

## Climate Change and Sustainable Development: Selected Elements of a Sustainable Development Model Law

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*Abstract:* 2020 was the beginning of the critical decade for Climate Change. Under the United Nations Framework Convention on Climate Change, the Paris Agreement was an opportunity for countries to commit to temperature rises of no more than 2 degrees Celsius while aiming to keep rises in temperatures below 1.5 degrees Celsius. Countries were to revisit their National Determined Contributions in 2020, during the first Global Stocktake, and strengthen emissions reduction targets for 2030. In the first 5 years of the Paris Agreement there has been a rather restricted way of viewing Climate Change mitigation and adaptation procedures and many countries have failed to provide express legislative reform or national plans and agendas to help decrease carbon emissions and curb the impacts of climate change. In order for there to be meaningful change that is all encompassing, there must be wholistic change across all present and future legislative reforms. Climate Change mitigation and adaptation must be considered in all future policy and national agenda considerations. And Covid-19 Recovery has provided an opportunity to do so.

As the globe finds ways to recover from the Covid-19 pandemic there has been greater focus and attempts to include Sustainable Development Goals and Climate Change agendas within pandemic recovery plans. There should be greater effort to incorporate the two into a uniform legislative instrument for change. Sustainable Development as a concept includes environmental development and Climate Action is expressly considered in Sustainable Development Goal 13. In formulating Sustainable Development legislation as a tool to address development agendas and Climate Change strategies, nations would be better equipped to ensure that climate considerations are present in all forms of development.

While considering the United Nations Agenda 2030, the Paris Agreement as well as development incentives, a Sustainable Development Act may be the tool to ensure the protection of present and future generations in Climate Change mitigation and adaptation. Sustainable Development legislation that brings together economic, social and

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*environmental concerns would be beneficial in addressing Sustainable Development and Climate Change simultaneously and with better effect.*

*Keywords: Sustainable Development, Climate Change, Model Law, Development, Law.*

## **I. Introduction**

By beginning of 2020, the world was met with the unimaginable challenge of a global pandemic, Covid-19, which has resulted in unconceivable changes to many countries. From health concerns to economic recovery, many countries have had to make variations at legislative and policy levels to protect their countries for years and generations to come. Despite the challenges of Covid-19, it is important that countries continue to address goals and obligations which have already been committed to. Of particular interest are the commitments and goals made in the fields of climate change and sustainable development, respectively.

2020 marked the beginning of the critical decade for climate change and also marked 5 years after the introduction of the sustainable development goals. Action against climate change and progressive sustainable development require persistent and constant attention. However, climate change and sustainable development should not be viewed in isolation of each other. In fact, it may be the necessary overlap of these concepts that could provide a solution that addresses both, climate change concerns as well as sustainable development. It is in the context of Covid-19 recovery and the critical decade of climate action that the introduction of a Sustainable Development Model Law can be favourable and accommodating.

This article is from a purely institutional background and as such seeks to provide an institutional framework that would assist in addressing climate change through the lens of sustainable development legislation. As such, this article will not contain an in-depth overview of climate change tools or sustainable development mechanisms. Outlines of climate change and sustainable development frameworks function solely as contextual background and for the purposes of determining how these concepts coincide.

## **II. Climate Change and Sustainable Development**

Climate change and sustainable development have been studied and improved for many years, however very little has been done to outline the nexus between these two. As such, to provide a foundation and background, an overview of these concepts through a developmental lens is useful in drawing overlaps between these crucial concepts.

### **A. Climate Change**

In the fifth assessment report of the Intergovernmental Panel on Climate Change (“IPCC”), climate change can be defined as “[A] change in the state of the climate that can be identified

(e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal processes or external forces such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use.”<sup>1</sup>

Additionally, art.1 para. 2 of the United Nations Framework Convention on Climate Change (“UNFCCC”),<sup>2</sup> provides a shorter definition of Climate Change and outlines that it includes: “[A] change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”

Both definitions, though containing slight differences, refer to anthropogenic changes or human activity. Anthropocentrism, put simply, is: “the idea that human interest, human goods and/or human values are the focal point of any moral evaluation of environmental policy and the idea that these human interests, goods and values are the basis of any justification of an environmental ethic.”<sup>3</sup>

In order to address and combat climate change, the Conference of the Parties (COP), under the UNFCCC, adopted the Paris Agreement at the 21st Session of the COP between 30 November and 13 December 2015.<sup>4</sup> As provided in art. 2 of the Paris Agreement:

“[A]ims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, [...];

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”

According to the Paris Agreement, parties shall address climate change by providing for domestic procedures that implement mitigation and adaptation measures, these would be

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<sup>1</sup> *IPCC*, Synthesis Report: Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, in *Pachauri/Meyer* (eds.), *Climate Change* 2014, 120.

<sup>2</sup> *UN*, United Nations Framework Convention on Climate Change, FCCC/INFORMAL/84GE.05-62220 (E) 200705.

<sup>3</sup> *Katz*, *A Pragmatic Reconsideration of Anthropocentrism*, Vol. 21 *Environmental Ethics* 1999, 377 (377 et seq.).

<sup>4</sup> *UN COP*, Report of the Conference of the Parties on its twenty-first session (2015) FCCC/CP/2015/10/Add.1.

recording in each country's nationally determined contributions (NDCs).<sup>5</sup> According to the UNFCCC, "Efforts to reduce emissions and enhance sinks are referred to as 'mitigation'".<sup>6</sup> In other words, mitigation looks at implementing measures that would reduce emissions in the long-term. According to the UNFCCC, adaptation "the goal is: to enhance adaptive capacity and resilience; to reduce vulnerability, with a view to contributing to sustainable development; and ensuring an adequate adaptation response in the context of the goal of holding average global warming well below 2 degrees C and pursuing efforts to hold it below 1.5 degrees C".<sup>7</sup> In other words, adaptation seeks to find ways to address and acclimatise to the current effects of climate change while maintaining Paris Agreement goals.

