)..

Countries stress the importance of legal and institutional reforms and capacity building

the conclusion that vast majority consider their current framework insufficient to contribute to combatting climate change and moving to a “green economy”. They stress their intent to undertake future reforms, and many ask for assistance with capacity building.

### PRELIMINARY FINDINGS OF THE CISDL LEGAL REVIEW OF INDCS 2016<sup>3</sup>

#### **156 of 187 Countries Prioritize Legal and Institutional Reform in their iNDCs, Seeking to Address Inadequate Current Frameworks and Governance Challenges<sup>4</sup>**

While the overwhelming majority of countries cite existing sectoral or other legislation in place to address climate change in their iNDCs, the review conducted highlights that only a few possess the required legal and institutional frameworks to secure adequate legal preparedness for climate change, and to address the commitments and challenges associated with implementing the new international climate regime. For instance, Sao Tome and Principe's iNDC notes the country's lack of existing regulatory, legislative, and policy infrastructure, and lack of institutional and human capacity as key barriers to implementation of adaptation and mitigation contributions.<sup>i</sup>

States widely acknowledge the need for further improvements in legal and institutional infrastructure to achieve climate change mitigation and adaptation. Indeed, of 187 countries that have submitted iNDCs, 156 explicitly prioritise legal and/or institutional reform in their intended contributions. Of these, 75 have placed a high priority on legal and/or institutional reform (including all 28 EU member states). For example, Guinea Bissau and Kuwait specifically mention legal and institutional reforms in their iNDC as important means to address the consequences of climate change and achieve a transition to a low carbon economy.<sup>ii</sup>

Such commitments to reforms can be found across different legal systems and regions. China for example stresses the need “[t]o strengthen laws and regulations on climate change” as part of its “sustained effort in further implementing enhanced policies and measures in areas such as regime

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<sup>3</sup> *Methods Note for comparative iNDC legal review research: The review methodology comprised an analysis based on comparative desk reviews of the (intended) Nationally Determined Contributions texts submitted to the UNFCCC iNDC Portal (<http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx>). The open condition of submission of the national contributions has meant that each of the iNDCs have been submitted in vastly differing formats. As a result, there has been no uniform means of assessing the content of the iNDCs. In order to achieve the aims of this study, each iNDC was read by the two person research team, and a flexible set of criteria were applied to code the qualitative data using content analysis methodology.*

<sup>4</sup> *Methods Note for iNDCs explicitly prioritising legal or institutional reform, or highlighting past legal reforms or implied legal/institutional change: The criteria used to determine the 156 explicitly referring to institutional or legal reform was the explicit mentioning of new laws, regulations, or institutions that would be developed in order to achieve the intended contribution. The criteria used to determine whether a high priority had been allocated to legal or institutional reform included (a) if an iNDC noted legal or institutional changes in the opening statements to the means of implementation section; (b) if an iNDC specifically assigned priority to legal reform, or (c) if more than one new law or institutional reform was listed as an intended implementation mechanism within an iNDC. The methodology used to determine whether legal or institutional reform was implied in a country's included an assessment of the types of policy actions referred to, and whether such actions would likely necessitate legislative reforms. In addition, some countries' iNDCs explicitly identified a lack of institutional capacity or legal frameworks and need to develop them, which was counted as an implication of future reform as well. The countries listing previous reforms were analysed based on explicit reference to past climate change related law development.*



Countries stress the importance of legal and institutional reforms and capacity building

building, production mode and consumption pattern, economic policy, science and technology innovation and international cooperation” to reach its 2030 climate change objectives. A variety of countries including Maldives, Sierra Leone, Laos, Mauritius and El Salvador are at different stages of adopting specific climate change bills, following the dozens of countries that have already adopted comprehensive laws dealing with climate change.<sup>iii</sup> Depending on the existing framework in the respective country some call for sweeping reforms without going into great detail, while other countries that have fairly advanced systems add specific reform proposals to their iNDC.

