



## CHAPTER ONE

### COMPLIANCE, RULE OF LAW, & GOOD GOVERNANCE

#### *What Reason Demands: Making Law Work for Sustainable Development*

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(2005)

*"[Because] human altruism is limited in range and intermittent...,  
what reason demands is voluntary co-operation in a coercive system...."*  
H. L. A. Hart, *THE CONCEPT OF LAW* (2<sup>nd</sup> ed. 1994).

#### **I. Introduction**

Faced with climate change and other environmental threats, as well as persistent poverty for billions of the Earth's people, "what reason demands" is that we improve the way law works for sustainable development. Law must be strengthened, and compliance must be ensured, to achieve this paramount goal of society.

The challenges are difficult. Two billion people subsist on the equivalent of US\$2 dollars a day or less, while millions over-consume, and billions more are being encouraged to join their ranks. At the same time, critical ecosystems are under increasing stress at global, regional, and local levels from the externalities of globalization and continuing population growth. Many scientists predict that we will face serious and potentially catastrophic irreversible consequences, perhaps within a matter of decades.

Successfully addressing the complex and interrelated issues of sustainable development requires designing and implementing appropriate governance systems, which in turn must be built on the



foundation of good governance, the rule of law, and compliance, even as this foundation is being strengthened in many States and built or rebuilt in many others.

Law is society's architecture for achieving our common purposes and common aspirations, including sustainable development.<sup>1</sup> Society has other governance mechanisms, but law – both formal and informal – is central.

What law does is to allow a society to choose its future. Law is made in the past, to be applied in the present, in order to make society take a particular form in the future. Law carries society's idea of its own future from the past into the future. ...

For example, a law on environmental management ... conditions the behavior of those who may be planning a new industrial project, ... the behavior of those who want to react, [and] those who have power to permit, prohibit, or modify the proposal...

That is the way law works. It enacts in a particular form the common interest of society as a whole. It then disaggregates that common interest by relating it to the actual detailed behavior of particular society members. And the result is that, in taking their individual self-interested decisions, individual society members, if they act in conformity with the law, also and inevitably serve the common interest of society.... So, in conforming to the law, we are society's agents in making a future for society which is within the range of possibilities which society has chosen.... For those who suffer, in body or in spirit, from the imperfection of the human world as it is, the best way to make a better world is the way of law.<sup>2</sup>

This essay sets discussions of compliance in the broader context of rule of law and good governance, which are required to achieve sustainable development. It presents an argument whose logic is straightforward: sustainable development depends upon good governance, good governance depends upon the rule of law, and the rule of law depends

<sup>1</sup> "[T]he hidden architecture of sustainable development [and] of a capitalist system is the law." Hernando de Soto, *Making Sustainable Development Work: Governance, Finance, and Public-Private Cooperation*, remarks at the Meridian International Center, Washington, DC (October 18, 2001), available at <http://www.state.gov/g/oes/rls/rm/6811.htm>.

<sup>2</sup> Philip Allott, *The True Function of Law in the International Community*, 5 *IND. J. GLOBAL LEG. STUD.* 391, 399-400, 404 (1998).



upon effective compliance. None are sufficient alone, but together they form an indivisible force that is essential for survival and for sustainable development. Underpinning this essay is a belief that the role of compliance in this equation is often insufficiently appreciated, and that it must be strengthened if the rule of law and good governance are to become more effective in meeting the challenges of sustainable development and in securing, from the possibilities of the present, a future that we as a society would like to share.

## **II. The Challenges of Sustainable Development: A Growing Sense of Urgency**

We face unprecedented challenges. In the last 70 years, world population has tripled to 6 billion and is projected to peak at nearly 9 billion by 2050. Human effects on the Earth have been accelerating for the past three centuries, until we now are such a dominant force that our era has been called the Anthropocene era – a human dominated geological epoch.<sup>3</sup> Human domination is reflected in a growing number of environmental threats such as climate change, water scarcity, and biodiversity loss.

While an expanding human population is extracting ever more from the Earth, the sharing of benefits remains uneven. Expanded economic activity in recent years has increased the wealth and well-being of many segments of human society – but one-fifth of the world's population still live in extreme poverty on less than US\$1 per day, and almost half the world's population on less than US\$2 per day.<sup>4</sup> More than 1.5 billion people are projected to be living in urban slums by 2020, and more than 1 billion people will be undernourished.

Faced with growing challenges, how we manage our relationships with each other and with the planet has become a crucial issue. Moving onto the path of sustainable development requires that we change human behavior to address major environmental challenges from global to local levels, while meeting the basic needs of all people now and in the future. Our purpose in exploring these issues is neither to dwell on threats, nor to celebrate successes, but rather to acknowledge the *extent* of the challenge facing us as societies. We firmly believe that humanity can rise to meet these challenges, but only with a deliberate and systematic

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<sup>3</sup> Paul J. Crutzen, *Geology of Mankind*, NATURE, Vol. 415, 3 January 2002. See also Peter M. Vitousek, et al., *Human Domination of Earth's Ecosystems*, SCIENCE, Vol. 277, 25 July 1997.

<sup>4</sup> United Nations Environment Programme, GLOBAL ENVIRONMENTAL OUTLOOK 3: PAST, PRESENT, AND FUTURE PERSPECTIVES (2002).



effort to build the trust and leadership, and the laws and institutions required to change course.

### **Addressing global environmental challenges**

A shortlist of the global and regional environmental problems includes loss of species and biodiversity, toxic chemicals and hazardous waste, ozone depletion, transboundary air pollution, and climate change.<sup>5</sup> Problems such as these are caused by human behavior – some inadvertent but much deliberate. High-consuming individuals, communities, and countries cause many of these problems, although large under-consuming countries are racing to catch up.

Among the most pressing of these global challenges is climate change – a compelling example of the issues arising from our domination of the natural world. Humans are conducting an unprecedented experiment with the Earth's atmosphere. Atmospheric concentrations of carbon dioxide today are up to 30 percent above pre-industrial levels. Over the past 100 years, average global temperatures have warmed measurably: the 1990s was the hottest decade on record, and 2003 the third hottest year on record (after 1998 and 2002), marking the 27th consecutive year that average global temperatures exceeded historical averages.