As per art. 4 para. 2 of the Paris Agreement, "Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve". Additionally, art. 4 para. 3 goes further to provide that, "Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances". As outlined above, art. 4 of the Paris Agreement goes further to provide that each party will provide and outline their commitments to achieve the objectives of art. 2 by publishing NDCs. Art. 4 makes it rather clear that each party is required to provide NDCs within their respective capacities and resources. As such, each party's NDC differs from the next and each have their own unique targets and goals which must be improved on with each new NDC. Due to the varying nature of NDCs each country will thus implement their climate commitments, as provided for in their respective NDC, in a diverse manner from one country to the next. In many of these NDCs, parties have committed to achieve net-zero emissions by 2050 in favour of ensuring temperatures to remain well below 2 degrees Celsius.<sup>8</sup> These commitments thus provide a dedicated timeline for climate action by 2050 at the latest.<sup>9</sup> Countries are required to provide new NDCs every 5 years and as such the next NDC was expected to be received in 2020 but were delayed in many countries due to the Covid-19 pandemic.<sup>10</sup>

On 25 October 2021, during the 3rd session of COP26, the Secretariat of the UNFCCC released the Revised synthesis report for the NDCs under the Paris Agreement.<sup>11</sup> This report provided "information from the 165 latest available nationally determined contributions

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<sup>5</sup> See *UN COP*, Report of the Conference of the Parties on its twenty-first session FCCC/CP/2015/10/Add.1., art. 4 and art. 7.

<sup>6</sup> *UNFCCC*, Introduction to Mitigation <https://unfccc.int/topics/mitigation/the-big-picture/introduction-to-mitigation> (last visited December 15, 2021).

<sup>7</sup> *UNFCCC*, New elements and dimensions of adaptation under the Paris Agreement (art. 7) <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/new-elements-and-dimensions-of-adaptation-under-the-paris-agreement-article-7> (last visited July 29, 2021).

<sup>8</sup> *UN*, For a liveable climate: Net-zero commitments must be backed by credible action <https://www.un.org/en/climatechange/net-zero-coalition> (last visited December 15, 2021).

<sup>9</sup> *UN*, For a liveable climate <https://www.un.org/en/climatechange/net-zero-coalition> (last visited July 29, 2021).

<sup>10</sup> *UNFCCC*, Nationally determined contributions under the Paris Agreement synthesis report by the secretariat (September 2021) FCCC/PA/CMA/2021/8, para. 1, available at [https://unfccc.int/sites/default/files/resource/cma2021\\_08\\_adv\\_1.pdf](https://unfccc.int/sites/default/files/resource/cma2021_08_adv_1.pdf) (last visited December 15, 2021).

<sup>11</sup> *UNFCCC*, Nationally determined contributions under the Paris Agreement Revised synthesis report by the secretariat (October 2021) FCCC/PA/CMA/2021/8/Rev.1, available at <https://unfccc.int/documents/307628> (last visited December 15, 2021).

communicated by the 192 Parties to the Paris Agreement and recorded in the interim registry of nationally determined contributions as at 12 October 2021".<sup>12</sup> Taking a look at these updated NDCs, the Revised synthesis report provides the commitments from these 165 latest NDCs in the graphs below:<sup>13</sup>

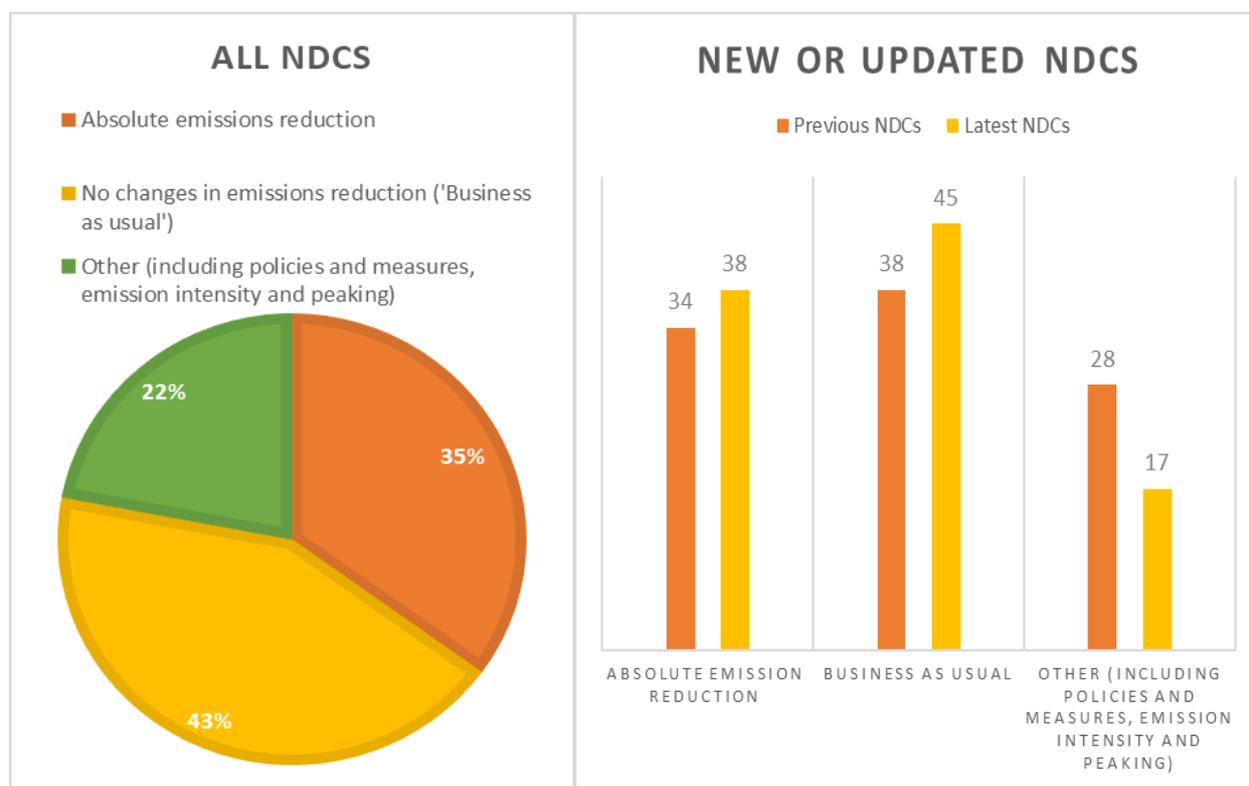


Figure 1: Types of mitigation targets and share of Parties that communicated them in nationally determined contributions (as provided within the Nationally determined contributions under the Paris Agreement Revised synthesis report by the secretariat)

From Figure 1, above, it is clear that there has been an increase in the share of NDCs committed to absolute emissions reduction thus showing that mitigation measures are thus becoming more in line with complete emissions by 2050. Despite this, there is still a larger percentage of countries which are utilising a 'Business as Usual' approach, which slows progress towards climate neutrality by 2050. Measures within NDCs are the smallest portion. This indicates that very few countries are open to utilise creative or unique measures to meet

<sup>12</sup> UNFCCC, Nationally determined contributions under the Paris Agreement Revised synthesis report by the secretariat (October 2021) FCCC/PA/CMA/2021/8/Rev.1 1, available at <https://unfccc.int/documents/307628> (last visited December 15, 2021).