Some countries also specifically focus on the importance of institutional reforms such as Grenada, which points out that “Enhancing institutional framework [that] establishing an integrated and coordinated approach to addressing climate change can help minimize capacity gaps in the system while ensuring coherence and cohesion at the local and national level”. Others suggest the creation climate finance structure including funds (e.g. Dominica) or market based mechanisms such as cap-and-trade emissions trading schemes (e.g. Saint Lucia), dedicated national committees to address climate change (e.g. Equatorial Guinea), or state intentions to develop or amend specific regulatory regimes such as building codes and town planning infrastructure (e.g. Seychelles).<sup>iv</sup>

Of the 31 countries that do not prioritise legal and institutional reform in their iNDC, 24 countries imply legal reforms in the types of future policies that are emphasised, and a further four countries refer to recent reforms already in place. Where legal and institutional reforms are not explicitly mentioned, they are often implied through references to further reforms proposed in sectors ranging from energy, construction, industry, transport to forests, water, agriculture, health, and finance. Jamaica’s iNDC, for example, refers to “the development of climate change strategies and action plans” in a multitude of sectors and it is assumed that those strategies may necessitate future legal and institutional reform.<sup>v</sup>

## **51 Countries Call for Legal and Institutional Capacity Building to Secure Necessary Reforms<sup>5</sup>**

This review highlights the disparity between the widespread agreement on the importance of legal and institutional reforms, and the lack of capacity identified by many countries to undertake the changes they prioritise. It is widely recognised that implementation will require effective and broad stakeholder engagement, and reform throughout all relevant sectoral legislation and governance systems, yet many countries projected challenges for climate law implementation and enforcement in their iNDCs. Mozambique’s iNDC, for example, mentions “[w]eak coordination and charge of the sectors in the implementation of the approved policies, strategies and plans, due to a low ability to verify and enforce the laws and regulations associated to a weak capacity to cross-sectoral and integrated planning” as a barrier to effectively addressing climate change, a concern repeated by countries ranging from Benin to Haiti and Mali.<sup>vi</sup> The iNDCs of 60 countries prioritised the need to build legal or institutional capacity

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<sup>5</sup> *Methods Note for determining legal and institutional capacity building needs through iNDC comparison: The criteria used to assess a commitment to build institutional or legal capacity domestically were references to capacity building measures within domestic institutions. The criteria used to assess the calls for international capacity building assistance included requiring an explicit statement of need for capacity building support. The 51 countries’ iNDCs calling specifically for institutional / legal capacity building support were included based on a more specific and detailed request for such support. The criteria used to assess the commitment to provision of capacity building support were statement(s) of intention to do so.*

Countries stress the importance of legal and institutional reforms and capacity building

domestically. El Salvador for example considers measures to strengthen legal frameworks and institutional capacities in the infrastructure, water resources, agriculture, health and energy sectors as a priority of its iNDC contribution.<sup>vii</sup>

Many of the domestic legal or institutional reform and capacity building contributions mentioned were conditioned on the provision of international support in the form of financing, technology transfer, and capacity building. Indeed, 120 countries are calling for increased support from the international community to implement their iNDCs. In their iNDCs, 51 countries are specifically requesting assistance for legal and institutional capacity building. For example, Morocco's iNDC states that "Beyond financial support, Morocco would also benefit from technical and institutional capacity building, particularly regarding the creation of data and knowledge sharing. It would also benefit from legal, financial and engineering support pertaining to designing and implementing projects at the regional and local levels, as well as for the monitoring and evaluation of their socioeconomic impacts."<sup>viii</sup>

Conversely, the review found only very few countries' iNDCs directly emphasising the provision of capacity building support in their iNDC. For example, Japan's iNDC states "Japan will also actively contribute internationally towards, inter alia, human resource development and promotion of development and diffusion of technologies relating to emission reductions in developing countries."<sup>ix</sup> Some countries also offer South-South cooperation such as Chile's iNDC, which contains a dedicated section outlining both their domestic and proposed international capacity building intentions. It states "the country currently has valuable information and learning which it can make available to its citizens, particularly the most vulnerable sectors, but which it can also put to the service of its peers under the UNFCCC."<sup>x</sup> While a greater number of countries offer assistance through related mechanisms such as climate funds, foreign aid or increasingly, also sustainable investment incentives, the widespread emphasis on building legal capacities in the iNDCs may require a stronger response, regarding willingness to provide the support needed.

### **A Strong Paris Agreement 'Rulebook' and New Climate Law and Governance Action**

Legal and institutional reforms in the sector of climate change have tremendous potential to provide a catalyst for sustainable development while effecting a transition to a low carbon economy. As noted by Uruguay in their iNDC the country was "able to undergo such a dynamic growth while reducing emissions intensity in all sectors, and for some of those it has even reduced absolute emissions, thanks to strong public policies on climate change, a new institutional framework, [...] and sector-specific policies." The 2015 Paris Agreement itself also explicitly acknowledged the need for new legal research, education, awareness, capacity building and technical assistance reflected in the iNDCs submitted by countries. This is further emphasised in the growing consensus around the shape of the Paris Agreement's Rulebook for implementation and governance.