The effects are alarming. Sea ice has shrunk by 250 million acres and is retreating at almost 10 percent per decade. Sea levels rose during the 20th century at ten times the rate observed for the previous 3,000 years. Warming already is causing an increase in the frequency and severity of extreme weather events. Average temperatures are predicted to increase another 1.4 to 5.8 degrees Celsius by 2100; the last Ice Age ended with a mere 9-degree shift approximately 14,000 years ago. Rising seas threaten to swallow coastal communities and contaminate freshwater supplies with salt, displacing millions of people, destroying their property, disrupting agricultural practices, and precipitating unprecedented famines. The damage to public health and the global economy is likely to be enormous.

Over the past several decades, annual average Arctic temperatures have increased at twice the rate of global temperatures, with some regions

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<sup>5</sup> See generally, David Hunter, James Salzman & Durwood Zaelke, *INTERNATIONAL ENVIRONMENTAL LAW & POLICY* (2nd ed. 2002); The World Bank, *World Development Report 2003: Sustainable Development in a Dynamic World, Transforming Institutions, Growth, and Quality of Life 2* (2003); and *Millennium Ecosystem Assessment: Synthesis Report*, 2005, available at <http://www.millenniumassessment.org/>.



increasing five to ten times the global average. The consequences are profound: at least half of the Arctic summer sea ice could melt by 2100, along with a significant portion of the Greenland Ice Sheet; and with projected temperature changes as high as 4 to 7 degrees Celsius by 2100, climate change will contribute to rising sea levels and raises the specter of abrupt climate change events. Even these predictions may be optimistic. Alaska's 2004 June-July-August mean temperature was nearly 2.8 degrees Celsius above the 1971-2000 historic mean, with permafrost temperature increasing enough to cause it to start releasing additional greenhouse gases in an unwelcome positive feedback loop. Natives in the North say "the weather has become a stranger to them." They are losing confidence in their environment.<sup>6</sup>

The gradual warming predicted for the next 100 years is only part of the problem. Climate change is a non-linear problem capable of sudden surprises – where a little more heat suddenly can cause the climate system to shift to a new state, like flicking a switch, with potentially catastrophic consequences. According to the National Academy of Science report entitled "*Abrupt Climate Change: Inevitable Surprises*," the "available evidence suggests that abrupt climate changes are not only possible, but likely in the future, potentially with large impacts on ecosystems and societies."<sup>7</sup> While great uncertainties exist over these "rapid climate change events", studies of climate changes since the last Ice Age suggest that there are thresholds beyond which the climate will shift "abruptly and perhaps almost irreversibly."<sup>8</sup> Where the thresholds are is not known.

<sup>6</sup>The Arctic Climate Impact Assessment, the most comprehensive regional climate study ever conducted, is based on a four-year scientific study by an international team of 300 scientists sponsored by the eight arctic nations (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States) and six indigenous peoples' organizations. ARCTIC CLIMATE IMPACT ASSESSMENT: POLICY DOCUMENT, Fourth Arctic Council Ministerial Meeting, Reykjavik (2004) at [http://www.acia.uaf.edu/PDFs/ACIA\\_Policy\\_Document.pdf](http://www.acia.uaf.edu/PDFs/ACIA_Policy_Document.pdf).

<sup>7</sup>Committee on Abrupt Climate Change, *Abrupt Climate Change: Inevitable Surprises*, National Academy Press, Washington, D.C. 2003. In a report released in February 2004, the Pentagon presented a scenario where rapid climate change events destabilize the geopolitical environment. Food shortages from decreased agricultural production, decreased availability of fresh water in key regions, drought and flooding due to changed precipitation patterns, disruption to energy supplies from sea ice, and increases in violent weather events are all identified as resource constraints that could lead to geopolitical destabilization and "skirmishes, battles, and even war." See Peter Schwartz and Doug Randall, *An Abrupt Climate Change Scenario and Its Implications for United States National Security*, Pentagon (2003).

<sup>8</sup>Thomas R. Karl & Kevin E. Trenberth, *Modern Global Climate Change*, 302 SCIENCE 1719 (Dec. 5, 2003).



### **Addressing local environmental challenges**

Emerging global challenges are matched by persistent and worsening environmental challenges at the local level in many developing countries, where human activity threatens local water supplies, air quality, and the viability of other resources. More than one billion people lack clean water. Two billion live in water-stressed countries, where the demand for water will double in the next 20 years from population growth, expansion of irrigated agriculture, and increased industrial development. Nearly 2.6 billion people – half of the developing world – lack adequate sanitation, which contributes to 900 million cases of diarrheal diseases, 200 million schistosomiasis or bilharzia, and 900 million cases of hookworm each year. Two million children die every year for want of fresh water and sanitation. Cholera, typhoid, and paratyphoid also continue to scourge human populations.

An estimated 300,000 to 700,000 people die each year in developing countries from air pollution. Air pollution in urban areas is so severe that in some cases breathing is as harmful as smoking two packs of cigarettes a day. Indoor air pollution from particulates, lead, and other sources continues to sicken and kill many in developing countries.

Other resources are also under stress. Erosion and desertification continue to consume arable land in a process already exacerbated by climate change. Humans have transformed 30-50% of the planet's land surface, appropriated 50% of its available fresh water, and removed 90% of the oceans' large fishes. Since the 1950s, 23% of all croplands, pastures, forests, and woodlands worldwide have been degraded, and close to 54% of grasslands. Many areas face significant losses in productivity. One-fifth of all tropical forests have been cleared since 1960. Around 58% of coral reefs and 34% of all fish species are threatened by human activities.

These challenges are significant in both developed and developing countries. Local environmental quality in OECD countries has improved in many but not all respects, and addressing compliance remains a persistent problem. Both deliberate non-compliance and non-compliance from lack of capacity remain a challenge, especially among small and medium-sized firms.



### Meeting basic needs

These environmental problems must be addressed with a view to meeting basic human needs in all countries and promoting equitable development, an unfulfilled promise for much of the world. Between 1980 and 2000, incomes in developing countries grew significantly and infant mortality was halved. But income disparity also continues to grow, causing disparities in material consumption. The richest 20 percent of the earth's population accounts for 86 percent of total private consumption expenditure, consumes 58 percent of the world's energy, 45 percent of all meat and fish, 84 percent of paper, and owns 87 per cent of cars and 74 per cent of telephones. Conversely, the poorest 20 per cent of the world population consumes 5 percent or less of each of these goods and services.