<sup>13</sup> See UNFCCC, Nationally determined contributions under the Paris Agreement Revised synthesis report by the secretariat FCCC/PA/CMA/2021/8/Rev.1, 14, available at <https://unfccc.int/documents/307628> (last visited December 15, 2021).

climate goals. In summary, the major concern currently is how to address the majority of Paris Agreement parties who are still adopting a business-as-usual approach within their NDCs. As such, it may be necessary to view policy alternatives which would address development and climate goals in order to meet the most goals in unison. Many countries do not necessarily have the skills or resources to devote the most attention to one concern that will not cause immediate harm or damage to citizens, even if that concern is climate change, thus resulting in a 'Business as Usual' approach to climate change mitigation. Often developmental and basic needs are given priority so it is necessary to ensure that climate goals are catered for while addressing these.

## B. Sustainable Development

According to the Brundtland report of the World Commission on Environment and Development ('The Brundtland Report'), sustainable development can be defined as: "[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>14</sup> This definition of sustainable development, though established many decades ago, has been both prominent and instrumental in present understandings of sustainable development.<sup>15</sup>

Prior to present understandings of Sustainable development, there has also been focus on the concept of sustainability. Though these concepts are independent in understanding, there are overlaps in meaning and perception. For example, when discussing sustainability, reference is often made to the '3 E's of Sustainability', namely environment, economy and equity.<sup>16</sup> On the other hand, in the United Nations Resolution 'Transforming our World: the 2030 Agenda for Sustainable Development' (Agenda 2030), there is mention of '5 P's of Sustainable Development', namely People, Planet, Prosperity, Peace and Partnerships.<sup>17</sup> What can be seen are the overlaps between the 3 E's and the 5 P's. More specifically, the 3 E's can also be found in the 5 P's, the correlation between Planet and Environment, between People and Equity and between Prosperity and Economy. Of particular interest in this paper is the correlation between sustainable development and the environment or planet.

## C. The correlation between Sustainable Development and Climate Change

As mentioned in the definition of climate change provided by the IPCC, one of the causes of climate change is anthropogenic behaviour. It is anthropocentrism or human centred interests that perpetuate harm to the planet and to the environment. The nature of sustainable development is to ensure the ability of future generations to meet their needs. If countries and organisations fail to acknowledge that their human activities cause climate change, there will be no resources or sufficient climate for future generations. As such the

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<sup>14</sup> *World Commission on Environment and Development, Our Common Future: Report of the World Commission on Environment and Development* (1987).

<sup>15</sup> *Houston, A Comparative Analysis of Sustainable Development Legislation: Selective Elements for an 'African' Model Law* (2020) (L.L.M. Dissertation, University of Stellenbosch, South Africa).

<sup>16</sup> *Reames/Blackmar/Pierce, Teaching the Three E's of Sustainability Through Service-Learning in a Professional Program, New Direction for Teaching & Learning - Special Issue: Teaching and Learning about Sustainability in Higher Education* 2020, Issue 161, 74 <https://doi.org/10.1002/tl.20374> (last visited December 15, 2021).

<sup>17</sup> *UN, Transforming our world: the 2030 Agenda for Sustainable Development*, 2015, A/RES/70.

link between sustainable development and climate change can be identified through anthropogenic behaviour prolonging climate change and thus potentially compromising sustainable development in the sense of promoting the needs of future generations. Sustainable development practices can thus be beneficial in addressing climate change and broader environmental concerns.

### III. Agenda 2030

In September 2015, the UN General Assembly adopted Agenda 2030 at the UN Summit for the adoption of the post-2015 development agenda.<sup>18</sup> Agenda 2030 was developed as a plan of action for 'plant, people and prosperity' thus addressing the 3 E's of sustainability. Agenda 2030 built on the Millennium Development Goals, introduced and in operation from 2001-2015, by announcing the 17 Sustainable Development Goals (SDGs),<sup>19</sup> and their 169 associated targets. The SDGs along with their targets with sought to 'bring sustainable development to the forefront of the universal agenda'.<sup>20</sup> Agenda 2030 was integrated to offer guidelines for UN member states when pursuing sustainable development practices at a national level.<sup>21</sup> The SDGs provided a common set of targets, goals and objectives, for each nation to concentrate on when pursuing sustainable development while forming global partnerships for execution.<sup>22</sup>

The SDGs themselves function as a collection of sustainable development target areas based on a collection of sustainable development principles that have been composed over a number of years. The SDGs are by no means the only tool for achieving sustainable development but rather function as a checklist or point of reference for achieving universal sustainable development that is measurable and commonly understood.

It is important to note that the formulation and implementation of the SDGs themselves may not guarantee sustainable development, however it does provide a measure to determine

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<sup>18</sup> See *UN, Transforming our world, 2015, A/RES/70*.

<sup>19</sup> The 17 SDGs are as follows: End poverty in all its forms everywhere; End hunger, achieve food security and improved nutrition and promote sustainable agriculture; Ensure healthy lives and promote well-being for all at all ages; Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; Achieve gender equality and empower all women and girls; Ensure availability and sustainable management of water and sanitation for all; Ensure access to affordable, reliable, sustainable and modern energy for all; Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation; Reduce inequality within and among countries; Make cities and human settlement inclusive, safe and resilient and sustainable; Ensure sustainable consumption and production patterns; Take urgent action to combat climate change and its impacts; Conserve and sustainably use the oceans, seas and marine resources for sustainable development; Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss; Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels and; Strengthen the means of implementation and revitalise the Global Partnership for Sustainable Development. *UN, Transforming our world, 2015, A/RES/70, 16*.

<sup>20</sup> See *UN, Transforming our world, 2015, A/RES/70, 17*.

<sup>21</sup> See *UN, Transforming our world, 2015, A/RES/70, 17 para. 21*.

<sup>22</sup> See *UN, Transforming our world, 2015, A/RES/70, 17 para. 39*.

levels of sustainable development implementation at a national level.<sup>23</sup> The SDGs provide a platform for individual nation states to introduce sustainable development mechanisms internally that meet the overarching goals and targets provided in the SDGs.

The SDGs can be formally and rationally implemented into national policies and frameworks through sustainable development legislation, thus solidifying the sustainable development intentions of a nation within its resources and means. The SDGs seek to identify economic, environmental and equity concerns regarding sustainability, which nations should consider when implementing strategies and frameworks for sustainable development internally.<sup>24</sup> In short, the SDGs are simply that: goals. They are the set of goals that UN member states wish to achieve, however on their own they do not guarantee sustainable development as member states are free to utilise whatever tools they see suitable to ensure sustainable development. It is with this in mind that I form the argument that if sustainable development is to be practically achieved, there should be model law introduced. This model law would be a template for legislative reforms that countries can implement to truly achieve sustainable development at a national level.

