



**Preliminary Comments on the Chairman's Paper dated 9 May 2002
Fourth Session of the Preparatory Committee for the
World Summit on Sustainable Development¹**

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The draft Chairman's text dated 9 May 2002 (Sections I to IX) has been improved significantly since the previous draft. It is more balanced and addresses a number concerns expressed by CIEL and others. Nevertheless, considerable deficiencies remain that should be addressed at PrepCom4 in order to better meet the challenges of sustainable development. We would like to highlight a few areas in this introductory note, while the drafting suggestions in these and other areas follow immediately below. CIEL has prepared separate comments on the last section of the Paper (Section X) regarding the Institutional Framework.

Human Rights

We strongly recommend that the paper explicitly acknowledge the fundamental role of the protection and promotion of human rights both as a means to and an ultimate end of sustainable development. Currently, human rights are not mentioned in Sections I-IX. In our view, the Chairman's paper should include a reference on human rights protection in its introduction as well as take a more rights-based approach throughout the entire text in order to guarantee the protection of various rights, including the rights to life, health and an adequate standard of living, for example.

Community- Based Property Rights (CBPRs)

We suggest that the text incorporate the concept of community-based property rights to address the half of humanity dependant on rural natural resources. The term "tenure" – which is used in the text -- has often proven to be insufficient in gaining legal recognition of the community-based property rights (CBPRs) of indigenous and other local communities. The concept of "rights" is better understood legally than the concept of tenure. The term "community-based" indicates that the property rights being secured relate to the local communities. In this context it should also be noted that the text's references to "indigenous and local communities" should be replaced by "indigenous and *other* local communities" because indigenous communities are also local.

¹ The Center for International Environmental Law (CIEL) is a public interest, not-for-profit environmental law firm founded in 1989 to strengthen international and comparative environmental law and policy around the world. CIEL's goals aim, among other things, at solving environmental problems and promoting sustainable societies through the use of law and at incorporating fundamental principles of ecology and justice into international law.

Intellectual Property

The paper's references to intellectual property, especially in Section IV, still cause concern. Innovation and technological development are essential prerequisites to sustainable development. Promoting innovation requires a system of intellectual property rights that simultaneously balances the interests of developed and developing countries, and the interests of consumers, producers and innovators. The current tendency in multilateral, regional and bilateral intellectual property agreements to promote overly strong intellectual property rights could undermine, rather than promote, the creation, transfer and dissemination of technology, and may benefit the producers of technological innovation (located mainly in the North) at the expense of its users (located mainly in the South). The text should assert the importance of an international intellectual property system that addresses the needs of poor countries and people.

Export credit agencies (ECAs)

Given the important function of export credit agencies (ECAs) in supporting enormous amounts of export trade and investment in economic development and infrastructure projects, ECAs can play a key leadership role in fostering sustainable development. In order to do so, however, it is essential to ensure that the debt implications and the socially and environmentally negative impacts arising from the projects benefiting from their support are minimized and mitigated. This can best be done through binding international guidelines, including the requirement to conduct early, comprehensive, transparent and participatory social and environmental impact assessments.

Services

Services can constitute an important aspect of poverty eradication, covering activities as diverse as education and health services, the provision of water, and services related to the extraction of natural resources. Services are highly regulated, amongst others for economic, environmental or social reasons. Liberalization of international trade in services could limit the ability of governments to regulate in order to pursue domestically determined policy objectives. Nevertheless, such liberalization is currently being pursued at the multilateral, regional and bilateral levels. It is crucial that these negotiations be based on an early, comprehensive, transparent and participatory assessment of impacts, in order to identify the sectors where liberalization could have negative social, health and environmental implications. Assessments should focus on the particular needs of developing countries and their societies. Developing countries should be given adequate financial assistance to carry out their national assessments. Textual references to the need for assessments could be included in Section II of the text which, among other things, refers to basic services for the poor (see paragraph 7(b)).