The United Nations' Millennium Development Goals (MDGs) represent a series of targets and objectives to address poverty, human rights, educational, environmental, and social equality issues, among others. The goals include lifting 500 million people out of extreme poverty by 2015, relieving more than 300 million from hunger, providing 350 million more people with safe drinking water, and providing access to basic sanitation to 650 million more people.<sup>9</sup>

Progress so far has been mixed. Many countries are on track to achieve at least some of the millennium development goals by 2015. But the spread of AIDS and malaria, coupled with falling food outputs per person and continued environmental degradation, have limited the efforts of sub-Saharan countries. Climate change will exacerbate the situation with the possibility of more frequent and intense extreme weather events such as droughts and floods. Warmer temperatures also will extend disease vectors. Already, the 2005 target for achieving gender parity in primary and secondary education has been missed by many countries.

The cost to achieve many of the MDGs is not out of reach. Overall, \$25 billion per year from the developed world (or one-one-thousandth of the developed world's annual income) may be enough to successfully pursue nearly all of the development goals. Rich countries could, at a small cost, save about eight million people each year in the world's poorest countries – many of whom are children dying before their fifth birthday.

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<sup>9</sup> See UN Millennium Project 2005, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals, Overview* for this and other facts on the MDGs.



There is often a perception that environmental management runs counter to development. But it is increasingly clear that sound conservation and use of the environment is better viewed as a foundation for development,<sup>10</sup> as well as for public health. It will not be possible, for example, to achieve the goal of delivering clean water to the world's population without ensuring compliance with the laws designed to protect water supplies from pollution. And without clean water, development cannot proceed.

Meeting development goals for poverty, hunger, water, and sustainable development, among others, will require wiser efforts to manage natural resources. As societies, we need to produce economic benefits without disrupting the Earth's life support systems or destroying cultural diversity. We also need to expand efforts to eradicate poverty without derailing economies or damaging critical ecosystems. Balancing these goals and meeting basic needs requires the rule of law and good governance, and requires a focus on ensuring effective enforcement and compliance.

### **III. The Role of Governance for Sustainable Development**

Addressing these challenges requires more effective governance. The need to enhance governance to address environmental challenges and to promote sustainable development is repeatedly recognized at international meetings, including the World Summit on Sustainable Development and the United Nations Millennium Summit. But understanding of the governance systems needed to implement sustainable development lags far behind the rhetoric.

Designing effective governance systems is complex, and made more difficult by the changing nature of the challenges that must be addressed. Threats such as climate change differ from past problems, creating new challenges for how we govern. Many emerging problems are *global* in scope, reflecting new interdependencies and a scale of human

<sup>10</sup> The World Bank, *Initiatives in Legal and Judicial Reform 3* (2004), available at <http://www4.worldbank.org/legal/leglr/>; Christina Biebesheimer & J. Mark Payne, *IDB Experience in Justice Reform: Lessons Learned and Elements for Policy Formulation 4*, available at <http://www.iadb.org/sds/doc/sgc-IDBExperiences-E.pdf> (2001) (Inter-American Development Bank); Organisation for Economic Co-operation and Development (OECD), *Final Report of the Ad Hoc Working Group on Participatory Development and Good Governance*, Part 1, 10, available at <http://www.oecd.org/dataoecd/44/12/1894642.pdf> (1997) (*hereinafter* *OECD Ad Hoc Working Group*). See also Chapter Thirteen, *Competitiveness and Compliance: The Porter Hypothesis*.



consumption large relative to the capacity of biological and geophysical systems. We are now transgressing, or will soon transgress, ecosystem limits – our margin of safety is quickly disappearing. The challenges are often more highly *interdependent*; more integrated global markets, for instance, make efforts to reduce poverty in one country more reliant on the trade policies of another. The problems are often *non-linear*, so that a little more pollution may produce a profound change, like the last step before falling off a cliff. And many new problems also occur on different *time scales*, whereby the problems are evolving rapidly or with major time-lags vis-à-vis our attempts to fashion effective governance responses. Finally, many of the global problems, and the links among them, represent new degrees of *complexity and uncertainty*, which require new tools, such as complex systems science, to understand, avoid, and mitigate. As such, they present new and complex issues in terms of how we design and implement our responses, including those involving governance and law. They have raised the stakes and will require new and more sophisticated efforts of management, and new ways of seeing and evaluating problems.

Increasingly, the challenges of sustainable development, including key environmental problems, are being seen as the result of the interaction between two linked complex systems: our social system and the Earth system. Social systems – the interplay of people and groups, up to and including the whole of humanity – now play a dominant role in changing the natural world. Too often we study these systems in isolation: the Earth system with the tools of the natural sciences, and social systems with the tools of the social sciences, including law, political science, sociology, anthropology, management, public administration, and so on. (A dramatic example involves the disconnect between economic models and ecological models regarding matters like climate change, the loss of biological diversity, and land-use practices.) These disciplines must be integrated more systematically through multidisciplinary approaches that bridge disciplines and scales, and blend theory and practice, if we are to understand these linked complex systems and, on the basis of this knowledge, to design more effective systems of governance to guide the interplay both within social systems and between social systems and the natural world.<sup>11</sup>

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<sup>11</sup> See e.g., L. H. Gunderson & C. S. Hollings, eds., *PANARCHY: UNDERSTANDING TRANSFORMATIONS IN HUMAN AND NATURAL SYSTEMS* (Island Press 2001) (The title *panarchy* is derived from *Pan*, the Greek god who was full of mischief, uncertainty, and fun, and *arch*, which is Greek for rule or ruler.) See also, R. M. Axelrod & M. D. Cohen, *HARNESSING COMPLEXITY: ORGANIZATIONAL IMPLICATIONS OF A SCIENTIFIC FRONTIER* (1999).



An essential part of this effort will be deepening our understanding of the role of governance systems in causing and confronting the challenges. *Governance* describes the systems available for guiding human society to achieve its common purposes, including sustainable development.<sup>12</sup> It includes the social institutions that resolve conflicts and facilitate cooperation, where *institutions* are defined as the “rules of the game” that define social practices, give us our roles, and guide us as we interact with others. Governance does not require material entities or organizations of the sort normally associated with governments and their public authorities, such as environmental agencies, which are better described as “players”. Governance can occur through other forms of social interaction involving a broader set of actors. Groups can provide *governance* without forming a *government*, as States do in the international community when they form international agreements. All forces that can influence human behavior are potential tools of governance.