Under Agenda 2030, Member States have expressed their “commitment to protect the planet from degradation and take urgent action on climate change”.<sup>25</sup> In para. 14 of Agenda 2030 climate change is identified as “one of the greatest challenges of our time” and outlines how “its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and Small Island Developing States. The survival of many societies, and of the biological support systems of the planet, is at risk”. From these two sections alone, it is clear that climate change goes hand in hand with development. This was also the case before the establishment of Agenda 2030.

In 1992, with the conclusion of the ‘Rio Convention’ at the Rio Earth Summit, the international political community provided a political response to climate change and adopted the UNFCCC.<sup>26</sup> Additionally, in 2015, with the introduction of Agenda 2030 came the 21st Session of the Conference of the Parties (COP21/CMP1) convened in Paris, France, as discussed above.<sup>27</sup> Through these examples of historic conferences and international political declarations it is clear that sustainable development and climate change have developed hand in hand for a number of years and will continue to progress for years to come.

Of particular importance, regarding the SDGs, is SDG 13: “Take urgent action to combat climate change and its impacts”.<sup>28</sup> SDG 13 contains 5 targets and 9 indicators.<sup>29</sup> These targets

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<sup>23</sup> Wackernagel/Hanscom/Lin, Making Sustainable Development Goals Consistent with Sustainability, 5.18 *Frontiers in Energy Research* 2017 <https://doi.org/10.3389/fenrg.2017.00018> (last visited December 15, 2021).

<sup>24</sup> Gupta/Vegelin, Sustainable Development Goals and Inclusive Development, 16 *International Environmental Agreements: Politics, Law and Economics* 2016, 433 <https://doi.org/10.1007/s10784-016-9323-z> (last visited December 15, 2021).

<sup>25</sup> See *UN*, Transforming our world, 2015, A/RES/70, 2.

<sup>26</sup> *UN*, Nations, Rio 1992 <https://www.un.org/en/conferences/environment/rio1992> (last visited December 15, 2021).

<sup>27</sup> See *UN COP*, Report of the Conference of the Parties on its twenty-first session (2015) FCCC/CP/2015/10/Add.1.

<sup>28</sup> *UN*, Goal 13 <https://sdgs.un.org/goals/goal13> (last visited December 15, 2021).

<sup>29</sup> *UN*, Goal 13 <https://sdgs.un.org/goals/goal13> (last visited December 15, 2021).

include: Strengthening resilience and adaptive capacity to climate-related hazards and natural disasters in all countries; Integrate climate change measures into national policies, strategies and planning; Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning; Implement and mobilize climate funding between developed and developing countries to achieve climate goals; Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States.

Of particular importance is Target 13.2: Integrate climate change measures into national policies, strategies and planning. Under target 13.2, many countries have adopted climate goals and climate change measures in their NDCs under the Paris Agreement, as discussed above, however this is not the sole solution to implementing climate measures. Target 13.2 makes clear reference to national policies and the target itself does not place limits on which policies this entails, neither to what capacity climate measures are to be achieved. Given the long-lasting connection between sustainable development and climate change it is only fair to assume that sustainable development legislation would also be a suitable national policy to address climate change measures. With this in mind, it is necessary to take a closer look at an example of sustainable development legislation that has done exactly this and catered to environmental and climate change measures within the harbour of sustainable development.

#### **IV. Sustainable Development at a National Level: Malta Sustainable Development Act, Chapter 521 enacted 10 July 2012**

Before exploring the formulation of a sustainable development model law, it is important to acknowledge a specific nation which has implemented functioning sustainable development legislation. The nation concerned is Malta, a small island in the middle of the Mediterranean with a population of 514 564 (as of 2019) and a land size of 316km<sup>2</sup>.<sup>30</sup> Malta has introduced the Malta Sustainable Development Act X of 2012, as amended by Act 1 of 2019 ('Malta SD Act'). This legislation is a practical and accountable means for directly ensuring sustainable development and not mere commitments to goals. It is not sufficient to commit to goals without committing to accountability for inaction at a national level, and this is followed in specific countries. A direct analysis of this legislative instrument is useful in identifying the tools and legislative mechanisms adopted to attain sustainable development.<sup>31</sup> These tools and mechanisms can function as a basis for a sustainable development model law. It should be noted that the Malta SD Act was initially introduced in 2012, prior to the introduction of the SDGs and has recently been amended in 2019.

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<sup>30</sup> *Government of Malta*, About Malta <https://www.gov.mt/en/About%20Malta/Pages/The%20Maltese%20Islands.aspx> (last visited December 15, 2021).

<sup>31</sup> This analysis is a simplified version based on similar subject matter provided in the submission of a Master's thesis presented by the author: *Houston*, A Comparative Analysis of Sustainable Development Legislation: Selective Elements for an 'African' Model Law' (2020) (L.L.M. Dissertation, University of Stellenbosch, South Africa).

## **A. Key Provisions within the Malta Sustainable Development Act**

### **1. Definitions**

Section 3 of the Malta SD Act defines sustainable development utilising the definition provided by the Brundtland Report, namely: “[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

### **2. Objectives**

Building on unique interpretations of sustainable development, each legislative instrument contains a unique set of objectives relative to the needs of the country or community it seeks to administer. Section 2 of the Malta SD Act provides: “(1) The purpose of this Act is to create a framework through which Sustainable Development is to be mainstreamed across Government. (2) Within the context of the private sector and civil society, the purpose of this Act is to raise awareness of the principles of sustainable development and to foster increased participation of civil society as well as that of all social actors in main-streaming sustainable development.” Objectives listed under the Malta SD Act are based, initially, on governmental mainstreaming and then civil society participation. A strict governmental focus encourages accountability and ensures a government centred approach to development.

### **3. Developmental Principles**

Developmental principles, as highlighted below, refer to specific principles concerning development that have been previously related to development and sustainable development.<sup>32</sup> The Malta SD Act, in Section 5 (h), references sustainable development principals, however there is no explicit indication of what these principles are. However, the Malta SD Act includes rare mention of Future Generations. Part IV of the Malta SD Act affords that a Commission, composed under the Act, must act as the Guardian of Future Generations and is responsible for “safeguarding inter-generational and intra-generational sustainable development in Malta.” The consideration of future generations, within the Malta SD Act, places a proactive focus on long-term generational inclusion.

