



## **Minutes Workshop Soil Protocol Workshop**

Place: IASS Potsdam

Date: Thursday 6<sup>th</sup> and Friday 7<sup>th</sup> June 2013

Time: 11:00-18:00hrs and 10:00-16:00hrs

Participants: Pamela Aracena (IASS), Ben Boer (IUCN), Knut Ehlers (UBA), Harald Ginzky (UBA), Ian Hannam (IUCN), Irene Heuser (IUCN), Ivonne Lobos Alva (IASS), Geertrui Louwagie (EEA), Luca Montanarella (EC), Alexander Müller (FAO/IASS), Vanesa Reinfelder (IASS), Lindsay Stringer (Sustainability Research Institute), Bernhard Vanheusden (University Belgium), Patrick Wegerdt (EC), Jes Weigelt (IASS), Michael Windfuhr (German Institute for Human Rights); and Sergio Zelaya (UNCCD)

### **BACKGROUND**

The European Commission, the German Federal Environmental Agency, and the Institute for Advanced Sustainability Studies hosted a 2-day Workshop called: Soil Protocol, which took place on June 6-7, 2013 in Potsdam, Germany. The objective of the workshop was to discuss legal aspects of a legally binding instrument in the field of global soil policy. Additionally, a proposal for a dialogue session at the second Global Soil Week (27-31 October 2013) was to be developed at the Workshop.

### **CONSIDERATIONS**

Topic 1: **Objective of the workshop**

A first presentation outlined initial considerations on the objective of the workshop. These included:

- Discussion of legal aspects of soil policy
- Provide legal expertise
- Considering policy and science aspects

It was agreed by the group to prepare an outcome paper based on this workshop to be further worked on via email communications. It was agreed by the group that the title "Soil

Protocol workshop" indicates a legally binding instrument. The title should not be misunderstood as favoring any particular international legal regime.

Topic 2: **SDGs and Post-2015 Development Agenda Process and Land Degradation Neutrality in the context of Sustainable Development**

Two presentations were made to provide an overview of the international process surrounding the commitment to achieve a land degradation neutral world made at Rio+20 and to give an update on the workshop on developing global targets and indicators for soils and land that took place on June 4-5 in Potsdam. The first presentation provided an overview of the global process that is underway to develop a coherent development agenda framework for 2015 which includes the development of a set of Sustainable Development Goals (SDGs). The SDGs are to build on the success of the MDGs by staying reduced in number, being easy to communicate, promote a people-centered development and deal with the world's priority issues. The SDGs must integrate the three pillars of sustainable development: Economic, Social and Environmental. A country case study conducted by IASS in collaboration with the GIZ on Guatemala and the Sustainable Development Goals with a focus on land and soils showed the importance of public participation and the need to go beyond 'traditional' land degradation indicators and address socio-economic aspects (i.e. food security, access to land and land tenure).

The second presentation covered the need for clear indicators that are measurable and that allow for actions on both sides of the land degradation neutrality concept (i.e. minimizing degradation and increasing rehabilitation). At Rio+20, world leaders recognized the global importance of soils in the outcome document "The Future We Want". Furthermore, several countries and country groups are asking for a SDG or target that deals with sustainable land use for all and by all, more specifically at the Open Working Group Meeting on "Food security and nutrition, sustainable agriculture, desertification, land degradation and drought". Some of these proposals are more ambitious than others. The presentation posed questions referring to the level (i.e. global, regional or national) and timeline (e.g. by 2030) of achieving a land degradation neutral world as well as to indicators in order to measure land degradation neutrality.

The participants recognized the importance of linking the work of this group on a global instrument for soils to current international processes concerning the land degradation neutrality concept.

Topic 3: **Scope and Objectives of a Soil Instrument**

A presentation discussed the potential scope and objective of an international instrument for soils. The first objective would be achieving a Land Degradation Neutral World. The second objective would be the “Sustainable use and management of soils and their functions”. The first objective was seen as essential due to its current prominence in international fora. The focus on soil functions was considered important as to underline the reason why soil is so important for sustainable development. The Protocol on the Implementation of the Alpine Convention of 1991 in the Field of Soil Conservation, which has as its objective “safeguarding the multifunctional role of soil based on the concept of sustainable development,” was discussed as an example of a legally binding instrument on soil and indicates the type of elements that could be included in a global instrument. In relation to a global soil instrument, the participants considered that its scope should not strictly be limited to soils but it could include a broader reference to land and in consideration of water, soil and vegetation. The participants also agreed to include in the scope the aspect of restoration as part of Land Degradation Neutrality as this would allow linking this work to the SDG process. The group also discussed the need to include rights and access to land in the scope of the global instrument. Moreover, the group favored simplicity and flexibility for this new instrument in order to avoid lengthy negotiations. The importance of controllability (to check compliance) was also mentioned. However, as to what exactly should be included in the definition of land was not agreed upon.