Many examples of social order without government can be found in the case studies describing the successful management of local common resources.<sup>13</sup> In many cases, social order is based on a common set of social norms, which are beliefs and values that influence human behavior. They operate internally by creating a sense of obligation or aversion to a particular action. Violations of internal norms can cause feelings of shame or guilt, or, if the norm is adhered to, feelings of pride and increased self-esteem. Norms also can operate externally, by triggering social sanctions for behavior that violates norms or rewards for behavior that is consistent with them. Norms affect human behavior by influencing the choices made by the “quasi-rational” actor. The utility-maximizing equation changes when people incorporate the consequences of violating internal or external norms, which explains, at least in part, why they often follow the rules when it is not in their purely economic self-interest to do so. Norm research, including the behavioral economics work of Nobel Laureate Daniel Kahneman and Amos Tversky and many others,<sup>14</sup> provides new tools and insights into issues of compliance, in particular into the many less rational factors that influence the choice of whether to

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<sup>12</sup> See Oran Young, *COMPLIANCE & PUBLIC AUTHORITY* (1979), and other works by same including *INTERNATIONAL GOVERNANCE: PROTECTING THE ENVIRONMENT IN A STATELESS SOCIETY* (1994), *GLOBAL GOVERNANCE: DRAWING INSIGHTS FROM THE ENVIRONMENTAL EXPERIENCE*, ED. (2000), and *THE INSTITUTIONAL DIMENSIONS OF ENVIRONMENTAL CHANGE: FIT, INTERPLAY, AND SCALE* (2002).

<sup>13</sup> See, e.g., Robert C. Ellickson, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

<sup>14</sup> Daniel Kahneman, *Maps of Bounded Rationality: A Perspective on Intuitive Judgment and Choice*, Nobel Prize Lecture (8 December 2003), available at <http://nobelprize.org/economics/laureates/2002/kahnemann-lecture.pdf>.



comply, beyond the assumed calculus of the rational actor. Theories of social norms are part of broader efforts by scholars in fields of law and economics, sociology, and behavioral psychology, among others, to better understand human behavior and the influences of law.<sup>15</sup>

At the most basic level, governance is created as a result of individuals recognizing that they are interdependent; that the actions of one can affect the welfare of others. Growing interdependence can lead to conflict, when members of a society perceive that the efforts of some to achieve their goals will interfere with the efforts of others to achieve different goals. Left to their own devices in an interdependent world, actors frequently suffer joint losses as a result of conflict, or are unable to capture joint gains because of an inability to cooperate; this is the classic collective action problem. But interdependency also can be a basis for cooperation when group members perceive opportunities to improve the welfare of the group by coordinating their behavior.

Governance based on law, social norms, and other mechanisms for controlling human behavior forms the bedrock of civilization. It is an artifact of society and includes law, both formal and informal, as a central element, as well as government and the attendant organizations and political processes. It also includes other “rules of the game” established through family, education, culture, religion, and the many other institutions that shape our values and guide our behavior. Some mechanisms such as law are largely the formal product of conscious human design, while others such as the internalization of values and social norms, are less conscious.

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<sup>15</sup> See e.g., Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 910 (1996); Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. LEGAL STUD. 537, 540 (1998); Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1003 (1995); McAdams, *The Origins, Development, and Regulation of Norms*, 96 MICH. L. REV. 338 (1997); Kenneth G. Dau-Schmidt, *Economics and Sociology: The Prospects for an Interdisciplinary Discourse on Law*, 1997 WIS. L. REV. 389, 399; James S. Coleman, *FOUNDATIONS OF SOCIAL THEORY* (1990); Tom R. Tyler, *WHY PEOPLE OBEY THE LAW* (1990); Tom Tyler, *COOPERATION IN GROUPS: PROCEDURAL JUSTICE, SOCIAL IDENTITY, AND BEHAVIORAL ENGAGEMENT* (2000). Sunstein notes the close relationship between behavioral research and the apparently independent interest in regulation by social norms. Sunstein, *Behavioral Law and Economics: A Progress Report*, AMERICAN LAW AND ECONOMICS REV. VI N1/2 1999 (115-157) at n. 14. Social-practice models also are related. See e.g., Oran Young, *The Behavioral Effects of Environmental Regimes: Collective-Action vs. Social-Practice Models*, INTERNATIONAL ENVIRONMENTAL AGREEMENTS: POLITICS, LAW AND ECONOMICS 1, 9-29 (2001).



Viewed broadly, governance is a complex process with many interacting forces. Governments remain central, as does law. But because government is always constrained by budgets, it is important to find the path of least resistance to meet environmental and sustainable development goals. The broader set of social institutions can help do this, and governance can sometimes be provided at lower cost to governments. The question is not which is better—government or other governance mechanisms—but rather how the forces can work best together to achieve chosen goals. The “new institutionalism” and regime theory provide important frameworks, tools, and insights in this endeavour, and an increasing empirical database to test hypotheses.

To respond to the new and rapidly changing issues, governance systems must become more effective. In a world of increasing interdependence – among people and societies, and with nature – new approaches to governance must be developed at the local, national, regional, and global levels. Ensuring compliance with existing legal mechanisms also must play a central role. This requires strengthening the foundation of the rule of law and good governance, the many multilateral environmental agreements and the national legal systems that implement them, as well as other national laws. It also requires improving diagnostic tools to determine why people and firms are not complying with domestic laws, in an effort to tailor effective and efficient compliance responses, including capacity building strategies where non-compliance is based on lack of capacity, as it often is with weak States and small and medium-size enterprises. It requires, as well, strengthening the social norms that complement and underpin the law.

#### **IV. Good Governance and the Rule of Law**

Even as new governance approaches are being developed and new diagnostic tools designed, practical efforts are underway in international institutions and bilateral aid agencies to strengthen good governance and the rule of law for sustainable development and other purposes. The term *good governance* is given different meanings by different organizations, but is generally characterized as referring to openness, participation, accountability, predictability, and transparency. Good governance depends, in turn, on the *rule of law*, which is generally characterized as referring to States where conduct is governed by a set



of rules that are applied predictably, efficiently, and fairly by independent institutions to all members of society, including those who govern. Good governance and the rule of law are complemented and supported by corresponding social norms that guide and constrain the exercise of power,<sup>16</sup> as well as by more explicit norms including those that foster environmental commitment.<sup>17</sup>

UNDP refers to good governance as “not only ridding societies of corruption but also giving people the rights, the means, and the capacity to participate in the decisions that affect their lives and to hold their governments accountable for what they do. It means fair and just democratic governance.”<sup>18</sup> The European Commission recognizes five principles that underpin good governance: openness, participation, accountability, effectiveness, and coherence.<sup>19</sup> The OECD identifies a similar set of essential elements:

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<sup>16</sup> Amir N. Licht, Chanan Goldschmidt, and Shalom H. Schwartz, *Culture Rules: The Foundations of the Rule of Law and Other Norms of Governance*, (forthcoming 2005).