As noted by the team of CISDL researchers and experts involved in the domestic iNDC legal and institutional research, there is an important opportunity for the 22nd Conference of the Parties in Marrakesh, Morocco to address the issues highlighted in the iNDCs. The research team undertaking this review serve as advisors to the new Climate Law and Governance Initiative which intends to make a key

contribution to furthering research into law and policy innovations on a national and international level and to provide a platform for knowledge sharing and cooperation.

## BACKGROUND TO THE CLIMATE LAW AND GOVERNANCE INITIATIVE

While the Climate Law and Governance Initiative was formally launched in 2015 in wake of the Paris negotiation, its roots can be traced back to 2005 to Montreal, the UNFCCC CoP11, which was the first Meeting of the Parties for the Kyoto Protocol, when the CISDL at Faculty of Law, McGill University in Canada hosted a law and governance conference in the weekend between Weeks 1 and 2 of the COP. Since that time, a consortium of partners including UNDP and CISDL have organized side-events and workshops on climate law and governance during most CoPs. This history has included symposia / side-events on *Strengthening Climate Cooperation, Compliance and Coherence* (2005, CoP11 in Montreal), *Sustainable Development Law on Climate Change: Emerging Legal Regimes & Mechanisms* (2006, CoP12), *Law & Governance of Climate Change Adaptation & Vulnerability* (2007, CoP13 in Bali), *Building the Low-Carbon Economy beyond Copenhagen: The Global Law & Policy Research Agenda & Climate Law and Governance Course* (2009, CoP15 in Copenhagen). These discussions were further developed through international events and discussions include *Developing Sustainable and Equitable Legal Frameworks for the Global Low Carbon Economy* (2010, CoP16 in Cancun), *Legal Preparedness for Climate Compatible Development: Securing REDD+* (2011, CoP17 in Durban), *Public Participation and Climate Governance* (2012, CoP18 in Doha), *Rights, Governance & Climate Change* (2013, CoP19 in Warsaw), *Innovations for Sustainable Energy: Smart Energy Path Planning, Law and Governance* (2014, CoP20 in Lima) and *Climate Law and Governance: Future Practices and Prospects* (2015, CoP21 in Paris).

## ABOUT THE CENTRE FOR INTERNATIONAL SUSTAINABLE DEVELOPMENT LAW (CISDL)

CISDL is a charitable international legal research centre with offices at the Faculty of Law of McGill University in Montreal, Canada; the University of Cambridge, UK; the University of Chile in Santiago, Chile; and the University of Nairobi, Kenya. CISDL works to integrate environment, human rights and economy through leading international legal research and scholarship on international sustainable development law, and legal empowerment by organizing and contributing to courses, conferences, lectures, roundtables, seminars, symposia and workshops to promote new ideas, dialogue and collaboration on law for sustainable development. CISDL supports the increased understanding, development and implementation of law for sustainable development through capacity-building, capacity development and technical cooperation in all regions of the globe. Since its creation in 2002, CISDL has grown to include a global fellowship of over 140 lawyers and legal scholars in more than 60 countries supported by a small international secretariat, through 7 substantive legal research and education programmes, over 80 new books and publications, to become the world's leading centre for law on sustainable development

### Endnotes

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<sup>i</sup> Sao Tome and Principe Intended Nationally Determined Contribution (September 2015)

<[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Sao%20Tome%20and%20Principe/1/Short\\_STP\\_INDC%20\\_Ingles\\_30.09.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Sao%20Tome%20and%20Principe/1/Short_STP_INDC%20_Ingles_30.09.pdf)>

<sup>ii</sup> Intended Nationally Determined Contributions - The State of Kuwait (November 2015, unofficial English Translation)

<[http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Kuwait/1/Kuwait\\_INDCs\\_English\\_Version.pdf](http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Kuwait/1/Kuwait_INDCs_English_Version.pdf)>; Republic of Guinea-Bissau - Intended Nationally Determined Contributions (INDC) (September 2015) <[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Guinea%20Bissau/1/GUINEA-BISSAU\\_INDC\\_Version%20to%20the%20UNFCCC%20\(eng\).pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Guinea%20Bissau/1/GUINEA-BISSAU_INDC_Version%20to%20the%20UNFCCC%20(eng).pdf)>

<sup>iii</sup> Maldives' Intended Nationally Determined Contribution (INDC) (September 2015)

<<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Maldives/1/Maldives%20INDC%20.pdf>>;

Sierra Leone's Intended Nationally Determined Contribution (INDC) (October 2015)

<<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Sierra%20Leone/1/-%20SIERRA%20LEONE%20INDC.docx>>;

