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978-1-107-40621-6 - Iucn Academy of Environmental Law Research Studies: Compendium of Land Use Laws for Sustainable Development

Edited by John R. Nolon

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IUCN ACADEMY OF ENVIRONMENTAL LAW RESEARCH STUDIES

Compendium of Land Use Laws for Sustainable Development

This book collects land use laws from countries on each continent that attempt to achieve sustainable development. Since 1992, when one hundred seventy-two nations met in Rio de Janeiro, Brazil, and adopted a 300-page plan for sustainable development (Agenda 21), the need for effective legal reform has become more and more evident. In the laws collected in this volume, many adopted since 1992, the reader can witness the evolution of national legal systems as they respond to these powerful influences. These laws illuminate the great flexibility and power of the law as a vehicle for effecting needed change. Laws contained in this compendium are mechanisms competent to address these challenges; they provide strategies that are appropriate to the culture and place of their origin. This book provides evidence that laws and law reform are being used to create strategies that address the global need to effectively use and preserve land and its natural resources.

John R. Nolon received his JD degree from the University of Michigan Law School, where he was a member of the Barrister's Academic Honor Society. His undergraduate degree is from the University of Nebraska, where he was President of the Senior Honor Society. He has served as a consultant to President Carter's Council on Development Choices for the 1980s, President Clinton's Council on Sustainable Development, New York Governor George Pataki's Transition Team, and the statewide Quality Communities Advisory Board directed by Lieutenant Governor Mary Donohue. Professor Nolon has been appointed Visiting Professor of Environmental Law at the Yale School of Forestry and Environmental Studies and named the Director of the Joint Center of Land Use Studies formed by Yale and Pace Law School. He served on the Editorial Advisory Board of the *National Housing and Development Reporter* and is a member of the Editorial Board of *The Land Use and Environmental Law Review*, published by Thompson-West. He has worked extensively on sustainable development in South America as a Fulbright scholar.

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IUCN ACADEMY OF ENVIRONMENTAL LAW RESEARCH STUDIES

Compendium of Land Use Laws for Sustainable Development

Edited by

JOHN R. NOLON

Pace University School of Law



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Introduction

1. OVERVIEW

This compendium collects land use laws from countries on each continent that attempt to achieve sustainable development; it accompanies the publication of *Comparative Land Use Laws: Achieving Sustainable Development*, which contains the papers delivered at the Second Annual Colloquium of the Academy of International Environmental Law, sponsored by the International Union for the Conservation of Nature and Natural Resources (IUCN) and conducted in Nairobi, Kenya.¹ These books provide evidence that laws and law reform are being used to create strategies that address a worldwide priority: the clear need to effectively use and preserve the land and its natural resources.

The Johannesburg Declaration on Sustainable Development set the stage for these books:²

Thirty years ago, in Stockholm, we agreed on the urgent need to respond to the problem of environmental deterioration. Ten years ago, at the United Nations Conference on Environment and Development, held in Rio de Janeiro, we agreed that the protection of the environment and social and economic development are fundamental to sustainable development, based on the Rio Principles. To achieve such development, we adopted the global programme entitled Agenda 21 and the Rio Declaration on Environment and Development, to which we reaffirm our commitment. The Rio Conference was a significant milestone that set a new agenda for sustainable development.

The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life.

We are determined to ensure that our rich diversity, which is our collective strength, will be used for constructive partnership for change and for the achievement of the common goal of sustainable development.

The Johannesburg Declaration on Sustainable Development was signed in 2002 and was a response to startling evidence that the long-term trends in land use demand world attention.

¹ For a description of the relevance of land use law to environmental protection in the United States, see John Turner and Jason Rylander, "Land Use: The Forgotten Agenda," in M. Chertow and D. Esty (eds.), *Thinking Ecologically* (Yale, 1997) at 61: "Land use is the forgotten agenda of the environmental movement. In the past twenty-five years, the nation's many environmental laws addressed one problem at a time – air or water pollution, endangered species, waste disposal – and they have done it primarily through prohibitive policies that restrict private behavior. Although their achievements have been significant, such policies seem to offer diminishing returns. Environmental progress in the next generation will increasingly depend on stemming the environmental costs of current land use patterns."

² Adopted at the seventeenth plenary meeting of the World Summit on Sustainable Development, September 4, 2002. U.N. Doc. A/CONF. 199/20 (2002).

The United Nations’ Millennium Ecosystem Assessment (March 2005),³ for example, reports that

- the function of the world’s ecosystems changed more rapidly in the second half of the twentieth century than in previous recorded history;
- more land was converted from its natural state to cultivation in the thirty years after 1950 than between 1700 and 1850;
- water withdrawals from rivers and lakes doubled since 1960;
- the number of species is declining (up to 30 percent of mammal, bird, and amphibian species are currently threatened, particularly in freshwater ecosystems);
- some 1.1 billion people lack access to improved water supply;
- more than 2.6 billion people lack access to improved sanitation;
- since 1960, the ratio of water use to accessible supply has grown by 20 percent per decade;
- approximately 1.7 million people die annually as a result of inadequate water, sanitation, and hygiene; and
- much of this adverse impact is the direct result of demands made by increasing global populations and the land development – urbanization – needed to serve them.⁴

In an effort to direct world leaders’ attention to solutions to these alarming facts, the Millennium Assessment points out that a number of institutional changes may have to be made. These include changes in institutional and environmental governance frameworks, addressing ecosystem management issues within broader development planning frameworks,⁵ increased coordination between environmental agreements and economic and social institutions,⁶ and increased transparency of government and private sector performance regarding policies that impact ecosystems, including greater involvement of concerned stakeholders in decision making.⁷

One remarkable positive trend that accords with these Millennial recommendations is the increased participation of municipal governments and their citizens in decision making regarding sustainable land use patterns. Because local governments operate at ground level, they are

³ Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (Island Press/World Resources Institute, 2005) [hereinafter MEA] available at: <http://www.millenniumassessment.org/en/Products.Synthesis.aspx>.

⁴ “Nearly all our present and future environmental concerns ultimately return to questions of land use.” John F. Richards (ed.), *Land, Property, and the Environment* (Institute for Contemporary Studies, 2002) at 1.

⁵ “For example, the Poverty Reduction Strategies prepared by developing-country governments for the World Bank and other institutions strongly shape national development priorities, but in general these have not taken into account the importance of ecosystems to improving the basic human capabilities of the poorest.” MEA, *supra*note 3 at 20.

⁶ “International agreements are indispensable for addressing ecosystem-related concerns that span national boundaries, but numerous obstacles weaken their current effectiveness. Steps are now being taken to increase the coordination among these mechanisms, and this could help to broaden the focus of the array of instruments. However, coordination is also needed between the multilateral environmental agreements and more politically powerful international institutions, such as economic and trade agreements, to ensure that they are not acting at cross-purposes. And implementation of these agreements needs to be coordinated among relevant institutions and sectors at the national level.” *Id.*

⁷ “Laws, policies, institutions, and markets that have been shaped through public participation in decision-making are more likely to be effective and perceived as just. Stakeholder participation also contributes to the decision-making process because it allows a better understanding of impacts and vulnerability, the distribution of costs and benefits associated with trade-offs, and the identification of a broader range of response options that are available in a specific context. And stakeholder involvement and transparency of decision making can increase accountability and reduce corruption.” *Id.*

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both aware of and, often, motivated to rectify land use crises; their citizens are there to urge them into action. Their lack of capacity to deal effectively with such serious matters calls on provincial and national governments to help by providing technical assistance, data, financial resources, infrastructure, and development and conservation guidelines. Many of the laws in this compendium empower local governments to either act or show an awareness of their critical role in achieving sustainable development. The level of involvement of localities in sustainable development problem-solving has increased dramatically in recent years.⁸

In the laws collected in this volume, the reader can witness the evolution of national legal systems as they respond to the challenge of sustainable development. These laws range in aspiration, ambition, and complexity.