### **4. Committees and Authorities that implement the National Development Plans, Policies and Strategies**

There is one common element across all legislation frameworks, namely, the use of national and regional plans that foster development. These plans provide and outline development strategies and objectives outside of the act and are necessary to supplement sustainable development agendas, as outlined in the act. The national development plan of each country is nationally specific and as such each plan will contain its own objectives, policies and principles. Each plan, due to national specificity, differs greatly from the next and would require more detailed analysis than currently provided. Rather, what is common with all the development plans is that each plan is specifically allocated to an accountable committee,

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<sup>32</sup> *Schrijver/Weiss, International Law and Sustainable Development: Principles and Practice (2004) 1 et seqq.*

administration or body that must report on the progress to the authorities provided under the act.

## **5. Mechanisms and Entities ensuring Sustainable Development on a National Level**

In addition to the development plans and national policies outlined above, each country may implement mechanisms and entities ensuring the effective management, administration, transparency and accountability needed to fulfil the respective legislation. Such entities may either be established in order to fulfil the act in its entirety or could be crucial to specific sections, procedures and programmes. The mechanisms and entities referenced may consist of frameworks, policies, plans, assessments, reports, programmes and protocols, in short it refers to any and all mechanisms that the legislation introduces, in addition to development plans and policies, which supplement sustainable development targets under this legislation.

### **B. Regulations and laws**

According to art. 6 para. 1 of the Malta SD Act, the competent authority that has been assigned to address sustainable development issues and concerns under the act does not have the authority to formulate new laws or regulations itself. Instead, the competent authority has the powers to set and make recommendations; initiate, promote, sponsor and encourage projects, studies, research, training, awareness initiatives and any other activities which exemplify sustainable development practices; and propose directives. It is the Public Administration, as identified in Part 3 of the Malta SD Act, who has the duty to respond to requests from the competent authority regarding “inputs into the formulation, revision or monitoring of any strategy or strategies, policy or policies or any other initiative related to sustainable development”.<sup>33</sup> It is through this chain of command that new regulations and laws may be implemented which address various sustainable development concerns, including climate change.

Since the competent authority itself cannot formulate or implement laws and regulations, there is no specific provision within the Malta SD Act which relates to reviewing the outcomes of the Act. Instead, under art. 5 (f) of the Malta SD Act, “The competent authority shall have the following functions: to review Government and specific Ministry policies, plans, programmes and projects to ensure that they are in line with the strategy and to ensure that all Ministries and line entities within the public administration factor sustainable development in their workings”. Functioning as a review mechanism for Government and specific Ministry policies, plans, programmes and projects thus allows the competent authority the power to ensure that sustainable development as well as climate change and environmental protection are in fact considered within new laws and regulations. Additionally, under art. 7 para. 6: “the

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<sup>33</sup> *Government of Malta*, Malta Sustainable Development Act X of 2012, as amended by Act 1 of 2019, art. 7 para. 1 (b).

Principal Permanent Secretary shall be entitled to request the competent authority to review, from time to time, any such reports in so far as related to the provisions of this Act". Through these broad functions of review the competent authority thus functions as a final stop for ensuring that sustainable development is maintained and implemented throughout various facets of Government and specific Ministries.

### **C. Civil society**

The Malta SD Act also makes clear provisions for civil society participation. The Malta SD Act opens by providing that: "Within the context of the private sector and civil society, the purpose of this Act is to raise awareness of the principles of sustainable development and to foster increased participation of civil society as well as that of all social actors in main-streaming sustainable development".<sup>34</sup> Additionally, and also linked to the formulation of regulations, art. 13 provides: "The Minister may make regulations for the purpose of implementing the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, to further promote the entrenchment of sustainable development practices across the public administration, the private sector and civil society in general, which regulations may also make provision in respect of matters that are consequential or incidental to the provisions of this Act". As such, throughout the Act, from the context of the act itself to regulation making by the Minister, civil society participation and recognition is essential in the sustainable development regulatory process.

It is necessary to include that art. 2 para. 2 of the Malta SD Act pertaining to civil society participation, was in fact an amendment included in the 2019 amendment. Prior to this, art. 2 para. 2 stated: "Within the context of the private sector and civil society, this Act seeks to enable the raising of awareness of the principles of sustainable development, such that these may be adopted on a voluntary basis". It is thus clear that civil society participation has in fact been a recent development in the Malta SD Act. It is also clear from this amendment that the sustainable development act (by nature of its amendments) is in fact a living document that the Government of Malta is willing to amend and develop as principles of sustainable development, legal reform change regulatory and legislative dynamics. The 2019 amendment also included amendments to art. 8 and 9, however these were procedural and administrative in nature and are not necessary to be analysed for the purpose of this paper.

### **V. Sustainable Development Model Law**

The outline and understanding of sustainable development and the direct comparison of the legislation above provides an outline and background to the formulation of a Model Law. Consideration is then needed on what a model law is, how it can be utilised, what elements should be included, and finally how the model law can be shaped to consider the environmental social and economic differences among nations which opt to utilise the model law.

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<sup>34</sup> See *Government of Malta*, Malta Sustainable Development Act X of 2012, as amended by Act 1 of 2019, art. 2 para. 2.

According to Godfrey: "The Model Law contains non-mandatory provisions that provide a model for policy-makers to adopt into national legislation at their discretion."<sup>35</sup> As it can be seen, a model law is a non-binding and optional legislative framework. It is therefore up to the nation itself to determine if they wish to adopt the model law in its entirety or in part into its own national legislation. When a drafter is drafting legislation, there is nothing more beneficial than having a draft to compare and apply, and that is the function of a model law.<sup>36</sup> In providing a model Law on sustainable Development for policy makers to utilise, there is then an opportunity for policy makers to, without excuse, adopt the vision of sustainable development practices into national legislation.

A model law is exactly that, a model of what the law should look like and or what it should include. In this way, a model law provides flexibility to nations to shape and mould their national legislation in order to include additional mechanisms and developmental elements that cater to national needs. The flexibility of a model law allows for adaptation and implementation that is unique. This flexibility also allows for specificity in formulation and provides policymakers leeway to form national legislation in the most effective way. However, despite the flexibility of the model law, there remain some elements of sustainable development legislation that must be present for the law to successfully meet sustainable development.

Sadooni indicates that in order for sustainable development legislation to be successful it should include:<sup>37</sup>

[A] clear definition of Sustainable Development such as that provided by the Brundtland Report; a Sustainable Development council consisting of representatives from different sectors; a Sustainable Development committee; an independent and impartial Sustainable Development commission; a Sustainable Development strategy or timeline; sector duties to mainstream Sustainable Development strategies across various Public Bodies; and a Legislative hierarchy that outlines at what level and under whose supervision the legislation is to be implemented.