<sup>17</sup> Social norms play an important role in fostering a sense of commitment to environmental issues, even among people who would not consider themselves *environmentalists*. Environmental problems activate social norms when people believe that the environment is threatened, that their actions may help reduce that threat, and that they have an obligation to do so. How the environmental threats are framed is important in this process; threats must be portrayed in a manner that either relates to preexisting norms, such as altruism, or that cultivates new norms, which can be general, such as environmental consciousness, or specific, such as the belief that toxic waste spills should always be cleaned up. Norms tend to be strong predictors of consumer behavior and willingness to sacrifice for environmental goals, including accepting a lower standard of living or paying higher taxes. Norms research thus has implications for compliance work: they can be developed and activated in individuals who manage firms to improve their willingness to take environmental regulations seriously, and they can be developed and activated among citizens to demand political action, support NGOs, and serve as surrogate enforcers through citizen suits. See Paul C. Stern, *et al.*, *A Value-Belief-Norm Theory of Support for Social Movements: The Case of Environmentalism*, HUMAN ECOLOGY REV. Vol. 6, No. 2, 1999, 81-97. See also, Michael P. Vandenberg, *Beyond Elegance: A Testable Typology of Social Norms in Corporate Environmental Compliance*, 22 STAN. ENVTL. L. J. 55 (2003), excerpted in Chapter 2: Compliance Theories. Both Licht, *et al.* and Vandenberg rely on the Schwartz Norm Activation Theory. See generally, Shalom H. Schwartz, *Normative Influences on Altruism*, in ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY, Volume 10, 221-279 (L. Berkowitz, Ed.).

<sup>18</sup> Georges Nzongola-Ntalaja, Director, Oslo Governance Center, *UNDP Role in Promoting Good Governance*, presentation at the Congress of the Labour Party of Norway, Oslo (9 November 2002) at 4-5, available at [www.undp.org/oslocentre/docsoslo/publications](http://www.undp.org/oslocentre/docsoslo/publications) (2002).

<sup>19</sup> Commission of the European Communities, *European Governance, A White Paper*, COM(2001) 428 final, available at [http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf).



- Openness, transparency and accountability;
- Fairness and equity in dealings with citizens;
- Efficient and effective services;
- Clear and transparent laws and regulations;
- Consistency and coherence in policy formation;
- Respect for the rule of law; and
- High standards of ethical behavior.<sup>20</sup>

Building good governance for sustainable development is a gradual process, involving changes to long-standing practices, entrenched interests, cultural habits, and social norms.

Good governance is more than a legal ideal and more than a development strategy. It also has been identified as a set of social norms comprising, among others, the rule of law, anti-corruption, and accountability.<sup>21</sup> These good governance norms constrain the exercise of power in the public sphere by limiting the power of government, and in the private sphere by limiting market power and corporate control. These norms are concentrated in political institutions but also involve nongovernmental groups, including civil society, corporations and other businesses, and even capital markets.<sup>22</sup> They are most effective when they are consistent with a community's general cultural values, the implicitly or explicitly shared abstract ideas about what is good and what is bad about society.<sup>23</sup>

Good governance norms promote norms of law-abidingness, which like other norms, are activated when people become aware of the consequences of their actions on others and feel a sense of obligation to prevent those consequences. Enforcement and compliance efforts can activate norms when they alert individuals to the consequences of non-

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<sup>20</sup> OECD Ad Hoc Working Group, *supra* note 10, at 2.

<sup>21</sup> Licht, *supra* note 16 (mapping the compatibility of norms of governance—the rule of law, anti-corruption, and accountability—with various cultural paradigms). The authors explain that strong foundations of rule of law can affect per capita income, infant mortality, and literacy, noting studies that have found positive associations between societies that adhere to the rule of law and economic productivity and growth, and links between corruption and negative economic performance and failed reform initiatives.

<sup>22</sup> *Id.*, citing Kofi Annan, *The Quiet Revolution*, 4 GLOBAL GOVERNANCE 123, (1998); The World Bank, *Governance: The World Bank's Experience* (1994); International Monetary Fund, *Declaration of Partnership for Sustainable Global Growth* (1996); Andrei Shleifer & Robert W. Vishny, *A Survey of Corporate Governance*, 52 J. FIN. 737 (1997); Luigi Zingales & Raghuram G. Rajan, *Power in a Theory of the Firm*, 113 Q. J. Econ. 387 (1998). See also Oran R. Young, GOVERNANCE IN WORLD AFFAIRS (1999).

<sup>23</sup> *Id.*, citing Robin M. Williams, AMERICAN SOCIETY: A SOCIOLOGICAL INTERPRETATION (3rd ed. 1970).



compliance and highlight the individual's responsibility to prevent those consequences. Consequently, law enforcement actions or compliance assistance programs can increase not only the attention an individual pays to a norm but also the amount of influence norm activation has on that individual's behavior.<sup>24</sup>

As well as aligning with appropriate norms, a prerequisite for institutions to achieve the characteristics of good governance is that they be based on the rule of law. Aristotle described the rule of law as "preferable to that of any individual" and went so far as to note that having "men govern" is like adding "a wild animal also; for appetite is like a wild animal, and also passion warps the rule even of the best men."<sup>25</sup> For Aristotle, law was "nothing less than the rule of reason."<sup>26</sup> James Harrington wrote in the seventeenth century that a society should be "an empire of laws, and not of men."<sup>27</sup> In 1803, U.S. Supreme Court Chief Justice Marshall wrote in *Marbury v. Madison* that the "government of the United States has been emphatically termed a government of laws, and not of men."<sup>28</sup> A.V. Dicey, a British legal theorist writing in the nineteenth century, described three "kindred conceptions" of the rule of law: that governments must adhere to the rules they make; that no one is exempt from those rules; and that the general rights of the constitution arise out of particular cases as decided by the courts.<sup>29</sup>

Today, a commitment to promote the rule of law is embodied in the *Millennium Declaration*, where member States agreed to "spare no effort

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<sup>24</sup> See Robert B. Cialdini, et al., *A Focus Theory of Normative Conduct: Recycling the Concept of Norms to Reduce Littering in Public Places*, 58 J. PERSONALITY & SOC. PSYCHOL. 1015, 1015 (1990) (explaining that influence of norms will vary according to the individual's focus on them.); P. Wesley Schultz, *Changing Behavior with Normative Feedback Interventions: A Field Experiment on Curbside Recycling*, 21 BASIC & APPLIED SOC. PSYCHOL. 25, 26 (1998) (commenting that "feedback" can draw attention to internal and external norms.).