- Some of them simply initiate discussions to bring society to consensus that a formal strategy for proper land use is required.
- Others are aspirational in nature; they establish goals and objectives that reflect some consensus as to what should be accomplished.
- Still others are framework laws. They put in place agencies and strategies intended to address problems, assigning roles to various levels of government and their agencies, and explain how the roles of the public and private sector are coordinated.
- Other laws achieve success on the ground by providing economic incentives or establishing market-based mechanisms that change behaviors and improve land use practices.
- A final group of laws set land use standards and insist on compliance, employing penalties and other disincentives to achieve their goals.

Describing land use laws in this way illuminates the great flexibility and power of the law as a vehicle for change. Laws such as those contained in this compendium are mechanisms competent to address society's problems; they provide strategies that are appropriate to the culture and place of their origin. Some countries are not ready for command-and-control, standard-based legal regimes complemented with enforcement mechanisms. Each country that is ready to take action, however, can find appropriate legal strategies and fit them to its circumstances. The law provides them a ready solution, allowing lawmakers to, for example, conduct inventories of the land and its resources; create processes that promote dialogue and consensus; articulate that consensus in policy statements; identify and properly employ the relative competencies of various levels of governments and various sectors; create standards; and use incentives, markets, and law enforcement to accomplish them, or invent some combination of these.

Many of the compendium's laws were provided by the participants in the Second Annual Colloquium of the Academy of International Environmental Law, sponsored by the IUCN. At that forum, we issued a call for documents and many responded. Where they did not, students at Pace University School of Law filled the gaps, using their extraordinary research and Internet skills to comb the globe for evidence of legal strategies that respond to the Stockholm, Rio, and Johannesburg accords. This evidence of the world attempting to order itself in response to intense pressure on the land and its resources could not have been collected a decade, or, perhaps, even

⁸ Robert R. M. Verchick, "Lessons from the Johannesburg Summit," *Urban Lawyer*, 25, no. 3 (2003): 471–473: "... the initiatives of local government that followed the Rio summit make up 'perhaps the single most important' effort toward sustainable development. This assessment finds support in a 2001 survey showing that since Rio, 6,416 local authorities in 113 countries have become involved in so-called 'Local Agenda 21' activities. ... The number of local authorities involved in such activities has more than tripled in the last five years."

five years, ago. Advances in technology, research, and communication made this volume, and the analysis of its contents, possible.

The laws and materials presented in this compendium have been abridged and abstracted. To fit a large number of laws into a single volume, we had to cut material that was not essential to understanding what the law aspires to do and how it accomplishes its objectives. Where we could find sources for the full law, such as an Internet address, we have made that information available. We have not attempted to change the format or the language of the laws as we received them. Some of them were translated from their country’s native language and some of the translations are rough but readable.

The gathered evidence and analysis of lawmaking in the interest of sustainable development found in this book are just a beginning. We have assembled pieces of a complex puzzle and present to the reader and researcher a floating opera like those performed on riverboats navigating up and down short stretches of the Mississippi River during frontier days in the United States.⁹ The audience on the river’s edge caught glimpses of the developing plot. They could not quite understand it all, but they knew that the action was dramatic and their appetite to learn more was whetted. We hold the same hope for this volume.

2. HISTORICAL REVIEW

Land use planning and regulation are not new on the world stage. In the early Roman period, around 450 B.C., a commission was formed to draft legislation regulating private behavior and public affairs. The result was the Twelve Tables, which include the following site planning provisions: “Whoever sets a hedge around his land shall not exceed the boundary; in the case of a wall, he shall leave one foot; in the case of a house, two feet . . . If a well, a path, an olive or fig tree, nine feet.”¹⁰ The Statute of Winchester (1285) contained transportation planning and road regulation requiring specific road widths and the absence of trees, bushes, and vegetation “whereby a man may lurk to do hurt. . . .”¹¹ This same statute reflects an early instance of “cooperative federalism,” requiring the feudal lord to carry out the law’s demands, while giving the king prerogatives to assume duties neglected at the baronial level.

Although scholars disagree about how precisely ancient Mayan cities were organized, they do not debate that they were planned and followed a prescribed pattern or arrangement designed to meet that ancient society’s needs.¹² Many of the great cities founded in Latin America in the sixteenth century were developed following distinctly Spanish urban planning concepts. Under the Law of the Indies, decreed in 1572 by King Philip II, cities were laid out according to various guidelines that changed depending on the climate, geography, and characteristics of the place. Viceroyalty completed surveys akin to today’s environmental impact assessments and sent them to Spain, where planners determined which guidelines were to be followed in each location.

The Spanish founded new towns – *villas* – based on models in Spain, with space for homes, public buildings, and croplands. In Mexico, common lands, or *ejidos*, were used for grazing, wood, fuel, and other community purposes. In Argentina, rural land holdings and development were shaped by the Spanish plantation, or *hacienda*, system of landholding. The location, design, infrastructure, and commercial functions served by Argentine cities such as Buenos Aires, Mendoza, Córdoba, Santa Fe, Buenos Aires, Salta, Tucumán, La Rioja, Jujuy, and San Luis (all

⁹ John Barth, *The Floating Opera* (Appleton Century Crofts, 1956; revised 1967).
¹⁰ Richard Nice (ed.), *Treasury of Law* (Philosophical Library, 1964) at 71.
¹¹ The Statute of Winchester, 13 Edw. 1, Stat. 2 (1285).
¹² *New York Times*, Science Times, Dec. 19, 2000, at F1.

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created between 1536 and 1596) were determined by Spanish conquerors and bureaucrats who conducted land use planning and regulated how the land was developed.

The tradition of building regulation in common law countries was catalyzed by a crisis: the catastrophic fire of London in 1666. The Act for the Rebuilding of the City of London¹³ regulated the materials of buildings to be raised in the devastated center of London, with violators penalized by fines and subject to demolition orders. That act allowed the use of one of four types of buildings, prevented the construction of “irregular buildings,” empowered the common council to create an official street map, regulated building heights along certain streets, and prohibited “noisome trades” from locating in certain areas.

At the time of the formation of the American colonies, colonial charter companies and towns allocated private ownership of land to each founding family.¹⁴ These grants were often subject to land use restrictions, such as requiring buildings to be perpendicular to the street and not to exceed 35 feet in height. In this early period, land uses were regulated more by conditions imposed on the land titles conveyed by colonial authorities than by governmental regulation. Lands granted to founding families were eventually subdivided by inheritance and transfer, creating lots for private use: agricultural, commercial, and residential. Colonial settlements evolved into cities, townships, and counties that eventually achieved governmental status and the power to legislate.

These municipalities were regarded not as sovereign entities but as creatures of the state, authorized by state law to exercise a wide variety of powers affecting the health, safety, and welfare of their citizens. Most were deemed to have only those powers delegated by their state legislatures, and those additional powers fairly implied in that delegation. As early as 1787, the City of New York was granted power to enact laws directing private landowners to arrange buildings uniformly in certain neighborhoods.