In formulating legislation, Bosselmann suggests that there are three phases: the developmental phase; the writing phase; and the monitoring and implementation phase.<sup>38</sup> In formulating a sustainable development model law, there is particular focus on the developmental phase. During this phase there must be clear stakeholder engagement and participation; cross departmental consultations and support from the legal and judicial

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<sup>35</sup> *Godfrey*, Case Studies of African Agricultural Biotechnology Regulation: Precautionary and Harmonized Policy-Making in the Wake of the Cartagena Protocol and the AU Model Law, Vol. 35 Loyola of Los Angeles International and Comparative Law Review 2013, 409.

<sup>36</sup> *Whisner*, There Oughta be a law - A Model Law, Vol. 106 Law Library Journal 2014, 125.

<sup>37</sup> *Sadooni*, Achieving Sustainable Development: How New Zealand can learn from the European Union, the United Kingdom and the rest of the world, Vol. 18 New Zealand Journal of Environmental Law 2014, 69.

<sup>38</sup> *Bosselmann*, National Strategies for Sustainability: Options for New Zealand (NZCEL Monograph Series Book 4) (2014).

community.<sup>39</sup> In allowing consultations and contributions from various levels and stakeholders, policymakers encourage a sustainable development legislation that is equity and people-centred.<sup>40</sup>

Based on the direct comparison above there are selected key provisions that should be included in any sustainable development legislation. Below is an example of what provisions should be included and is in no way a finite list of provisions, these provisions should be reviewed as a starting point for consideration and inclusion. The headings utilised to identify these provisions function as a means to group the provisions together and are not expected to be the headings within the legislation itself.

## **A. Selected Elements and Provisions identified within a Sustainable Development Model Law**

### **1. Preamble**

A preamble functions as a means to outline a clear picture of the complete understanding of the sustainable development legislation and functions as an introductory provision to the legislation and highlights the main focus of the legislation. In earlier sustainable development legislations there have been diverse focus areas, namely addressing past under-development, seeking environmental, social and economic sustainable development,<sup>41</sup> addressing sustainable development in terms of land use agendas.<sup>42</sup>

### **2. Definitions**

The following terms, as identified in previous sustainable development legislation, should be considered for inclusion and definition: sustainable development;<sup>43</sup> Precautionary Principle;<sup>44</sup> Biological diversity, Ecosystem, Environment, Natural Resources, and Pollution;<sup>45</sup> Inter-generational Equity principle;<sup>46</sup> Development;<sup>47</sup> Right to Clean and Healthy Environment;<sup>48</sup> Social, economic and environmental impacts; Future Generations;<sup>49</sup> and Duty to Mitigate.<sup>50</sup> Definitions included are subject to the focus of the legislation itself therefore this list of

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<sup>39</sup> See *Sadooni*, Achieving Sustainable Development, Vol. 18 New Zealand Journal of Environmental Law 2014, 69 (95); *Jones*, Trying harder: Developing a new sustainable strategy for the UK, Vol. 30 Natural Resources Forum 2006, 124 (127) <https://doi.org/10.1111/j.1477-8947.2006.00165.x> (last visited December 16, 2021).

<sup>40</sup> See *Sadooni*, Achieving Sustainable Development, Vol. 18 New Zealand Journal of Environmental Law 2014, 97.

<sup>41</sup> Section 4 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar).

<sup>42</sup> Section 6 Capital Territory Planning and Development (2007) (Austl.).

<sup>43</sup> Section 3 Sustainable Development Act (Chapter 521 enacted 10 July 2012) (Malta); Section 2 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Section 5 Capital Territory Planning and Development (2007) (Austl.); Section 5 Federal Sustainable Development Act (S.C. 2008, c. 33) (Can.); Section 2 Well-Being of Future Generations Act (2015 anaw 2) (Wales).

<sup>44</sup> Section 2 Federal Sustainable Development Act (S.C. 2008, c. 33) (Can.).

<sup>45</sup> Section 2 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Section 9 Capital Territory Planning and Development (2007) (Austl.).

<sup>46</sup> Section 9 Capital Territory Planning and Development (2007) (Austl.).

<sup>47</sup> Section 7 Capital Territory Planning and Development (2007) (Austl.).

<sup>48</sup> Section 6 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar).

<sup>49</sup> Part IV Sustainable Development Act (Chapter 521 enacted 10 July 2012) (Malta).

<sup>50</sup> Section 6 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar).

definitions is suitable, as a point of departure, for a Model Law that addresses environmental, economic and social needs as well as the needs of future generations.

### **3. Application of the Act**

In order for it to function successfully, there must be a clear indication as to whom the legislation directly applies and whom will be responsible for the implementation of the legislation itself. Implementation may be left to a specific Ministry or Governmental Department, a designated authority<sup>51</sup> or civil society at large.<sup>52</sup> This section is specifically vital for determining who benefits from the legislation and who is to be held accountable for its fulfilment.

### **4. Objectives of the Act**

Often seen as a directed and comprehensive version of the preamble, the objectives of the Act provide and include clear goals and visions that the legislation should set in motion to achieve. Specific sustainable development legislation focuses on sustainable development and achieving a country's national development agenda.<sup>53</sup> Should the objectives be more environmentally focused this ought to be stipulated within the objectives.<sup>54</sup> In instances where development is taken to achieve a specific developmental vision, i.e. land planning and land use systems, objectives must clearly stipulate such in order to prevent misunderstandings of sustainable development agendas and accompanying responsibilities.<sup>55</sup>

### **5. Committees and Authorities that implement the National Development Plans, Policies and Strategies**

Where national governments have formulated national development plans or other plans and frameworks to implement development strategies, the sustainable development legislation should attempt to provide clear linkages between the plan and the legislation.<sup>56</sup> In offering provisions that address the national plans there is no ambiguity regarding the legal position of the national plan and where it belongs in the greater development agenda.

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<sup>51</sup> Section 4 Sustainable Development Act (Chapter 521 enacted 10 July 2012) (Malta); Chapter 3 Capital Territory Planning and Development (2007) (Austl.).

<sup>52</sup> Section 2 Sustainable Development Act (Chapter 521 enacted 10 July 2012) (Malta).

<sup>53</sup> Section 2 Sustainable Development Act (Chapter 521 enacted 10 July 2012) (Malta).

<sup>54</sup> Section 4 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar).

<sup>55</sup> Section 6 Capital Territory Planning and Development (2007) (Austl.).