Lao People's Democratic Republic Intended Nationally Determined Contribution (September 2015)

<<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Laos/1/Lao%20PDR%20INDC.pdf>>;

Intended Nationally Determined Contribution for the Republic of Mauritius (September 2015)

<<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Mauritius/1/Final%20INDC%20for%20Mauritius%2028%20Sept%202015.pdf>>; Contribucion Prevista y Determinada a Nivel Nacional de El Salvador (November 2015)

<<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/El%20Salvador/1/EL%20SALVADOR-INTENDED%20NATIONALLY%20DETERMINED%20CONTRIBUTION.pdf>>

<sup>iv</sup> Intended Nationally Determined Contribution (INDC) of the Commonwealth of Dominica (September 2015)

<[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Dominica/1/Commonwealth%20of%20Dominica-%20Intended%20Nationally%20Determined%20Contributions%20\(INDC\).pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Dominica/1/Commonwealth%20of%20Dominica-%20Intended%20Nationally%20Determined%20Contributions%20(INDC).pdf)>; Saint Lucia - Intended Nationally Determined Contribution Under the United Nations Framework Convention On Climate Change (UNFCCC) (November 2015)

<<http://www4.unfccc.int/ndcregistry/PublishedDocuments/Saint%20Lucia%20First/Saint%20Lucia's%20INDC%2018th%20November%202015.pdf>>; Republica de Guinea Ecuatorial - Contribuciones Previstas y Determinadas a Nivel Nacional (Contribuciones Nacionales) (CPDN)

<[http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Equatorial%20Guinea/1/República%20de%20Guinea%20Ecuatorial\\_INDC.doc](http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Equatorial%20Guinea/1/República%20de%20Guinea%20Ecuatorial_INDC.doc)> Republic of Seychelles - Intended Nationally Determined Contribution (INDC) Under the United Nations Framework Convention On Climate Change (UNFCCC) (September 2015)

<<http://www4.unfccc.int/ndcregistry/PublishedDocuments/Seychelles%20First/INDC%20of%20Seychelles.pdf>>

<sup>v</sup> Intended Nationally Determined Contribution of Jamaica (November 2015)

<[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Jamaica/1/Jamaica's%20INDC\\_2015-11-25.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Jamaica/1/Jamaica's%20INDC_2015-11-25.pdf)>

<sup>vi</sup> Intended Nationally Determined Contribution (INDC) of Mozambique to the United Nations Framework Convention on Climate Change (UNFCCC) (2015) (October 2015) <

[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Mozambique/1/MOZ\\_INDC\\_Final\\_Version.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Mozambique/1/MOZ_INDC_Final_Version.pdf)>;

Republique Du Benin - Contributions Prevues Determinees Au Niveau National (CPDN) (September 2015) <<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Benin/1/INDC%20BENIN%20%20Version%20finale%20revue%20septembre%202015.pdf>>;

Republique de Haiti - Contribution Prévue Déterminée au niveau National (September 2015)

<[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Haiti/1/CPDN\\_Republique%20d'Haiti.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Haiti/1/CPDN_Republique%20d'Haiti.pdf)>;

Republique de Mali - Contribution Prevue Determinee Au Niveau National CPDN (September 2015)

<[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Mali/1/CPDN\\_MALI\\_VFsegal.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Mali/1/CPDN_MALI_VFsegal.pdf)>



<sup>vii</sup> Contribucion Prevista Y Determinada A Nivel Nacional de El Salvador (November 2015)

<<http://www4.unfccc.int/submissions/INDC/Published%20Documents/El%20Salvador/1/EL%20SALVADOR-INTENDED%20NATIONALLY%20DETERMINED%20CONTRIBUTION.pdf>>

<sup>viii</sup> Morocco - Intended Nationally Determined Contribution (INDC) Under the UNFCCC (June 2015)

<<http://www4.unfccc.int/submissions/INDC/Published%20Documents/Morocco/1/Morocco%20INDC%20submitted%20to%20UNFCCC%20-%205%20june%202015.pdf>>

<sup>ix</sup> Submission of Japan's Intended Nationally Determined Contribution (INDC) (July 2015)

<[http://www4.unfccc.int/submissions/INDC/Published%20Documents/Japan/1/20150717\\_Japan's%20INDC.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Japan/1/20150717_Japan's%20INDC.pdf)>

<sup>x</sup> Intended Nationally Determined Contribution of Chile Towards The Climate Agreement Of Paris 2015 (English Translation, May 2016)

<<http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Chile/1/INDC%20Chile%20english%20version.pdf>>