An early land use planning act of the New York legislature, dated 1807, established a commission to lay out streets in the developing portions of New York City and to condemn title to land within established streets, to demolish buildings located on planned streets, and to compensate owners for the resulting damages.¹⁵ In 1784, the Connecticut assembly had granted some cities authority to adopt laws regulating the placement and construction of private buildings. Similar laws were adopted in Virginia and Georgia at about the same time. By the end of the eighteenth century, postcolonial landowners had grown accustomed to governmental regulation of building on the land in the interests of public health, safety, and even aesthetics.¹⁶

In the nineteenth and twentieth centuries, many Commonwealth countries and European nations adopted land use planning models that coordinated land use planning and regulation, particularly in cities. References to these efforts are found in the section on urban planning below. Early German law was highly protective of individual property rights. The Prussian Land Law of 1794 liberally authorized all property owners to build upon their property or alter any buildings they owned. In 1871, the law added setback requirements, and in 1876 building in certain undeveloped areas was limited.¹⁷ Illustrative of more modern approaches to land use control and environmental protection is Australia’s 1991 Land Act. It establishes a nationwide system of planning and development regulation that focuses on both development and environmental

¹³ 19 Car. 2, c.3 (1666).

¹⁴ See, generally, John F. Hart, “Land Use Law in the Early Republic and the Original Meaning of the Takings Clause,” *Zoning and Planning Law Handbook* (2000), Chapter 3; reprinted from 94 Nw. U. L. Rev. 1099.

¹⁵ “An Act Relative to Improvements, Touching the Laying Out of Streets and Roads in the City of New York, and for Other Purposes,” N.Y. Laws, c. 115 (1807).

¹⁶ *Id.*

¹⁷ Clifford Larsen, “What Should be the Leading Principles of Land Use Planning? German Perspective,” *Vanderbilt Journal of Transnational Law* 967 (1996) at 975.

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values, including the preservation of cultural heritage and requiring environmental assessments in advance of development.

The modern era of lawmaking to achieve sustainable development centers on the United Nations Conference on Environment and Development (UNCED) in 1992. One hundred seventy-two nations met that year in Rio de Janeiro, Brazil, for the Earth Summit, which was attended by nearly 100 heads of state. All the participating nations endorsed the Rio Declaration on Environment and Development and adopted Agenda 21, a 300-page plan for achieving sustainable development in the twenty-first century.¹⁸ The core of the declaration, and its twenty-seven principles, is a commitment to economic efficiency, environmental protection, and equity, the three pillars of sustainability. It contains an entitlement running to present and future populations: “Human beings . . . are entitled to a healthy and productive life in harmony with nature.”¹⁹

The Rio Declaration is a study of connectivity: the importance of concentrating on all relevant aspects of sustainable development in making policies and adopting laws that implement them. Principles 3 and 4 of the Declaration demonstrate this imperative:

Principle 3: The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

The eradication of poverty is an indispensable ingredient of sustainable development.²⁰ Environmental issues are to be addressed with the participation of concerned citizens who must have an opportunity to participate in the decision-making process and have full information on relevant matters that shall be broadly available. Effective access to judicial and administrative proceedings shall be provided.²¹

The Declaration recognizes the central place of law in achieving its aspirations. Constitutions and statutes create rights and policies, such as those articulated in the twenty-seven principles. The declaration refers to conforming national policies to “international consensus,” which is given effect by international laws: conventions and treaties. It refers to the creation and enforcement of environmental and development standards that, to be effective, must be found in law. It is the law enacted by national, state, and local governments that creates administrative and judicial processes, establishes access to them, and requires information to be available. Agenda 21 is even more explicit on the topic: “Laws and regulations suited to country-specific conditions are among the most important instruments for transforming environment and development policies into action.”²²

It is in Agenda 21, the report of the UN Commission on Environment and Development, that the relevance of land use law to achieving sustainable development is dramatically set forth. Agenda 21 is analogous to a comprehensive plan for the planet of the type adopted by nations, states, and local governments: a plan that defines where the community has come from, where it wishes to go, its demographic trends, how and where new populations will be settled and how they will be housed, new infrastructure and services needed (such as schools, parks, roads, water and sewer systems, and public buildings), and valuable natural and cultural resources that

¹⁸ Report of the United Nations Conference on Environment and Development, U.N. GAOR, 46th Sess., Annex II, Agenda Item 21, U.N. Doc. A/CONF. 151/26 (1992).

¹⁹ Rio Declaration, Principle 1.

²⁰ *Id.*, Principle 5.

²¹ *Id.*, Principle 11.

²² Agenda 21, *supra*note 18, §8.13.

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must be preserved. The functions of the UN and its affiliated institutions that provide technical assistance and financial assistance are similar, on the global scale, to the roles played by national and state governments in establishing priorities, articulating policies, involving stakeholders, defining their roles, and making resources available that are sufficient to realize the objectives of the comprehensive plan.

Agenda 21 establishes land use goals: encouraging sustainable human settlements and integrating environmental considerations into development decisions. Urban and regional planning and regulation are at the core of land use law and are the means by which governments influence the private sector to create human settlements. If current settlement patterns are not sustainable, law reform is called for. The *sine qua non* of land use regulation is to determine where development should go, how much of it – and what type of it – is needed, what interests should be served by it, and how affordable and environmentally friendly it should be. Land use regulations empower land use agencies to review development proposals and to approve them if they meet established standards such as energy conservation and site planning that ameliorate environmental damage on site, next door, down river, and to the landscape.

Agenda 21 is replete with references to matters attainable through land use planning and regulations. Section 7.5 refers to the provision of adequate shelter for all; promoting sustainable land use planning and management; promoting water, sanitation, drainage, and solid waste management; and ensuring sustainable construction industry activities. Section 7.3 contains a planning strategy; it adopts the “enabling approach” through which governmental resources (money, data, and technical assistance) are used to influence private behavior and leverage private investment. Section 7.18 posits that “intermediate cities” should be encouraged in rural areas as a means of relieving the devastating pressures of migration to megacities. The objective of section 7.28 is “to provide for the land requirements of human settlement development through environmentally sound physical planning and land use so as to ensure access to land to all households.” Section 7.68 aims to ensure that the construction industry builds and locates buildings so that they avoid “harmful side-effects on human health and on the biosphere.”

Evidence that the Rio accords (the Declaration and Agenda 21) are affecting lawmaking in other countries is found throughout this compendium. A constitutional amendment in Argentina in 1994, two years after the UN Conference on Environment and Development in Rio, recognizes the right of all citizens “to a healthy, balanced environment fit for human development and for productive activities which can satisfy present needs without compromising those of future generations.”²³ The Law of Social Development adopted by the Mexican Congress in 2004 covers most of the bases of sustainable development. It is an aspirational law, containing ambitious and comprehensive goals: promoting respect for natural resources, encouraging economic growth, addressing poverty through the distribution of resources, and creating educational and job opportunities. A quick glance at the table of contents of this volume reveals that many of the laws included were adopted after the Rio accords in 1992.

While the framers of the Rio Declaration and Agenda 21 built a three-legged stool (supported by equity, environmental quality, and economic efficiency), many of the laws contained in this compendium are works in progress, reflections that conditions are not yet ripe to fully comply with the vision. For example, where water shortages are extreme, a constitutional commitment to ensure adequate water supplies for all in the present generation – resting on the equity principle – can be understood as a needed response to a reigning crisis. It is good to regard it, however, as part of the sustainable development agenda – a reminder that there is more to be done.

²³ Const. Arg. Pt. I, art. 41.