Biotechnology

Except for one very narrow reference (paragraph 39(j)), the current draft does not refer to biotechnology--an area of human activity that continues to develop rapidly and which has an enormous potential for transforming our society and the biosphere, possibly in devastating ways. Biotechnology has already been used to create crops that produce human drugs and industrial chemicals, bacteria that produce medicines, food and fiber

crops that contain their own pesticides or are immune to herbicides, food crops that have enhanced nutritional value, trees and bacteria that act as bioremediation agents, ornamental fish that can survive in colder water than their non-modified relatives, organisms that grow much more rapidly than their wild relatives, and viruses that function as biocontrol agents. Biotechnology is also used in medical therapy, and possibly also for human cloning and military or terrorist purposes.

Besides raising important ethical and national security issues, some products of biotechnology raise extremely serious environmental, social and economic issues: for example, every genetically modified organism is a potential invasive species, and over time, one can expect massive changes in the earth's flora and fauna. Moreover, the prevalence and uses of biotechnology will almost certainly increase. Biotechnology thus holds an important promise for promoting sustainable development, but also carries a risk of irreversible and serious harm to human society.

The text should explicitly mention that biotechnology, including the modification and creation of organisms using recombinant DNA technology, as well as the products resulting there from, should be regulated at the national level in a comprehensive, rigorous, and transparent manner to protect human health, the environment, and national security; and that international laws and institutions should be put in place that are adequate to regulate the international movement of biotechnological processes and products.

Detailed suggestions for textual changes follow.

I. Introduction

4. Good governance within each country and at the international level is essential for sustainable development. At the domestic and international levels, sound environmental, social and economic policies, democratic institutions responsive to the needs of the people, rule of law, compliance with international law, anti-corruption measures, respect for human rights, including gender equity, meaningful opportunity for participation for those persons affected by decisions, and an enabling environment for investment are the basis for sustainable development. As a result of globalization, external factors have become critical in influencing-determining the success or failure of developing countries in their national efforts. The gap between developed and developing countries point to the continued need for a dynamic and enabling international economic environment supportive of international cooperation, particularly in the field of finance, technology transfer, debt and trade, as well as full and effective participation of developing countries in global decision-making, if the momentum for global progress towards sustainable development is to be maintained and increased.

II. Poverty eradication

6. Eradicating poverty is the greatest global challenge facing the world today and an indispensable requirement for sustainable development, particularly for developing countries. While each country has primary responsibility for its own sustainable development and poverty eradication, concerted and concrete measures are required to achieve the internationally agreed poverty-related targets, including the Millennium Development Goals. Actions at the international, regional and national levels are required to accomplish ~~these~~ following targets.

7.

(b) Develop national programmes for sustainable development and community development to promote the empowerment of people living in poverty and their organizations. In order to realize the right to an adequate standard of living, ~~These~~ programmes should reflect their priorities, and enable them to increase access to productive resources, public services and institutions, in particular land, water, employment opportunities, credit, education, and health, while ensuring that multilateral, regional and bilateral negotiations on the liberalization of trade in services support rather than undermine the goals of poverty eradication, the protection of natural resources and the environment and the protection of public health and human rights.

(c) Promote women's right to participation in decision making at all levels, mainstreaming gender perspectives in all policies and strategies, eliminating all forms of violence and discrimination against women, and improving the status, health and economic welfare of women and girls through full and equal access to economic opportunity, credit, education, health care and services;

(f) Provide access to other agricultural resources, for people living in poverty, especially women, and promote, as appropriate, land tenure arrangements that recognize and protect indigenous and other local community-based property rights, including common property and natural resource management systems;

(h) Transfer ~~of~~ basic sustainable agricultural and natural resource management techniques and knowledge, including natural resource management, to small and medium-scale farmers, fishers and the rural poor, including through multi-stakeholder approaches and public-private partnerships aimed at increasing agriculture production and food security;

(i) Increase food availability and affordability, including through harvest- and food-technology and management, as well as equitable and efficient distribution systems, by promoting for example, community-based partnerships linking urban and rural people and enterprises;

9. Launch an action programme to reduce by half the number of people who currently lack access to modern energy services by 2015. This ~~would include~~ will require international, regional and national actions to:

(a) Utilize existing and develop new financial instruments and mechanisms, to provide financial resources to developing countries, to meet their capacity needs and strengthen

national institutions in energy, including promoting energy efficiency, advanced clean fossil fuel technologies and renewable energy;

(c) Develop regional plans of action with local input and participation to facilitate cross-border energy trade, including the interconnection of electricity grids and non-threatening oil and natural gas pipeline.; These plans should be developed with the full participation of local communities, by-pass areas protected for environmental or social reasons and incorporate independent environmental and social monitoring;

(d) Develop and utilize locally available and indigenous energy sources and infrastructures for various local uses, where considered more environmentally sound, socially acceptable and cost-effective, with increasing. Increase the -use of renewable energy resources including wind and solar powers, and find simple and local solutions to meet daily energy needs, including through community-based development methods, with the support of the international community and its public multilateral and bilateral financial institutions, ~~to meet the daily energy needs and to find simple and local solutions;~~

NEW (h): Establish renewable energy portfolio targets of 20% by 2015 for developed country export credit agencies and multilateral development banks.

10. Strengthen the contribution of industrial development to poverty eradication and sustainable natural resource management. This ~~would include~~ will require, inter alia, international, regional and national actions to:

11.

(a) NEW: Improve access to potable drinking water and sanitation facilities for the rural and urban poor with special attention to households headed by females;

(a) Progressively realize the right ~~Improve access~~ to adequate shelter and basic social services for the rural and urban poor, with special attention to ~~female heads of~~ households headed by females;

III. Changing unsustainable patterns of consumption and production

13.

(a) Adopt and implement policies and measures aimed at promoting sustainable patterns of production and consumption, applying the polluter-pays principle, with due regard to the public interest and without distorting sustainable and equitable patterns of international trade and investment;

14.

(c) Provide incentives for investment in cleaner production and eco-efficiency in all countries such as state-financed loans, venture capital, export credits and guarantees technical assistance and training programmes for small and medium-sized companies, while avoiding trade-distorting measures inconsistent with ~~WTO rules~~ international law;

(d) Collect and disseminate information on cost-effective examples in cleaner production, eco-efficiency and environmental management, and promote the exchange of best practices and know-how on environmentally sound technologies between public and private institutions and between countries;

(e) Provide training programmes to small and medium-sized enterprises on the use of information and communication technologies.

15. Enhance corporate, environmental and social responsibility and accountability. This would include international, regional and national actions to:

(a) Consider developing legal standards for corporate responsibility and accountability and encourage industry to improve social and environmental performance, including the respect for human rights through voluntary initiatives, including environmental management systems, codes of conduct, certification, and public reporting on environmental and social issues, taking into account furthering such initiatives as the International Organization for Standardization (ISO) standards and the Global Reporting Initiative (GRI) guidelines on sustainability reporting, bearing in mind Principle 11 of the Rio Declaration;

(b) Encourage dialogue between enterprises and the communities in which they operate and other stakeholders; with reference to international best practice of local community consultations and prior informed consent;

(c) Encourage financial institutions, public and private, to incorporate transparent sustainability considerations into their decision-making processes, including public release of environmental impact assessments;

(d) Strengthen labor rights through the development of ~~Develop~~ workplace-based partnerships and programmes, including training and education programmes.

NEW (e) Encourage export credit agencies to adopt World Bank Group environmental and social standards by 2005 for all sensitive private sector projects supported.

17.