<sup>25</sup> Aristotle, *POLITICS* 265 (H. Rackham trans., 1944).

<sup>26</sup> Eric W. Orts, *The Rule of Law in China*, 34 VAND. J. TRANSNAT'L L. 43, 77 (2001), citing Richard Flathman, *Liberalism and the Suspect Enterprise of Political Institutionalization: The Case of the Rule of Law*, in *THE RULE OF LAW* 297, 302 (Ian Shapiro, ed., 1994) (quoting Aristotle). See also Judith N. Shklar, *POLITICAL THEORY AND THE RULE OF LAW*, in *THE RULE OF LAW: IDEAL OR IDEOLOGY* 1, 1 (Allan C. Hutchinson & Patrick Monahan eds., 1987).

<sup>27</sup> Ernst-Ulrich Petersmann, *How to Promote the International Rule of Law? Contributions by the World Trade Organization Appellate Review System*, 1 J. INT'L. ECON. LAW. 25 (1998).

<sup>28</sup> *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

<sup>29</sup> David Schneiderman, *A. V. Dicey, Lord Watson, and the Law of the Canadian Constitution in the Late Nineteenth Century*, 16 LAW & HIST. REV. 495, 508 (1998), citing Albert Venn Dicey, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION*, 3d ed. (London: Macmillan, 1889) 175-84.



to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.”<sup>30</sup> Accepted and promoted by many international organizations, the rule of law is generally defined to include independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all its citizens. The World Bank identifies transparent legislation, fair laws, predictable enforcement, and an accountable and legitimate government that maintains order, promotes private sector growth, and fights poverty as the key elements of the rule of law.<sup>31</sup> The European Commission describes the rule of law as having the following characteristics:

- A legislature that enacts laws that respect the constitution and human rights;
- An independent judiciary;
- Effective, independent, and accessible legal services;
- A legal system guaranteeing equality before the law;
- A prison system respecting the human person;
- A police force at the service of the law;
- An effective executive that is capable of enforcing the law and establishing the social and economic conditions necessary for life in society, and that is itself subject to the law; and
- A military that operates under civilian control within the limits of the constitution.<sup>32</sup>

As with good governance, some researchers have identified the rule of law as a social norm,<sup>33</sup> which describes the degree to which law guides

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<sup>30</sup> *United Nations Millennium Declaration*, Res. 55/2, Sept. 8, 2000, available at <http://www.un.org/millennium/declaration/ares552e.pdf>

<sup>31</sup> The World Bank, *Initiatives in Legal and Judicial Reform 3* (2004).

<sup>32</sup> *Draft Handbook on Promoting Good Governance in EC Development and Co-operation*, 57, available at [http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/themes-gg-handbook\\_en.pdf](http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/themes-gg-handbook_en.pdf). For the Inter-American Development Bank, see Christina Biebesheimer and J. Mark Payne, *IDB Experience in Justice Reform Lessons Learned and Elements for Policy Formulation 4*, available at <http://www.iadb.org/sds/doc/sgc-IDBExperiences-E.pdf> (2001). According to the Bank, “If the justice system is to function adequately, judges, prosecutors, police, prison officials, legal aid attorneys, ombudsmen, rehabilitation officers, civil society organizations that provide alternative dispute resolution or victim assistance, and the private bar—all must be able to carry out their portion of the administration of justice.” *Id.* For the OECD, see *OECD Ad Hoc Working Group supra* note 10.

<sup>33</sup> Licht, *supra* note 16, for information in this paragraph. See also, Vandenberg, *supra* n. 17 (describing the norm of law compliance in an environmental context, and referring to strong, intermediate, and weak forms of the norm).



the behaviour of individuals, groups and governments. Cultures that value obedience and honouring of elders may, generally speaking, prefer non-legal sources for guidance and resist the application of new social norms underpinning the rule of law. Other cultures, by contrast, may embody norms that are more receptive to the rule of law, including those relating to protection of basic property and contractual rights as well as civil rights such as due process, equal protection, and freedom of speech. Social norms can, for example, be a major determinant of the extent of corruption in society. Where norms of law-abidingness are strong, corruption is likely on balance to be lower than where norms of law-abidingness are weak. Social norms that condone corruption, in turn, undermine the rule of law by promoting disrespect for the law, and weakening law enforcement and other compliance efforts. Social values and norms that complement and support the rule of law must be considered as part of any effort to promote good governance and rule of law.

## **V. Compliance Is an Indivisible Part of the Rule of Law**

Compliance is an indivisible part of the rule of law. The eminent jurist Lon Fuller described eight essential elements of the rule of law: “that law be general in its application; that it be public; that it operate prospectively; that it have reasonable clarity; that it be internally consistent; that it be practicable to comply with, that is, that there be a genuine congruence between the *ought* of law and the *can*; that it be relatively stable; and that there exist a congruency between the word of law and its enforcement.”<sup>34</sup>

Without compliance, the rule of law has no meaning.<sup>35</sup> The importance of compliance, rule of law, and good governance is nowhere more

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<sup>34</sup> Margaret Jane Radin, *Reconsidering the Rule of Law*, 69 B.U.L. REV. 781, 784-85 (1989), citing Lon L. Fuller, *THE MORALITY OF LAW* (rev. ed. 1969). Radin suggests that Fuller’s elements consist of two basic principles: “First, there must be rules; second, those rules must be capable of being followed.” She adds two additional elements: “it is clear that there must be a ninth and tenth requirement: (9) addressees of rules must be rational choosers; (10) addressees must be suitably motivated, perhaps by penal sanctions, perhaps by opportunities for reward.”