3. "URBAN" PLANNING: SHAPING LAND USE PATTERNS

Many nations have adopted legal regimes for the purpose of creating and implementing city, town, and regional planning. Master plans, sometimes called comprehensive plans, can be local or regional in scope, consistent with or ignorant of regional plans and needs, and concern themselves with a truly impressive list of critical subjects that affect the public's well-being and private property rights:

City planning is a science and an art concerned primarily with the city's ever-changing pattern. As a pure science it examines causes (history, etiology) and reciprocal influences of man and environment, (urban geography and ecology). As applied science it synthesizes these findings with those of the economic, sociological, and political sciences, as well as the technological branches of statistics, civil and sanitary engineering, architecture, landscape architecture and other pertinent branches of human knowledge, in an attempt thoroughly to understand conditions and their contexts and trends. As an art it utilizes these materials, instructs or organizes citizens, molds events, and thwarts or guides trends to bring about the changes in city design which it contemplates.²⁴

"City planning," of course, is a misnomer. Land use planning laws and policies must concern themselves with the entire landscape comprising urban, suburban, exurban, and rural areas. What emerged as a body of law focused on human settlements in urban places has become the "law of the land" more comprehensively. From a global perspective, in fact, "land use planning" now reaches to include "ocean planning"; the relationship between land-based activities and the health of marine environments is clearly understood and must be similarly linked in law.

This point is easily illustrated. The UN Convention on the Law of the Sea has been ratified by one hundred forty-seven nations. In describing the need for this global convention to protect oceans, the UN points to the concerns of scientists that "the ocean's regenerative capacity will be overwhelmed by the amount of pollution it is subjected to by man."²⁵ The UN also notes that signs of catastrophic effects on oceans and marine life are clearly observable, particularly along heavily populated coasts. One of the major sources of pollution is, of course, land-based activities. The convention obliges signatory nations to protect the marine environment. Coastal nations are "empowered to enforce their national standards and anti-pollution measures within their territorial sea."²⁶

The UN describes this convention as "possibly the most significant legal instrument of this century." It declares that states have an obligation to protect the marine environment and calls on them to take all measures necessary to prevent marine pollution from any source. This, of course, requires states to adopt legislation to prevent the type of land-based pollution that can be so harmful to the marine environment, a process that implicates federal, state, and local law. The convention assumes that national governments have legal power to regulate land-based activities in coastal states. Legal competence regarding environmental and land use matters generally is assumed by other critical international agreements as well.²⁷ As a result the land use planning

²⁴ James Ford, *Slums and Housing* (Harvard, 1936) at 490.

²⁵ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 21 I.L.M. 1261 (entered into force Nov. 16, 1994), available at: <http://www.un.org/Depts/los/index.htm>; see also Oceans and Law of the Seas, Division for Ocean Affairs and the Law of the Sea, *The United Nations Convention on the Law of the Sea (a Historical Perspective)*, available at: http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Setting%20Limits.

²⁶ Oceans and Law of the Sea, *supra*note 25.

²⁷ Agenda 21, *supra*note 18: "Preamble: Humanity stands at a defining moment in history. We are confronted with . . . the continuing deterioration of the ecosystems on which we depend for our well being. However,

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regimes of nations, states, and municipal governments must be concerned with and collectively competent to control the use of all the planet’s resources: land, water, and air.

1. Brazil

Under Brazil’s Federal Constitution, the basis for urban development is the master plan. Master plans must be adopted by cities with populations greater than 20,000 and are optional for smaller cities.²⁸ The Constitution contains a novel requirement that urban property must serve a social function, which means that it is used as provided for in the city’s master plan.²⁹ The Constitution enables cities to compel the appropriate use of underused property through mechanisms such as compulsory subdivision, increased property taxes, and expropriation.³⁰

The federal statute that sets out the guiding principles of Brazil’s national urban policy – the Statute of the City³¹ – was enacted in 2001 to carry out the provisions of Articles 182 and 183 of the Federal Constitution.³² These articles put the formulation of urban policy squarely in the hands of municipalities and create a nexus between the proper “social” function of property and the municipal master plan. The statute’s goal is to regulate the use of urban property for the good of the community, to protect the safety and well-being of the citizens, and to achieve environmental equilibrium.³³ The statute’s guiding principles for national urban policy³⁴ include the following:

- A citizen’s right to sustainable cities;³⁵
- Public participation in the discussion and execution of plans, programs, and projects of urban development;³⁶
- City planning conducted to prevent distortions in urban growth and negative impacts on the environment;³⁷

integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can – in a global partnership for sustainable development.”

²⁸ C.F. art. 182, para. 1: “The master plan, approved by the City Council, which is compulsory for cities of over twenty thousand inhabitants, is the basic tool of the urban development and expansion policy.” The full text of the Brazilian Constitution is available, in English translation at http://www.oefre.unibe.ch/law/icl/br00000_.html.

²⁹ “Urban property performs its social function when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan.” *Id.* art. 182, para. 2. *See also* C.F. art. 5: “XXII. the right to own property is guaranteed; XXIII. ownership of property shall attend to its social function.”

³⁰ *Id.* art. 182, para. 4: “The Municipal Government may, by means of a specific law, in relation to areas included in the master plan, demand, according to federal law, that the owner of unbuilt, underused, or unused urban soil provide for adequate use thereof, subject, successively, to: I. compulsory subdivision or construction; II. rates of urban property and land tax that are progressive in time; III. expropriation with payment in public debt bonds issued with the prior approval of the Federal Senate, redeemable within up to ten years, in equal and successive annual installments, ensuring the real value of the compensation and legal interest.”

³¹ Law 10,257 of July 10, 2001 [hereinafter Statute of the City]. *See* UN-HABITAT, *The Statute of the City: New Tools for Assuring the Right to the City in Brazil* (2002), available at: http://www.polis.org.br/obras/arquivo_163.pdf.

³² Statute of the City, *supra*note 31, art. 1.

³³ *Id.*

³⁴ *Id.* art. 2, I to XVI.

³⁵ *Id.* art. 2, I.

³⁶ *Id.* art. 2, II.

³⁷ *Id.* art. 2, IV.

- Protection, preservation, and remediation of the natural and built environment;³⁸ and
- Participation of municipalities and the public in making decisions about development or activities with potential negative impacts on the natural and built environment.³⁹

2. China

The Environmental Protection Law of China, Chapter III, provides that “the targets and tasks for protecting and improving the environment shall be defined in urban planning.” The chapter requires that all levels of government establish measures to protect “regions representing various types of natural ecological systems, regions with a natural distribution of rare and endangered wild animals and plants, regions where major sources of water are conserved, geological structures of major scientific and cultural value, . . . Damage to the above shall be strictly forbidden.”

Planning in rural areas is provided for by this language: “The people’s governments at various levels shall provide better protection for the agricultural environment by preventing and controlling soil pollution, the desertification and alkalization of land, the impoverishment of soil, the deterioration of land into marshes, earth subsidence, the damage of vegetation, soil erosion, the drying up of sources of water, the extinction of species and the occurrence and development of other ecological imbalances, . . .”

3. Europe

In Europe, Sweden enacted an early comprehensive town planning law in 1874 that provided for some land use planning in all of its towns and cities.⁴⁰ In Germany, there is a strong tradition of comprehensive planning, directed from the top down, with plans at the state, regional, and local level, and with a tradition of self-government where local authorities adopt plans and zoning to control growth around preserved historic centers, with open space retained at the periphery. Early French city planning, which emphasized infrastructure development, particularly transportation planning, was conducted primarily at the national level until 1982, when the French parliament adopted a law that transferred significant land use planning and project approval authority to the country’s more than 35,000 municipalities.⁴¹

Although there are at least four distinct traditions in Europe – Germanic, Napoleonic, Scandinavian, and Eastern European⁴² – environmental standards and laws have become more homogeneous under the Single European Act, 1987, and the 1993 Treaty on European Union, Article 130.⁴³ The European Union’s European Spatial Development Perspective (ESDP) issued in 1999 is a voluntary strategic plan that guides national, regional, and local authorities in the EU regarding economic development, transportation, and cultural and natural heritage issues. Legal authority and regulatory power remain with the national governments participating in the EU.