<sup>56</sup> Part IV Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Chapter 5 and 6 Capital Territory Planning and Development (2007) (Austl.).

## 6. Administrative Bodies established under Sustainable Development Legislation

Sustainable development, especially at a national level, cannot be achieved without focused and specialised attention from administrative bodies. These administrative bodies are crucial for well-organized allocation of developmental tasks and necessary to fulfil key roles in sustainable development governance. These bodies include: A Sustainable Development Office;<sup>57</sup> Sustainable Development Advisory Council;<sup>58</sup> A Committee on Climate Change;<sup>59</sup> and A Future Generations Commissioner.<sup>60</sup> Establishment of these administrative bodies, is in accordance with the duties this placed on public bodies to ensure the well-being of all citizens and prolonged sustainable development.<sup>61</sup>

## 7. Mechanisms and Entities ensuring Sustainable Development on a National Level

Based on the legislative needs and the objectives there are additional mechanisms that can be useful in ensuring the successful fulfilment of sustainable development aspects. Specific mechanisms, procedures and protocols provide clarity, uniformity and accountability. These mechanisms include: Permits and applications for development tasks;<sup>62</sup> Environmental Impact assessments;<sup>63</sup> Systems for achieving ecological sustainability;<sup>64</sup> Specialised mediators, prosecutors and assessors;<sup>65</sup> Provisions addressing procedures for review, variations and revisions;<sup>66</sup> Mechanisms for monitoring, reporting and evaluating progress;<sup>67</sup> Enforcement strategies;<sup>68</sup> and Penalties and Offences for failure to uphold provisions of the legislation.<sup>69</sup>

### B. A Sustainable Development Model Law as a Framework law

The introduction of a sustainable development model law is to provide a framework law which countries can utilise as a structure for implementing sustainable development principles and objectives on a national level. Similarly, to the NDCs, this model law would have to be implemented through more specific laws, regulations, directives, plans and programmes. As

<sup>57</sup> Section 7 Federal Sustainable Development Act (S.C. 2008, c. 33) (Can.).

<sup>58</sup> Section 8 Federal Sustainable Development Act (S.C. 2008, c. 33) (Can.).

<sup>59</sup> Section 32-38 Climate Change Act (2008 Chapter 27) (U.K.).

<sup>60</sup> Section 17-28 Well-Being of Future Generations Act (2015 anaw 2) (Wales).

<sup>61</sup> Section 2-6 Well-Being of Future Generations Act (2015 anaw 2) (Wales).

<sup>62</sup> Section 64 and 69 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Part 7.2-7.3 and 9.11 Capital Territory Planning and Development (2007) (Austl.).

<sup>63</sup> Part V Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Part 7.2-7.3 and 9.11 Capital Territory Planning and Development (2007) (Austl.).

<sup>64</sup> Section 4 Queensland Planning Act 2016.

<sup>65</sup> Section 112-114 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar).

<sup>66</sup> Part 5.3, 9.6 and Chapter 13 Capital Territory Planning and Development (2007) (Austl.).

<sup>67</sup> Section 14 Sustainable Development Act (Chapter 521 enacted 10 July 2012) (Malta); Part V Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar).

<sup>68</sup> Chapter 12 Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Section 107 Capital Territory Planning and Development (2007) (Austl.).

<sup>69</sup> Part VIII Environmental Management for Sustainable Development (Act No. 2/1996) (Zanzibar); Section 5 Capital Territory Planning and Development (2007) (Austl.).

such, it is not necessarily a stand-alone legislative instrument unless countries choose to apply the model law as legislation within their own legal framework.

Framework laws have a number of different functions which are beneficial to introducing and formulating new legislation. Firstly, framework laws function as a symbol of the legislatures intentions to address a specific concern, in this case this concern would be development, however this is not enough and legislative action is needed.<sup>70</sup> Secondly, framework laws are considered as neutral laws because they contain an amalgamation of possible opportunities which legislatures can shape and mould into what is specifically needed for their own respective legal systems.<sup>71</sup> Put simply, the framework law is contextually unbiased. Thirdly, framework laws can be used as a 'coordination device' to<sup>72</sup> encourage coordination in response to institutional challenges, ensure necessary outcomes that may not have been considered previously, and shift interests towards matters that have previously received little attention. Countries are free to determine how the commitments and outcomes are to be incorporated into their respective legal systems. Fourthly, framework laws are self-binding for as long as the framework remains in place the objectives, they promote are entrenched in the law they are introduced through.<sup>73</sup>

The main advantage of a framework law is that, by its very nature, it provides a basis for legislation building and as such can be the first step towards encouraging more countries to actively introduce sustainable development legislation in their respective states. Countries can thus no longer utilise excuses such as a lack of guidance, skills shortages or minimal resources, in failing to or neglecting sustainable development priorities.

### C. Domestic implementation

To date, there are countless international model laws and framework laws which have been implemented across the globe.<sup>74</sup> From these model and framework laws it is possible to determine various ways which these laws can be implemented at a domestic or national level. First, if there is a specific agreement between two states that both want to have sustainable development oversight over the agreed dealings or partnerships, then it is possible to include a clause in such an agreement that allows for the provisions of the model law to apply to the partnerships or agreement.<sup>75</sup> Additionally, Governments of respective countries can opt to adopt the model law as their own law and thus apply provisions of the model law as if it would

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<sup>70</sup> *Garrett*, The Purposes of Framework Legislation, Vol. 14 *Journal of Contemporary Legal Issues* 2014, 717 (733).

<sup>71</sup> See *Garrett*, The Purposes of Framework Legislation, Vol. 14 *Journal of Contemporary Legal Issues* 2014, 736.

<sup>72</sup> See *Garrett*, The Purposes of Framework Legislation, Vol. 14 *Journal of Contemporary Legal Issues* 2014, 741 et seqq.

<sup>73</sup> See *Garrett*, The Purposes of Framework Legislation, Vol. 14 *Journal of Contemporary Legal Issues* 2014, 749.

<sup>74</sup> See, to name a few: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006; Model legislation on laundering, confiscation and international cooperation in relation to the proceeds of crime (1999); Model Law against Trafficking in Persons (2009); Model Treaty on Mutual Assistance in Criminal Matters (1990); African Union Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa (2018).