<sup>35</sup> See e.g., James Spigelman, Chief Justice of the Supreme Court of New South Wales, *Address at the ICAC-Interpol Conference*, Hong Kong (Jan. 22, 2003) (“Without a substantial level of enforcement, the rule of law is simply devoid of meaningful content.”), available at [http://www.lawlink.nsw.gov.au/sc%5Csc.nsf/pages/spigelman\\_300103](http://www.lawlink.nsw.gov.au/sc%5Csc.nsf/pages/spigelman_300103). See also Ernst-Ulrich Petersmann, *How to Promote the International Rule of Law?*, J. INT’L ECON. L. 1998 (25).



important than in the field of environment and sustainable development. In his eloquent Preface to this volume, UNEP Executive Director Toepfer stresses this point:

We all have a duty to do whatever we can to restore respect for the rule of law, which is the foundation for a fair and sustainable society.... Sustainable development cannot be achieved unless laws governing society, the economy, and our relationship with the Earth connect with our deepest values and are put into practice internationally and domestically. Law must be enforced and complied with by all of society, and all of society must share this obligation.

These and other affirmations by the international community, international organizations, and donor agencies support the indivisible nature of compliance and the rule of law; they also support the central role these concepts play in good governance and sustainable development.<sup>36</sup> The presence of all three does not in itself ensure that society is well run nor does it guarantee sustainable development. However, their absence severely limits that possibility and can, at worst, impede it. Without the rule of law and compliance to promote social stability and legal certainty, firms are less willing to make the investments and assume the risk that form the basis of market economy development.<sup>37</sup> Furthermore, lack of compliance with the rule of law encourages high rates of corruption, with further devastating consequences on the confidence of economic actors.<sup>38</sup> This lack of investment, in turn, can slow economic growth and deprive governments of resources needed to invest in education, social safety nets, and sound

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<sup>36</sup> See, e.g., *Johannesburg Principles on the Role of Law and Sustainable Development* (2002), available at [http://www.inece.org/wssd\\_principles.html](http://www.inece.org/wssd_principles.html) (affirming "that an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law" and that "there is an urgent need to strengthen the capacity of judges, prosecutors, legislators and persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law"). The Principles were adopted at the Global Judges Symposium held in Johannesburg, South Africa, on 18-20 August 2002, an event co-sponsored by INECE.

<sup>37</sup> Inter-American Development Bank, *Rule of Law*, available at [http://www.iadb.org/sds/SCS/site\\_2776\\_e.htm](http://www.iadb.org/sds/SCS/site_2776_e.htm). According to studies undertaken for the World Bank among global investors, the predictability of judicial enforcement is the most robust predictor of economic growth. See Spigelman, *supra* note 35; Thomas Carothers, *The Rule of Law Revival*, 77 FOREIGN AFFAIRS, 95, 97 (1998).

<sup>38</sup> Inter-American Development Bank, *Rule of Law*, *supra* note 37.



environmental management, all of which are critical for sustainable development.<sup>39</sup>

## VI. Making Compliance a Priority for Sustainable Development

The efforts of various governments and institutions, including those mentioned above, are helping advance the rule of law and good governance. However, these efforts must be further strengthened by increasing the focus on compliance and enforcement. The need to strengthen enforcement and compliance has received some attention at international meetings, but more is required to convert words into action.<sup>40</sup> Many States still lack a sound foundation for the rule of law, and many judicial and legal systems still function poorly. Despite a growing body of environmental law both at the national and international levels, environmental quality and some other important social indicators have been declining around the world. One reason for these trends is the inadequate investment in assuring effective compliance and enforcement, at both the national and international levels. International and national donor agencies should expand their efforts on good governance and rule of law to include an explicit focus on compliance and enforcement.

While the challenges across these levels differ, some notable commonalities exist. Among other things, enhancing compliance requires:

***Strengthening the empirical foundations of compliance.*** Effective policies, including those relating to compliance, must be based on a sound empirical foundation. More empirical research is required about the behavior of different actors – states, firms and individuals – in different circumstances. It has been said of compliance at the national level that, “20 percent of the regulated population will automatically comply with any regulation, 5 percent will attempt to evade it, and the remaining 75 percent will comply as long as they think that the 5 percent will be caught and punished.”<sup>41</sup>

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<sup>39</sup> See, OECD, Policy Brief, *Working Together Towards Sustainable Development: The OECD Experience*, 5-6 (July 2002); *Draft Handbook on Promoting Good Governance*, *supra* note 32 at 5.

<sup>40</sup> For example, the participants of the Rio Earth Summit in 1992 recognized this necessity in Chapter 8.21 of AGENDA 21, which established an international mandate to build compliance and enforcement capacity as an essential element of environmental management. Agenda 21, UN Doc. A/CONF.151/4 (1992).

<sup>41</sup> Chester Bowles, PROMISES TO KEEP: MY YEARS IN PUBLIC SERVICE, 1941-1969, 25 (1971).



Understanding the spectrum of actors in practice, and how to change their behavior, is a key task in conducting empirical research and in enhancing compliance. Public agencies and researchers have begun collecting empirical data to analyze the effectiveness of different policies and strategies in inducing compliance with various environmental regulations. An example is the International Regimes Database, which provides a rich set of empirical data on 23 MEAs.<sup>42</sup> Indicators provide another method of gathering and displaying information about complex phenomena in a coherent way. INECE is developing Environmental Compliance and Enforcement Indicators with several States including Costa Rica and Brazil.<sup>43</sup> However, the empirical literature is still sparse, due to the difficulty of obtaining reliable empirical information about the compliance of particular regulated entities. There is further need for well-functioning, reliable, and comprehensive data gathering systems. NGOs and various international networks, including INECE, can play an important role in gathering and validating information for such systems.<sup>44</sup>

**Applying new analytical tools.** New analytic techniques need to be applied to problems of compliance, including systems approaches, simulation and modelling techniques, configurational comparisons and meta-analyses, case studies, counterfactuals and narratives, and structured stakeholder interviews, all of which provide a toolkit for understanding the broader human-environment interactions.

**Strengthening the theoretical foundations of compliance.** Empirical data is interpreted and given meaning through theories, and theories generate testable hypotheses. Theories about compliance provide accounts of why different actors comply or do not comply with international and domestic laws. Some theories assume that actors decide to comply or not to comply based on rational evaluations of the logical consequences of their actions vis-à-vis the rules, in order to maximize payoffs (often referred to as a “logic of consequences” or collective-action approach). Other theories examine a wider range of factors shaping behavior, including whether behavior is appropriate vis-à-vis underlying norms (often referred to as a “logic

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<sup>42</sup> A description of initial results from the database is excerpted in Chapter Three: Multilateral Environmental Agreements in Action.