³⁸ *Id.* art. 2, XII.

³⁹ *Id.* art. 2, XIII.

⁴⁰ See, generally, Patrick Abercrombie, “International Contributions to the Study of Town Planning and City Organization,” *Town Planning Review* 4, no. 2 (July 1913): 98–117.

⁴¹ Nicholas N. Patricios (ed.), *International Handbook on Land Use Planning* (Greenwood, 1986) at 283–294.

⁴² Peter Newman and Andy Thornley, *Urban Planning in Europe: International Competition, National Systems and Planning Projects* (Routledge, 1996).

⁴³ Thomas H. Reynolds and Aururo A. Flores, *Foreign Law, Current Sources of Codes and Legislation in Jurisdictions of the World* (William S. Hein, 1991); see also Gerd Winter, *European Environmental Law, A Comparative Perspective* (Dartmouth, 1996).

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4. Germany

When the Federal Republic of Germany was founded in 1949, there was no national understanding of the role of government in land use planning. The new constitution of the republic included a commitment to achieving “equivalent living conditions” throughout the country that required some national scheme for land use planning.⁴⁴ A federal law adopted in 1960 established procedures for adopting local building and zoning laws. In 1965, a much broader land use planning law was adopted that created a framework for ordering the roles and influences of the national, state, and local governments in land use planning and regulation.

The German Constitution gives the federal government certain areas of exclusive jurisdiction and establishes other areas where it enjoys concurrent jurisdiction with the states. Land use planning falls in this latter category. The federal framework law for land use planning allows the federal government to establish national standards and then requires states to adopt more detailed legislation implementing the national policies. The national law applies to all parts of the German Republic; targets economic, infrastructure, social, and cultural needs; and pursues the principles of environmental protection and equivalent living conditions for all people in the country. The law establishes a highly integrated process that coordinates federal, state, and local ministries; informs their respective planning processes; and requires land use activities to consider and respect conditions in neighboring jurisdictions.

Under this system, states must adopt land use plans that respect federal interests and identify specific areas where equivalent living conditions are not being maintained, including urban areas where environmental pollution, inadequate transportation, and problems of population concentration are improperly controlled. States are to identify planning regions and prepare regional plans. At the federal level, a system of central cities is created and towns and cities are typed based on the level of development that is to be concentrated in each category. These designations guide federal and state land use, environmental, and infrastructure planning.

5. Mexico

Mexican lawmakers and the nation’s executive have recently made a strong commitment to sustainable development in a country whose abundant resources are threatened on a variety of fronts, most notably by the migration of rural poor to metropolitan areas. Paragraph 3 of Article 27 of the Mexican Constitution grants Congress the power to adopt provisions for the development of human settlements and planning the growth of population centers.⁴⁵ The national administration adopted a plan committing the government to sustainable development while noting that “environmental protection and sustainable use of natural resources represent a social mandate and a government commitment. Likewise, sustainable development is a task that, besides government action, requires the commitment of all sectors of society.”⁴⁶ The National Development Plan emphasizes the importance of developing an integrated legal framework, promoting democratic processes of sustainable development and developing efficient governmental entities and strategies.⁴⁷ Among these strategies is the creation of an adequate land use plan that promotes social inclusivity, a sustainable environment, and economic efficiency.⁴⁸ A recently adopted national

⁴⁴ For authority regarding German land use planning law, see Larsen, *supra*note 17, at 981–1002.

⁴⁵ Mex. Const., art. 27, para. 3.

⁴⁶ SEMARNAT, National Program of Environmental and Natural Resources 2001–2006 (2001) (statement of President Vicente Fox).

⁴⁷ *Id.*

⁴⁸ National Development Plan of 2001–2006, *Diario Oficial de la Federacion* [D.O.] May 30, 2001, §5.3.4–5.3.5 (promoting and developing a general policy where all people are included through

statute, the Social Development Act, declares that Mexican citizens have a right to a healthy environment and focuses on parallel goals of improving social development and biodiversity protection.⁴⁹

6. United Kingdom and the Commonwealth

In England and Wales, a piecemeal process of town and country planning was enacted into law in 1909 and became more comprehensive and compulsory following the Second World War.⁵⁰ Under the 1947 Town and Country Planning Act, Parliament delegated planning authority to local governments with responsibility to control all land development, prepare a development plan for their jurisdictions, and establish redevelopment strategies for war-ravaged neighborhoods. The central government, under this act, retained the power to formally approve local development plans, following a public inquiry. A centralized process is established for hearing grievances regarding local development decisions.

British urban planning and redevelopment law affected national laws throughout the colonial world, including countries in Asia, Africa, and the Caribbean. The first notable influence was the Housing for the Working Classes Act of 1890, which influenced land use controls in Asia and Africa. Under this program, public entities were created by the state government to conduct planning at the municipal level. In India at the beginning of the twentieth century, laws based on the 1909 British town and country planning act were adopted. Town planning, following the British model, came to Africa as early as 1929 with the adoption of the Lagos Town Planning Ordinance, under which control was centralized rather than distributed to municipally elected authorities. In its earliest manifestations, planning bore the stamp of colonial control and helped create and perpetuate racial and social segregation.

Following the adoption of the Town and Country Planning Act in Britain in 1947, Britain's Colonial Office developed a model planning act, based in part on an ordinance adopted in 1938 in Trinidad and Tobago, which influenced the adoption of land use and planning laws in Africa and the Caribbean. The model was adjusted to the particular needs of each country and region. Much of this effort, in the middle of the last century, was aimed at eradicating bad housing conditions through slum clearance and urban redevelopment. By the early 1960s, in many postcolonial countries in Africa, the Caribbean, and South East Asia, the pattern of urban planning developed in Britain became part of the general development and modernization strategy.⁵¹ In recent years, the British model has been criticized as being authoritarian, socially divisive, and difficult to administer in developing countries. While its influences remain, land use laws in developing countries that are former commonwealth countries are becoming more diverse and influenced by indigenous ideas regarding the organization of development in cities and the landscapes beyond. The British approach itself in recent years has become more open and democratic, with significant participation and decision making exercised at the local, even neighborhood, level.⁵² The experience in countries influenced so heavily by British approaches, of course, is highly varied and idiosyncratic.

comprehensive development and public participation), available at: <http://pnd.presidencia.gob.mx/index.php?idseccion=42>.

⁴⁹ Ley General de Desarrollo Social [L.G.D.S.], D.O. Jan. 20, 2004.

⁵⁰ U.K. Government Planning Portal at: <http://www.planningportal.gov.uk>.

⁵¹ See generally Patrick McAuslan, *Bringing the Law Back In* (Ashgate, 2003) at 84–105.

⁵² U.K. Government Planning Portal (“Existing town and country planning legislation was consolidated into three Acts: the Town and Country Planning Act, 1990; the Planning (Listed Buildings and Conservation Areas) Act, 1999; and the Planning (Hazardous Substances) Act, 1990”), available at: <http://www.planningportal.gov.uk/wales/government/en/1105619050598.html>.

