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National legislation potentially suitable for upscaling

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National legislation potentially suitable for upscaling

▶ Aim

- ▶ Possible integration of the LDNW target into international law through particular measures and instruments aimed at prevention, remediation / offsetting, and/or planning against land degradation
- ▶ Review of the UNFCCC and its Kyoto Protocol, the CBD and its two protocols, and the UNCCD
 - ▶ with regards to the existing measures and provisions contained within the agreements that address prevention, remediation/offsetting, and planning
 - ▶ Regarding gaps which exist under these three categories in the respective agreements
- ▶ Suitability of any national laws for the three case study countries to be upscaled and incorporated into international law

Review of international agreements relevant for LDNW - UNFCCC

- ▶ Provisions to prevent land degradation in context of mitigation and adaption to climate change
 - ▶ Precautionary measures against causes of CC (e.g. unsustainable land management) and for mitigation of CC effects
 - ▶ Requirement to promote sustainable management of sinks and reservoirs and need to conduct EIAs regarding the impact of CC
 - ▶ Parties are required to make plans how to protect/rehabilitate areas
- ▶ Remediation less emphasised than prevention in scope of measures
 - ▶ Remediation not only to conserve but *enhance* sinks and reservoirs



Review of international agreements relevant for LDNW – Kyoto Protocol of UNFCCC

- ▶ Mandates that Parties adopt national policies and measures to prevent and remediate land degradation
 - ▶ a bit more specific than the UNFCCC in terms of defining which types of national policies and measures should be adopted
- ▶ Includes planning provisions which help avoid land degradation but are directly focused on mitigating and facilitating adaptation to climate change
- ▶ Includes provisions allowing for project-based actions and emissions trading which present possible entry points for land degradation prevention and remediation

Review of international agreements relevant for LDNW – CBD

- ▶ Includes planning provisions in the form of national action plans and strategies that would contribute to land degradation neutrality
 - ▶ A particularly specific form of planning that would contribute toward the LDNW target is required under the CBD – to define protected areas (or areas where degradation is prevented) from a biodiversity standpoint
- ▶ Contains prevention measures against biodiversity degradation and for sustainable use of biological resources, which would contribute to preventing land degradation
- ▶ Includes a few remediation provisions

Review of international agreements relevant for LDNW – UNCCD

- ▶ Is the international agreement which most directly targets *land degradation and development* out of the three conventions analysed
- ▶ Action Programmes: (weak) planning instruments that target prevention of land degradation through long-term strategies
- ▶ Remediation is to be included by the Parties, but the Convention does not specifically highlight examples of what types of remediation actions or measures are possible
- ▶ Focuses in large part on prevention of further land degradation: Parties must identify the drivers of land degradation within their national context



Summary – gap analysis

- ▶ All three agreements contain different types of measures on prevention etc.
- ▶ UNFCCC and CBD: EIAs; inclusion of this prevention mechanism relevant for UNCCD
 - ▶ But: effect of EIA varies in terms of how much it impacts the resulting decision/project development
- ▶ Each convention: large amount of planning through national strategies, legislation etc.; needed: more effective utilisation, coordination and comprehensiveness of land use planning or protection
- ▶ Limited inclusion of land degradation prevention in project-based mechanisms and emissions trading schemes
- ▶ Remediation weak within international agreements

Suitable national legislation for international agreements

“Criteria for selection”:

- ▶ National laws were too embedded within their respective national legal structures -> special needs of each region/country due to history etc.
- ▶ Many of the laws identified were too specific in terms of the scope of land which was covered
- ▶ Some of the laws were too broad or general in their coverage to be useful in contributing to land degradation neutrality
- ▶ Some of the laws lack substantive requirements
- ▶ *But: many laws with elements or mechanisms for a possible integration*

National legislation suitable for upscaling - EU

- ▶ Prevention/Planning
 - ▶ “mainstreaming”, i.e. the inclusion of soil protection into other policies (Thematic Soil Strategy)
 - ▶ soil monitoring system combined with the development of new measures on the basis of the monitoring results (Thematic Soil Strategy)
 - ▶ Permitting procedure (Industrial Emissions Directive)
 - ▶ Emission limit values, which support integrated pollution prevention and control (IED)
 - ▶ Monitoring obligations for owners and public authorities (IED)

National legislation suitable for upscaling - EU

- ▶ Prevention/Planning (issue: implementation!)
 - ▶ specific regulations on sewage sludge and different types of emission limit values (Sewage Sludge Directive)
 - ▶ soil protection standards concerning the content of heavy metals (Sewage Sludge Directive)
 - ▶ lifecycle analysis for highly soil-damaging harmful substances (Biocidal Products Regulation)
 - ▶ concept of protected areas and/or environmental restrictions in land use – indirect behaviour control (Habitat Directive)