<sup>43</sup> The INECE ECE Indicator project is described in Chapter Eleven: Indicators for Measuring Compliance.

<sup>44</sup> See Morita & Zaelke, *A Review of Empirical Studies on Environmental Compliance*, INECE 7<sup>th</sup> CONFERENCE PROCEEDINGS (forthcoming 2005).



of appropriateness” or social-practice approach).<sup>45</sup> To be effective, policymakers must understand the various theories and when they will be useful, make their own theoretical assumptions explicit, measure these assumptions against the evolving empirical results to ensure they are sound, and make adjustments as required.

**Diagnosing specific problems.** Reliable empirical data and sound theory can help diagnose underlying problems of non-compliance accurately. Why are some problems harder to address than others? What specifically is the source of non-compliance? Given the limited and fixed budgets of most enforcement and compliance agencies, they need to find the most cost effective means to ensure compliance.<sup>46</sup> Agencies generally consider what is feasible, what is most important, and what presents the greatest risk, and then focus on the problems that cause the most severe environmental or public health damages. New tools are being developed to help diagnose compliance problems, although further efforts are required in many countries to develop effective diagnostic tools to promote compliance.

**Understanding and empowering key actors.** When diagnosing problems, policymakers at all levels should take an expansive system-wide view of the actors in the universe they are attempting to regulate. Several of the more recent theories of compliance tend to recognize that States and firms are not unitary actors, but rather are made up of numerous entities and are influenced by various forces that all contribute to compliance behavior. Actors such as scientists, the media, NGOs, and financial institutions, in addition to the individuals and departments that comprise States and firms, all have important roles to play in promoting compliance, the rule of law, and sustainable development. Policymakers should consider how these actors could

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<sup>45</sup> For more on the theoretical foundations of compliance, see Chapter Two: Compliance Theories.

<sup>46</sup> See Oran Young, COMPLIANCE & PUBLIC AUTHORITY, 112 (1979) (suggesting that it is useful to recognize that public officials generally will approach compliance issues as an investment problem, choosing how to invest their resources in various compliance mechanisms to obtain the best returns); see also INECE, PRINCIPLES OF ENVIRONMENTAL ENFORCEMENT, Chapter 10, at 6-7, available at <http://inece.org/enforcementprinciples.html>; and Sandra Rousseau & Stef Proost, *The Cost Effectiveness of Environmental Policy Instruments in the Presence of Imperfect Compliance*, working paper series # 2002-04 (2002), available at <http://www.econ.kuleuven.ac.be/ew/academic/energml/downloads/ete-wp02-04.pdf> (studying the impacts of various costs on the choice of environmental policy instruments. The paper analyzes the administrative, implementation, enforcement and monitoring costs of different combinations of regulatory instruments (such as taxes and standards) and enforcement instruments (such as criminal and administrative fines)).



best be empowered, in order to most efficiently and effectively generate the desired behavioral changes in the regulated community.

***Strengthening the role of civil society.*** Enhancing compliance requires tools that empower citizens to participate in governance, including through access to justice, with opportunities to apply pressure on and through the judicial and legal systems. The international community is moving in this direction. The Aarhus Convention guarantees the rights of access to information, public participation in decision-making, and access to justice in environmental matters.<sup>47</sup> These rights empower citizens to ensure that environmental laws are properly enforced and complied with, as well as foster norms that complement and support the rule of law and good governance.

***Building capacity of regulators and those they regulate.*** Strengthening efforts to build capacity is essential, to enhance both the ability of those in the regulated community to comply and the knowledge and capability of those seeking to secure compliance – judges, policymakers, and other governmental officials. To this end, organizations such as UNEP, the Global Environment Facility, and the United Nations Economic Council for Europe have produced guidelines to facilitate implementation and compliance with Multilateral Environmental Agreements (MEAs).<sup>48</sup> It is important for policymakers and regulators to complement a deterrence-based framework with appropriate compliance assistance and capacity building needed to achieve compliance and sustainable development. Successful models exist at the international level (the Montreal Protocol), and at the regional level (the European Union accession process). The World Bank has just launched a new country systems strategy that may become another model.<sup>49</sup> The problem of weak States requires special attention.

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<sup>47</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, available at <http://www.unece.org/env/pp/treatytext.htm>. The Convention came into force on October 31, 2001 and has been ratified thus far by 33 countries.

<sup>48</sup> The UNEP Guidelines are excerpted in Chapter Three: Multilateral Environmental Agreements in Action.

<sup>49</sup> *Issues in Using Country Systems in Bank Operations*, Operations Policy and Country Services (October 8, 2004). The World Bank approved the new strategy 21 March 2005, and will start with pilot studies in 14 countries to test the use of country legal systems, including environmental law systems, for development projects. After an equivalency determination by the Bank, it will use the borrowing country's legal systems in lieu of the Bank's environmental safeguard policies. A key goal is to strengthen country legal capacity in environmental law and other fields.



***Building political will and expanding funding.*** It is increasingly recognized that the fundamental changes needed to promote the rule of law and sustainable development require the support and commitment of the key decision-makers within the system – whether in government or civil society – and this core group needs to be given enabling assistance to help build the essential internal political will these reforms require. Donor assistance is critical, but so is the will to reform, which must be fostered from within.

***Strengthening the norms that complement and support compliance and rule of law.*** Efforts to strengthen compliance and the rule of law must be complemented by broader efforts to replace cultures of non-compliance and corruption with cultures of compliance. Institutions built on cultures of non-compliance, like buildings erected on sand, are likely to founder. Consequently, additional efforts must be made to promote social norms that complement and support the rule of law and that support legal and judicial reform. This includes general norms such as the norms of good governance; rule of law; and compliance, obedience, and law-abidingness. More specific environmental norms also should be considered.

With better coordination and increased support, all of these efforts – those addressing broad issues of the rule of law and good governance, those specifically promoting compliance and enforcement, and those supporting the analysis and collection of empirical data – will help expedite progress towards sustainable development.

But to succeed it is necessary to give higher priority to compliance and enforcement on the international agenda. “What reason demands” is that we improve the way law works for sustainable development, by strengthening our laws and by ensuring compliance. The challenge is difficult, but we *can* succeed. The only question is what consequences we will suffer before we find sufficient political will and leadership to undertake the serious effort that is needed.