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4. HUMAN SETTLEMENTS, DECENT HOUSING, AND SLUM ERADICATION

The work and deliberations of the UN Commission on Human Settlements and the UN's two global conferences on world settlements provide a useful complement and contrast to the topic of town and country, or land use, planning. Since the Conference on Human Settlements in Vancouver, Canada, in 1976 – Habitat I – the conditions of human settlements in metropolitan areas globally, particularly for the poor, have worsened significantly. Concerns regarding slums and inadequate housing in large metropolitan areas led to the Second United Nations Conference on Human Settlements – Habitat II – held in 1996 in Istanbul, Turkey.

The conditions in slums are health threatening: slums are communities without basic services such as piped water, sanitation, or health care. According to the Global Report on Human Settlements – *The Challenge of Slums* – the total number of people living in slums in 2003 was 928 million, and growing. By the end of this decade, more than 50 percent of the world's population will live in urban areas, reflecting a steady migration from rural to metropolitan areas over the last century. A dramatic example of this trend is evidenced in Mumbai, India, where more than half of the population lives in slums and 80 percent of the slum dwellers live in houses smaller than 100 square feet.⁵³ Worldwide, many urban dwellers live in absolute poverty: estimates run as high as 1 billion.⁵⁴ Recent demographic trends indicate that 94 percent of the world's total population growth will occur in developing countries and that 86 percent of this growth will occur in urban areas. The production of 39,000 additional housing units *daily*, mainly in metropolitan areas, will be required to accommodate the projected population growth of developing countries.⁵⁵

Laws and planning strategies that deal with urban slums and shelter for the poor and near-poor are a critical and distinct element of town and country planning. The focus here is on individuals in need of shelter, the neighborhoods they inhabit, and their need for services and jobs. Notable problems confronted by public bodies working on these problems are illegal housing possessed by squatters and the isolation and marginalization of slum residents from mainstream urban populations.

Since the General Assembly's adoption in 1988 of the Global Strategy for Shelter to the Year 2000, the strategy of choice regarding the provision of shelter is to use public policy and resources to facilitate or enable nonpublic actors, particularly the private sector, to solve the world's worsening shelter problems. This contrasts with the more interventionist approach witnessed in some traditions of urban planning that emphasizes detailed public plans, public ownership of infrastructure and protected open space, and extensive regulation of privately owned land in developing and redevelopment areas.⁵⁶

The Istanbul Declaration on Human Settlements (Habitat II, 1996) responds to the continuing deterioration of conditions of shelter and human settlements by announcing "a new era of cooperation" and offering a "positive vision of sustainable human settlements."⁵⁷ The global problems it addresses are unsustainable population change, excessive population concentration,

⁵³ Vinit Mukhija, *Squatters as Developers?: Slum Demolition and Redevelopment in Mumbai, India* (Ashgate, 2003) at 23.

⁵⁴ UN-HABITAT, "Cities Without Slums," World Urban Forum (2002) HSP/WUF/1/DLG.I/Paper 4 (Mar. 18, 2002), available at: http://hq.unhabitat.org/cdrom/unhabitat_cdrom/html/documents/dlg1paper4.pdf.

⁵⁵ *Id.*

⁵⁶ Preamble, The Habitat Agenda and Istanbul Declaration U.N. Doc. A/CONF.165/PC.3/4 (June 3–14, 1996), available at: <http://www.undp.org/un/habitat/agenda/ist-dec.html>.

⁵⁷ Istanbul Declaration on Human Settlements §15. The Istanbul Declaration endorses "the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier and more livable, equitable, sustainable, and productive" (§1).

homelessness, a lack of basic infrastructure and services, and a lack of planning. It tackles two issues: the need for adequate shelter for all and sustainable human settlements in an urbanizing world.⁵⁸ The Declaration affirms the “progressive realization of the right to adequate housing” and seeks to ensure “legal security of tenure.”⁵⁹

The Istanbul Declaration, consistent with the Rio Declaration of 1992, emphasizes connectivity: the interdependence of rural and urban development; the need for a network of settlements; the participation of all public, private, and nongovernmental stakeholders in decision making; and the need to involve all levels of government in the resolution of settlement problems.

To be effective, these human settlement principles and strategies will have to influence urban planning itself. The accommodation of new housing, slum eradication, neighborhood revitalization, and urban redevelopment are central to the traditions of town and country planning. Land use regulation’s focus is on the proper location and accommodation of new residential and job development. Effective human settlement strategies – including the provision of water and sewerage facilities, transportation, and the redevelopment of deteriorated areas – are the day-to-day currencies of the planning field and the concerns of planning and zoning law.

In Mexico in 2003 the Secretariat of Social Development initiated Program Habitat, focused on the neediest populations in the nation’s urban centers. Program Habitat in Mexico encourages the establishment of land use plans and the protection of the natural environment; it aspires to improve housing conditions, combat poverty, and revitalize neighborhoods.⁶⁰

In the United Kingdom, the Office for National Statistics estimates that there is a need for 4.3 million new homes by 2021. The nation’s housing stock is aging, the size of household is decreasing, and the population is increasing and living longer. The Sustainable Communities Plan issued by the Deputy Prime Minister in 2003 follows a policy that assists the private market to address housing market failures in the north of England and development pressures in growing areas, such as London itself. The government plans to invest US\$40 billion in this effort over several years, concentrating on the provision of physical infrastructure, transportation, land acquisition, and public services. The program supports three types of projects: those in central cities, the repair of postwar new towns, and the expansion of urban areas in and surrounding existing towns. The essential land use strategy here is one of defining priority growth districts and leveraging public investments to induce private sector intervention.⁶¹

5. GOVERNMENTAL ORGANIZATION AND CONSTITUTIONAL FRAMEWORK

The proper development and conservation of land, both privately and publicly held, requires great coordination among levels of government, the private and public sectors, and even nations themselves. The use and preservation of natural resources, the process of urbanization, and the economics and environmental impacts of land use involve federal, state, and local interests and deeply affect private landownership, wealth, and economics. The structure of governments and public policies affecting land ownership are generally created when a nation’s constitution is first framed or restructured over time. Quite often, governmental systems and policies were established to deal with issues markedly different from those presented by the emerging world’s crisis in

⁵⁸ Istanbul Declaration §1.

⁵⁹ *Id.* §8.

⁶⁰ Subsecretaria de Desarrollo y Ordenación del Territorio, available at: <http://www.sedesol.gob.mx/subsecretarias/desarrollourbano/programahabitat.htm>.

⁶¹ Bill Hanway, “Sense of Place in the U.K.,” *Urban Land*, August 2004, at 66–71.

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sustainable development. Without adjusting these institutional arrangements and individual expectations, little progress can be made.

In the words of Agenda 21, “An adjustment or even a fundamental reshaping of decision-making . . . may be necessary if environment and development is to be put at the centre of economic and political decision-making, in effect achieving a full integration of these factors.”⁶² The objectives tied to this goal are to allow the full integration of environmental and developmental issues at all levels of decision making; to facilitate the involvement of concerned individuals, groups, and organizations in decision making at all levels; and to establish domestically determined procedures to integrate environment and development issues in decision making.⁶³

In recent years, a number of notions about governmental organization have been articulated that respond to and refine these aspirations. One is that all levels of government should be involved in a collaborative enterprise, with each contributing and controlling according to its particular interests and competencies. Another is that the full participation of all interested stakeholders is necessary to achieve success, for the system to respond to all interests and to earn the confidence it needs to succeed as elections are held or governments abruptly change. A third is that governmental policy setting and regulation should be transparent, open, and incorruptible. The specifics here include open meetings laws, public hearing requirements, availability of public information to the public, citizen participation requirements, opportunities to be heard, and the right of those aggrieved by decisions to seek judicial or other remedies. By observing how lawmakers amend their systems, share power, open up decision making, and delegate responsibility, it is possible to observe the process of reorganization so that effective regimes can be created.