One participant mentioned that an international instrument for soils could guide the development of national policies. This is important since not many countries have regulatory frameworks on SLM in place. Participants discussed the need to explore options for soil-related regulations, the need for a precautionary approach regarding soil protection and the potential for making use of experience and recommendations from national developments. The following issues were left open for consideration:

- Land and soil mostly privately owned. Does this have legal implications that limit the effect of conservation efforts?
- The amount of fertile land that needs to be maintained for food security. Do we need international binding law if SDG process is successful?
- What are the advantages of an internationally binding agreement?

#### Topic 4: **Legal Analysis of Options**

A presentation reviewed the legal options for a soil instrument. International treaties: UNCCD, UNFCCC, CBD, Alpine Convention. A process led, among others, by IUCN on legal and institutional frameworks for sustainable soils started about 10 years ago. The options reviewed by IUCN and others for an international framework for soil included a binding

standalone convention (treaty), a protocol to an existing convention, and a non-binding instrument.

An instrument for soils should contain the fundamental principles for security and sustainable use of soils. It should be considered to forge a link between a soils instrument and other international instruments – biodiversity and climate change. Moreover, it should motivate states to promote soil protection and to develop national soil policies.

The UNCCD was reviewed to define the most feasible option and it was agreed by the group that an Annex under UNCCD (according to Article 31 of the Convention) would be the most feasible and time-effective option as it wouldn't require an amendment to the Convention. A protocol under UNCCD, at this stage would appear to be less acceptable for UNCCD parties because such a protocol would probably require an amendment to the Convention first and involve extended negotiation.

It was also agreed by the group to ensure that the Annex proposal should focus on synergies and should not infringe on the scope of other instruments, and that it should reflect the debate on the Post-2015 Development Agenda and the SDGs regarding soil/land resources.

#### Topic 5: **Institutional and political analysis of options**

A presentation covered the institutional and political options for a soils instrument. The legal aspects of a UNCCD Annex were discussed and the difference between a regional Annex and a non-regional Annex was noted. The group discussed who could present the idea of this Annex to the Convention and it was agreed that a north-south partnership would be the most strategic option. It was mentioned that the Republic of Korea could possibly support such an initiative and that they should decide which type of paper (input) they would like to receive from the Legal Experts group. Sergio Zelaya from UNCCD would contact them. A summary of this workshop should also be provided at the UNCCD meeting in Korea. A side event during the second week of UNCCD's COP was deemed desirable.

#### Topic 6: **Global Soil Week Proposal**

The group discussed the possibility to develop a proposal for the second Global Soil Week and considered proposing two dialogue sessions. One session would include high-level discussions on the political options for an instrument and a second session would discuss the legal and operational content of such instrument. The group agreed on a proposal presented by UBA for a session and decided to wait until a later stage to decide on the members of the

panel. UBA will submit the proposal to reserve a spot in the GSW program and then share the proposal with the group for discussion at a later stage.

Topic 7: **Social Implications of a Soils Instrument**

A presentation was made to discuss the linkages of the discussions to the process of the FAO "Voluntary Guidelines on the Responsible Governance of Tenure". This presentation showed the importance of a rights-based approach to land and summarized six main points:

1. Public Investment is needed in rural areas
2. Spatial Planning is a key for good policies for soil
3. Small Holder Agriculture and its importance needs to be reflected in a new instrument
4. Land use patterns and changes need to be tracked
5. Dispute settlement procedures should be in place to protect vulnerable groups
6. Land Degradation Neutrality (LDN) Needs to relate to the user of soil and land resources

The group considered the acquisition of additional support from civil society as well as farmers was crucial since there is a disconnection between soil issues talked at working groups and those groups dependent on the land.

Topic 8: **Legal Instruments for Sustainable Use and Protection of Soils and ZNLD**

The last presentation discussed legal instruments. Various types of principles were considered: Sustainable development, Precautionary, Preventive, Polluter pays, Source and High Level of Protection. The new instrument should preserve ecological functions as they have inherent value and needs to include traditional ecological knowledge (TEK). Possible categories were: Planning, Direct Behavior Control, Indirect Behavior Control, Company Organization and Private and Criminal Law. As a note it was mentioned that not all possible instruments would be suitable for international law. Moreover, the implementation and enforcement depend on the political and legal system in place.

Topic 9: **Next Steps**

The group will prepare an Issue Paper (3 pages) to be submitted to the UNCCD workshop in Korea on 26/27 of June 2013 and potentially to the UNCCD COP in Namibia in September. The main goal is to have a working group appointed at the COP to work on this topic. These topics will be further discussed at the second Global Soil Week in October 2013.