<sup>75</sup> *UN*, UNCITRAL Model Law on International Commercial Arbitration, A/40/17, annex 1, art. 1 para. 1.

be a law of the country itself, requiring both administrative and institutional support from the countries established structures and may even require additional resources to formulate the bodies and institutions provided under the Model law.<sup>76</sup> Finally, the model law can be implemented by an overarching supranational body, as such member states of this supranational body will then ratify the model law and become signatories of this model law and as provisions of the model law will be applicable to signatories.<sup>77</sup>

Domestic implementation should be done in a way that encourages sovereignty and country specific implementation and formulation of such a model law. It is advised that countries formulate their own sustainable development legislation and provide a provision within this legislation that incorporates the provisions of the Model law as either a part of the main legislation or as an annex to the legislation. This form of domestic implementation has been achieved with model laws in the past.<sup>78</sup>

## V. Concluding Remarks

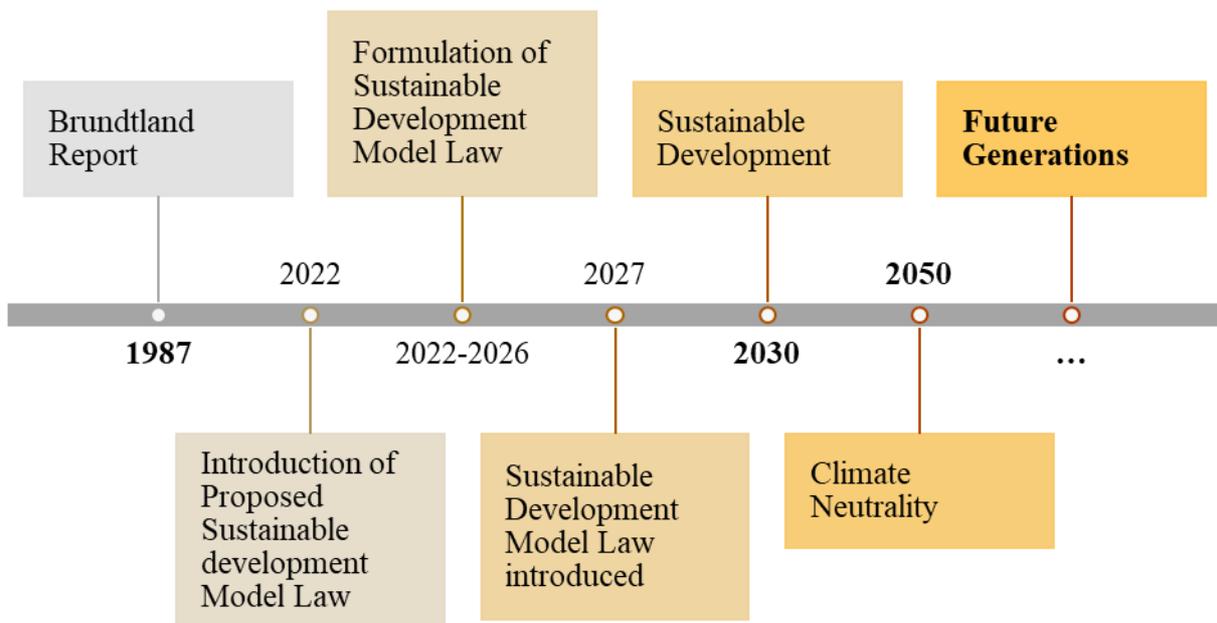


Figure 2: Timeline for a Sustainable Development Model law in relation to the SDGs and Climate Goals.

Sustainable development as a concept was formally recognised and understood through the Brundtland Report of 1987. This understanding of sustainable development has led to numerous interpretations, programmes and actions in the field of sustainability, resulting in progress in the study and implementation of sustainable development. Since 1987 many nations and organisations have sought to implement and interpret sustainable development for the protection of the interests and needs of present and future generations alike. Looking

<sup>76</sup> *UN Commission on International Trade Law, Guide to Enactment of the UNCITRAL Model Law on Public Procurement* (2014) 18 et seqq.

<sup>77</sup> *African Union, Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa* (2018).

<sup>78</sup> E.g., the UNCITRAL Model Law on International Commercial Arbitration (1985) has been ratified, accessed or enacted in 82 countries across the globe including in: South African; Austria and Germany to name a few.

at the formal establishment of the concept of sustainable development, 1987 was not too long ago and an informal acknowledgement of sustainable development was likely to have existed for many years prior to this. What can be recognised is this: sustainable development has been around for many years and has been useful in the development and execution of many policies and plans that have improved generational protection in nations and organisations alike.

The benefits of a sustainable development model law, in this regard, has been highlighted above. Put simply, a sustainable development model law would be useful as a practical guide and legislative framework to be ratified into national law thus assisting nations in the continuous implementation of sustainable development. The introduction of a sustainable development, and ultimately sustainable development legislation, provides continuous implementation in a way that ensures transparency and accountability among governments. Transparency and accountability are essential in securing support and approval from citizens in sustainable development plans, programmes and actions.

Should a sustainable development model law be formulated and introduced, this then poses the question: why now? Would this be worth it given the SDG timeline and Climate Change goals? Now is as good a time as any. Figure 2, above, has provided an illustration in support of this argument. In ideal circumstances, let it be proposed that the idea of a sustainable development model law is accepted and formulation of this model law begins in 2022. Once again in ideal circumstances, it is proposed that it takes an international body 4 years, between 2022-2026 to develop and formulate the model law given the research, expert involvement, public involvement and legislative oversight. Ultimately, with the above shown ideal timeline, a sustainable development model law would be introduced and ready for ratification by 2027.

With the timeline of Agenda 2030, it is expected that the SDGs will be implemented and sustainable development be relatively achieved by 2030. And, according to the Paris Agreement, countries have until 2050 to address climate change concerns. This would mean that, if we limit our understanding of sustainable development within the boundaries of the SDGs or climate change, there would only be a limited timeframe in which a sustainable development model law would be useful. And this is where our understanding of sustainable development must in fact return to the definition provided in the Brundtland Report:

[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>79</sup>

Sustainable development has an explicit link to future generations and so for as long as there are future generations whose needs must be considered, there will be sustainable development. The use of a model law is not a rigid or inflexible device. As such, with time,

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<sup>79</sup> World Commission on Environment and Development Our Common Future: Report of the World Commission on Environment and Development (1987) 41.

when new challenges impact the ability to ensure sustainable development, the model law itself can be amended or nations can amend their national legislation that has adopted the model law.

At present, in the field of sustainable development, having goals and idealistic commitments is not enough to meet realistic challenges and provide practical solutions for ensuring sustainable development at a national level. A sustainable development model law would be the first step in securing a practical legislative instrument that is measurable, uniform, and flexibly implementable. Guidance is needed on a legislative level to make changes in favour of sustainable development. A sustainable development model law offers guidance and ensures a blueprint for sustainable development which countries are free to adopt in a way that supports national skills and resources and meets national concerns.