1. Citizen Participation

Evidence that lawmakers are taking these principles into account in drafting laws affecting sustainable development is found throughout this compendium and elsewhere. Regarding progressive reforms to involve citizens in planning and policy formulation, this list illustrates what is being done:

- The South Australia Development Act of 1993 requires planning and regulation of development throughout the state and establishes several advisory committees to assist the state authority: a development policy advisory committee, a development assessment commission, and a major developments panel. The law contains specific membership requirements and duties for these panels to perform.
- The Manitoba Sustainable Development Act not only provides for the creation of an advisory board but also funds that body to ensure that it can effectively perform its advisory function.
- Argentina’s General Environmental Law recognizes the right of citizens to have access to environmental information and establishes an obligation to develop a national integrated system of information.⁶⁴

⁶² Agenda 21, *supra*note 18, §8.2.

⁶³ *Id.* §8.3. See also Rio Declaration, *supra*note 18, Principle 10: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

⁶⁴ Law No. 25.675, Nov. 27, 2002, Art. 17.

- The Argentine Constitution (Const. Art. Pt. I, art. 43) grants broad power to all affected parties to file judicial appeals to defend the collective right to a healthy environment.
- Under the Czechoslovak Act on Land Use Planning and Construction Rules (No. 50/1976) (amended by Act No. 262/1992), neighbors, private individuals, concerned administrative authorities, and businesses affected by proposed governmental land use decisions are given the right to submit comments and participate in hearings conducted on land use approvals and decisions such as land-use plans, locational decisions, construction permits, and construction approvals.
- The Lithuania Law on Territorial Planning provides for the creation of a territorial planning data bank and for public access to all planning data and proposals. It requires public notice and public meetings prior to the adoption of any planning proposals and guarantees the right of administrative and judicial appeal. There are strong provisions for review and enforcement and mechanisms for resolving disputes.
- The Village Land Act of Tanzania provides for the establishment of an elders council to act as the village land council, the creation of a village advisory committee, and the use of mediation of disputes between parties. The act refers to “land sharing arrangements between pastoralists and agriculturalists,” and villages are authorized to enter into joint land use agreements with any other village council concerning the use of land by one or more groups. Information regarding programs created to implement the provisions of the act must be provided throughout the nation and translated into native languages. The act secures land rights that promote women’s economic empowerment; it grants Tanzanian women the right to acquire title to land and to register their titles. The act also promotes women’s representation in land use decision-making bodies.

2. Constitutional Rights

The first principle of the Rio Declaration is that “human beings . . . are entitled to a healthy and productive life in harmony with nature.” Perhaps the most obvious evidence that the legal system is in alignment with the principles of sustainable development is when they appear in the national constitution or in key policy documents. Article 24 of the African Charter on the Rights of Man and Peoples (1981) states that “[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.”⁶⁵ Chapter 2 of the Constitution of South Africa tracks both this African Charter and the Rio Declaration. It states that

[e]veryone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

According to the List of Fundamental Rights and Freedoms of the Czech Constitution, citizens have a right to live in an environment favorable to health and well-being. The Hungarian Constitution of 1949 recognizes the right of all citizens to a healthy environment. The government of Lithuania and its citizens are obligated to protect the environment under Article 53 of the 1992 Constitution; Article 54 prohibits the destruction and depletion of the land, forests, and wildlife, as well as the pollution of water and air. Article 21 of the Constitution of the Netherlands states

⁶⁵ Organization of African Unity: Banjul Charter on Human and Peoples’ Rights, CAB/Leg/6713/Rev, 5 (Jan. 7–19, 1981), 21 I.L.M. 59, 63 (1982).

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that it is the responsibility of the public authorities to ensure the habitable nature of the land and to protect and improve the environment.

3. Involvement of Municipal Government

The Istanbul Declaration clearly recognizes and trumpets the importance of local governments: towns, cities, and villages. They are “our closest partners,” who are the most democratic and provide the most effective approach to appropriate human settlements. It recognizes the need to strengthen municipal financial and institutional capacities.⁶⁶ According to the 2002 World Urban Forum report, this process is slow to develop:

The most important difficulty in the decentralization process is the limitations of transfer of authority. Legal and administrative frameworks should promote autonomy over the acquisition and expenditure of public revenues. On the other hand, lack of participatory planning processes, limitations in the capacity of civil society organizations and modalities to involve the most vulnerable groups in decision-making appear as factors at the local level hindering the effectiveness of decentralization.⁶⁷

Evidence of municipal involvement in making land use decisions is found in the Lithuanian Law on Fundamentals of Local Government (1990), which establishes the competence of districts and towns within the national land use planning system. In Hungary, under Act No. iii (1964) on Housing and Construction, as amended in 1993, the central government prepares regional land use plans and municipalities prepare local plans.

The South African Constitution contains a blueprint for local government engagement in a national system of government regarding land use management. It states that municipal governments must be established for the whole of the territory of the republic, each of which has the right to govern regarding its own affairs, subject to national and provincial legislation. Among the constitutional objects of local government are “to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in the matters of local government.” Finally, the constitution provides that the national government and provincial governments, “by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.”

Under Article 9 of the Environmental Protection Law of the People’s Republic of China, “[t]he people’s governments of provinces, autonomous regions and municipalities directly under the Central Government may establish their local standards for environment quality for items not specified in the national standards for environment quality and shall report them to the competent department of environmental protection administration under the State Council for the record.”

4. Restructuring of Institutional Arrangements and Decision Making

Argentina

The Constitution of Argentina, Article 41, after recognizing its citizens’ right to enjoy a healthy environment, requires the federal Congress to establish minimum standards at the national level and to create an integrated system of national and provincial legislation to enforce those standards. The General Environmental Law, Article 4, contains provisions delegating authority to provincial and municipal governments according to their respective competencies. In the Argentine Constitutional Reform of 1994, a provision was added to the constitution that ensures “municipal autonomy, regulating its scope and content in the institutional, political,

⁶⁶ Istanbul Declaration, *supra*note 56, §12.

⁶⁷ “Cities Without Slums,” *supra*note 54, at 13, para. 56.

administrative, economic and financial order.”⁶⁸ The Constitution of the City of Buenos Aires, adopted in 1996, requires the city to adopt planning and environmental management policies and to adopt a framework plan with which all land use regulations and public works projects must conform.

Australia

A remarkable legal invention, the Australian Oceans Policy adopts land-based zoning strategies and applies them to its state and national territorial waters. This policy is contained in an executive document released by the Australian government. It applies to the extensive oceans subject to the country’s sovereignty, dividing them into six marine regions, each defined by their distinct biophysical marine characteristics. Within each of these domains, numerous management practices are defined that are to be implemented over time.⁶⁹

Motivating the policy is the “stark warning” given by the collapse of major marine ecosystems and fisheries resources in the northern hemisphere. The policy recognizes that urban and infrastructure development in coastal zones place increasing demands on coastlines and oceans and that past management practices have not effected the amelioration of adverse human impacts on ocean health and productivity. The goals of the policy include meeting Australia’s international obligations under the UN Convention on the Law of the Sea and establishing integrated ocean planning and management arrangements involving the national and state governments, their agencies, and the public.