National legislation suitable for upscaling - EU

Prevention/Planning

- ▶ Agri-environment-climate incentive encourages farmers to use sustainable practices (Pillar 2 of the CAP)
- ▶ a) Identification of risk areas, b) Drawing up a programme of measures including at least risk reduction targets, the appropriate measures for reaching those targets, a timetable for the implementation of those measures and an estimate of the allocation of private or public means for the funding of those measures (drafted Soil Framework Directive)

National legislation suitable for upscaling - EU

▶ Remediation

- ▶ Polluter Pays Principle: Liability is not dependent on whether the environmental good belongs to someone's property (Environmental Liability Directive)
- ▶ Funding mechanisms for contaminated sites (Draft Soil Framework Directive)

National legislation suitable for upscaling - Germany

▶ Prevention/Planning

- ▶ Temporary limits on building permission - > buildings within existing settlements (Federal Building Act)
- ▶ Examination of and remediation planning for contaminated soil (Federal Soil Protection Act)

▶ Remediation

- ▶ Liability: Party who caused a harmful soil change or a contaminated site, and his universal successor, as well as the relevant *property owner* and the occupant of the relevant real property, shall be obligated to remediate the soil and contaminated sites (Federal Soil Protection Law) – but limited!

National legislation suitable for upscaling - Germany

- ▶ Remediation (cont.)
- ▶ Compensation for environmental impacts from building measures with *compensation or substitution measures* or where not possible with *monetary substitution* (impact mitigation regulation) (Federal Nature Conservation Act) -> *difficult and highly cost-intensive process of locating and making available land is proving more and more of a critical obstacle*
- ▶ Eco-accounts (Federal Nature Conservation, Act Federal Building Act)
- Soft Law (under discussion)
- ▶ Trading system of site certificates, land recycling measures, and Circular Flow
Land Use Management

National legislation suitable for upscaling - US

▶ Prevention/Planning

- ▶ Sustainable management contracts can be agreed with private actors (Title 16 Soil Conservation and Domestic Allotment Act)
- ▶ Zoning ordinances, plans which delegate authority to local governments to regulate land uses (California Planning and Zoning Law)
- ▶ Funds also made available to incentivise or leverage public-private partnerships (e.g., new Regional Conservation Partnership Program of the Farm Bill)
- ▶ Setting water quality standards as well as permitting schemes for resource conservation (Clean Water Act and RCRA)

National legislation suitable for upscaling - Brazil

▶ Prevention/Planning

- ▶ Participation: Water Resources Plans shall be set up as long-term plans. The public, state and municipal governments *and civil society* participate in the development of the plans (Water Law 9,433/97)
- ▶ Soil monitoring (CONAMA Resolution No. 420/2009)
- ▶ Restrictions on vegetation removal so that it primarily takes place on substantially degraded land (Brazil's Atlantic Forest Law)



Conclusion

- ▶ Permitting schemes for potentially harmful activities
- ▶ Standard setting, e.g. pollution standard setting
- ▶ Requirement of baseline reports -> status of soil and groundwater
- ▶ Mandatory conservation compliance measures
- ▶ Land use planning for designated uses as well as protected areas
- ▶ Urban planning requirements combined with an EIA and offsetting obligation during the planning phase
- ▶ General offsetting requirement for degradation of land

Conclusion

- ▶ Obligation to remediate existing land degradation
- ▶ Specific regulatory provisions for certain land cover types
- ▶ Procedural mechanisms like EIA, SEA, including plans for activities which cause land degradation (recent European Court ruling: in cases of non-compliance, national courts should order the relevant authorities to establish a plan that will ensure that the period in which the pollution limits are exceeded is as short as possible)
- ▶ Designation of certain risk areas or special soil types -> prioritizes protection of certain valuable lands necessary for food production
- ▶ Planning instruments for the achievement of LDNW like
 - ▶ Determination of main drivers of land degradation



Conclusion

- ▶ Funding mechanisms for private actors, e.g. cost-sharing, low-interest loans, partial reimbursement
- ▶ Economic instruments to support prevention and planning
 - ▶ a trading system of site certificates
 - ▶ building site designation and/or development charge, and sealing charge,
- ▶ Record-keeping, reporting, tracking systems
- ▶ Taxation or monetary mechanisms to build large funding reserves for government actors

Possible integration into a comprehensive int. instrument

- ▶ UNCCD thematically aligned with the achievement of LDN, however existing provisions for remediation etc. need to be amended to refocus the content to include LDN (+/-)
- ▶ UNCCD limited in its coverage of land worldwide, applies to drylands -> desertification a national concern? (+/-)
- ▶ Adoption of a protocol (not only) possible under the CBD (+)
- ▶ CBD's (and UNCCD's?) lack of effectiveness (-)



Possible integration into a comprehensive international instrument

- ▶ Bunch of instruments as first proposal for a recommendation? Later on integration into an annex/protocol?
- ▶ Topic will be discussed in more detail in part 4 of this workshop!



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Thank you for your attention.

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