The policy, issued by the National Oceans Office, establishes a planning process for each of the six regional marine zones within which integrated planning will occur in territorial ocean districts. These districts are defined and differentiated by their unique marine ecosystem characteristics, mimicking approaches taken in land-based planning processes designed to protect inland watersheds, forests, wilderness areas, and, even, urban neighborhoods. This is a highly evolved resource planning strategy that integrates international and domestic law, national and state governments and agencies, and affected industries and the public, in order to realize the objectives of sustainable development off shore.

Brazil

The Brazilian Federal Constitution states, “All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.”⁷⁰ The Constitution creates a plan of co-operative federalism; it enunciates a number of *enumerated* powers of the federal government,⁷¹ *express* powers that are granted to municipal governments,⁷² and *reserved powers* that remain with the states.⁷³

⁶⁸ Const. Arg., Pt. II, art. 123.

⁶⁹ An ancient commonwealth precedent to this modern Australian regime is found in “An Act for the Preservation of Spawn and Fry of Fish,” 1 Eliz., c.17 (1558), which regulated fishing, prohibiting various methods of catching young broods and prohibiting out of season fishing of any kind.

⁷⁰ Title VIII, Chapter VI, art. 225.

⁷¹ C.F. art. 21.

⁷² C.F. art. 30: “The municipalities have the power to: I – legislate upon matters of local interest; II – supplement federal and state legislations where pertinent; . . . IV – create, organize and suppress districts, with due regard for the state legislation; V – organize and render, directly or by concession or permission, the public services of local interest, including mass-transportation . . . ; VIII – promote, wherever pertinent, adequate territorial ordaining, by means of planning and control of use, apportionment and occupation of the urban soil; . . . IX – promote the protection of the local historic and cultural heritage, with due regard for federal and state legislation and supervision.”

⁷³ C.F. art. 25, para. 1.

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Article 30 of the Brazilian Constitution reserves the power of urban planning and land management to municipalities to be carried out in conformance with the nation's broad urban policies. Environmental standards are contained in the Constitution with which all levels of government and all governmental agencies must comply. A 1999 law, adopted by the Brazilian Congress, contains strong criminal and civil enforcement penalties for offenses committed against natural and cultural resources; these penalties are greatly increased when violations affect endangered species or are committed by repeat offenders.

Canada

Several Canadian laws are contained in this compendium. They tend to vest clear authority in a specific minister or agency, instruct that minister to coordinate with other involved agencies, focus attention on specific geographical areas, include implementation techniques, and demonstrate a commitment to sustainable development.

The Canadian national legislature adopted the Oceans Act in 1996 to protect ocean waters and their marine environment; it adopted the Crown Forest Sustainability Act in 1994 to provide for the sustainable exploitation of forest resources on public lands; and in 1997, it adopted the Muskwa-Kechika Management Area Act to provide for conservation planning and biodiversity protection in the North American continent's largest protected conservation system, comprising 6.3 million hectares. In each of these statutes, administrative responsibilities are clearly defined, enforcement measures are provided, and funding sources are included.

Three provincial statutes from Canada are also included. Ontario's Sustainable Water and Sewage Systems Act of 2002 requires providers of water and wastewater services to prepare reports that estimate their full costs and how those costs are going to be recovered. The reports are to include water source protection measures that protect the quantity and quality of water supplies. Ontario's Land Use Planning Act, adopted in 1990, provides for the formation of provincial and municipal planning boards, intermunicipal planning advisory committees, the creation of zoning regulations, site plan control, and the protection of environmental resources and natural features. The province of Manitoba legislature enacted the Sustainable Development Act in 1997 aimed at achieving sustainable development through the comprehensive review of specific projects in an integrated fashion within the province.

European Union

At the regional scale, the European Union (EU) attempts to rationalize national policies of Union member-states regarding common interests, including land use and the environment. Relevant provisions of law are found in the Single European Act⁷⁴ and the modification of it contained in the Treaty of Amsterdam.⁷⁵ Article 174(1) of the Treaty of Amsterdam establishes as objectives of the EU the preservation of the environment, protection of human health, rational utilization of natural resources, and promotion of regional and worldwide measures for dealing with environmental problems. Article 174(3) states that the EU's policies on the environment shall take account of "the economic and social development of the Community as a whole and the balanced development of its regions."⁷⁶ Article 175(2) of the Treaty of Amsterdam authorizes the EU's representative body, the Council of the European Union, by unanimous vote, to adopt measures regarding town and country planning, management of water resources, land use, and

⁷⁴ Single European Act, 25 I.L.M. 506 (1986).

⁷⁵ Treaty of Amsterdam amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, O.J. (C. 340) 1.

⁷⁶ *Id.* art. 174(3).

energy supply.⁷⁷ This system leaves significant current sovereignty in the member states to adopt and enforce separate land use planning and regulatory measures, subject to periodic directives and regulations adopted by the Council.

Mexico

Article 27 of the Mexican Constitution grants Congress the power to dictate measures necessary for the development of human settlements and for the preservation and restoration of the environment. The Ecological Equilibrium and Environmental Protection Act, adopted in 1988, established a foundation for environmental policy, ecological balance, and sustainable development in Mexico.⁷⁸ It guarantees “the right of all persons to live in an environment suitable for their development, health, and welfare.”⁷⁹ It also adopts mechanisms for coordination and agreement among governmental authorities and various sectors of society regarding environmental matters.⁸⁰

In 1996, the Ecological Equilibrium and Environmental Protection Act was amended to strengthen the basis for concurrent federal, state, and local jurisdiction and expand provisions related to land use planning, natural protected areas, and environmental impact assessments.⁸¹ New mechanisms of environmental policy (such as economic instruments, environmental audits, and self-regulating agreements) and the establishment of new rules for public participation in the environmental policy were added to the act as well.

Since the adoption of the act, all Mexican states have passed environmental laws that partially or wholly address environmental matters such as ecology, urban development, subdivisions, water treatment, planning, sanitation, public administration, transportation, human settlements, and public works. Several states have issued regulations to accompany these laws, and it is also now apparent that Mexican municipalities have begun to adopt land use regulations that protect ecological resources.⁸²

6. PROPERTY RIGHTS AND LAND TENURE

Property rights, in societies that recognize them, play a fundamental role in the affairs of state, giving their holders rights to participate in the national economy and some insulation from arbitrary state action.⁸³ How land is owned is critical to sustainable development. People are connected to their land, communities, and, ultimately, their sovereign states through land ownership and possession and by the degree of control the state and its agencies have over private land use and exploitation. The U.S. Supreme Court has balanced private property rights with the right of the state to regulate land: “We must be cognizant that government regulation – by

⁷⁷ *Id.* art 175(2).

⁷⁸ L.G.E.E. art. 1.

⁷⁹ *Id.* art. 1, I.

⁸⁰ *Id.* art. 1, IX.

⁸¹ See generally Jose Juan Gonzalez, *Nuevo Derecho Ambiental Mexicano* (Instrumentos de Politico, 1997) at 46–76 (amendment resulting from increased public concern and the subscription to NAFTA and its parallel environmental agreement).

⁸² See generally *Framework of Mexican Environmental Law*, available at the Ventana Ambiental Mexico Web site: <http://www.ventanaambientalmexico.com>.

⁸³ “In a state in which private property does not exist, citizens are dependent on the good will of government officials. . . . Whatever they have is a privilege and not a right. . . . Any challenge to the state may be stifled or driven underground by virtue of the fact that serious challenges could result in the withdrawal of the goods that give people basic security.” Cass R. Sunstein, *On Property and Constitutionalism* (1993) 14 Cardozo L. Rev. 907, at 915.