(e) Support the transition to the use of liquid and gaseous fossil fuels, where considered more environmentally sound, socially acceptable and cost-effective than renewable energy options;

(g) Integrate, as appropriate to the maximum extent possible, energy efficiency considerations into the planning, operation and maintenance of long-lived energy consuming infrastructures, notably transport, urban land use, industry, agriculture and tourism;

(h) Accelerate the development, diffusion and deployment of affordable and cleaner energy efficiency and energy conservation technologies as well as the transfer of such technologies, in particular to developing countries, on favourable terms, by establishing portfolio targets at export credit agencies and multilateral development banks, including on concessional and preferential terms, as mutually agreed;

(l) Promote policies to reduce market distortions in order to achieve energy systems compatible with sustainable development through the use of improved market signals and by removing market distortions, including restructuring taxation and phasing out of harmful fossil fuels and nuclear subsidies, where they exist, to reflect their environmental impacts, with such policies taking fully into account the specific needs and conditions of developing countries, with the aim of minimizing the possible adverse impacts on their development;

(o) Strengthen and facilitate, as appropriate, regional cooperation arrangements for promoting cross-border energy trade, including the interconnection of electricity grids and oil and natural gas pipelines . . . ; These arrangements should be made on the basis of an assesement of environmental and social impacts, including human rights;

IV. Protecting and managing the natural resource base of economic and social development

22. Achieve the UN Millennium Declaration goal to halve, by the year 2015, the proportion of people who are unable to reach or afford safe drinking water. This would require international, regional and national efforts to:

(b) Ensure Facilitate access to public information and participation at all levels in support of policy and decision-making related to water resources management and project implementation as well as empower women;

29. Promote the conservation and sustainable management of marine living resources through actions at the international, regional and national levels to:

NEW (e) Commission the UNEP and other appropriate institutions to develop an internationally-recognized priority list of sensitive marine ecosystems off limits to extractive development.

33.

(e) Support the Artic Council initiative to assess the environmental, social and economic consequences of climate change on the Arctic as well as on the Antarctic, in particular the impact on ~~local and~~ indigenous and other local communities and their enjoyment of human rights.

35.

(d) Promote programmes to enhance the productivity of land and the efficient use of water resources in agriculture, forestry, wetlands, artisanal fisheries and aquaculture, especially through indigenous and other local community-based approaches;

(f) Enact, as appropriate, measures that protect indigenous and other local resource management systems and support the participation of all appropriate stakeholders in rural planning and local governance;

(g) Adopt policies and implement laws that guarantee well-defined and enforceable land and water use natural resource rights and promote legal security of tenure, including community-based property rights, while recognizing the existence of different national laws and/or systems of land access and tenure, and provide technical and financial assistance to developing countries that are undertaking land tenure reform;

38.

(a) Enhance international cooperation, sustainable foreign direct investment and partnerships with both private and public sectors at all levels;

(d) Promote the diversification of the economic activities, including through the facilitation of access to markets and commercial information, and participation of emerging local enterprises, especially small and medium enterprises (SMEs).

39.

(a) Incorporate and mainstream the objectives of the CBD into global, regional and national sectoral and cross-sectoral programmes and policies, in particular in the programmes and policies of donor countries and funding agencies and export credit agencies;

(f) Preserve and maintain traditional knowledge relevant to biological diversity and promote its wider application in decision and policy-making in consultation with and participation of indigenous and other local communities, while recognizing the ownership rights of the knowledge and the need to apply appropriate benefit-sharing mechanisms;

(g) Provide for the protection to traditional knowledge through flexible and effective sui generis systems. Such sui generis systems should take into account the national and regional concerns, as well as those of indigenous and other local communities, where appropriate. Technical capacity and financial support should be jointly implemented in order to Encourage technical and financial support to developing countries in their efforts to conserve, enhance, catalogue, and secure sui generis systems for the protection of traditional knowledge particularly in its application of sustainable methods of production, with a view to conserving biodiversity;

(i) Ensure successful conclusion of existing processes under the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and in the Ad Hoc Open-ended Group on Article 8 (j) and related provisions of the CBD, to ensure that benefits derived from the use of genetic materials and traditional knowledge, including through the use of intellectual property rights filing and licensing, are fairly and equitably shared, particularly with source countries and with indigenous and other local communities;

(j) Ensure that biotechnology be regulated in a comprehensive, rigorous and transparent manner so as to take advantage of its benefits while at the same time protecting against its risks; and pPromote an effective and transparent framework and mechanisms for equitable access to the results and benefits arising from biotechnologies, including intellectual property licensing, based upon genetic resources, in accordance with article 19 of the CBD;

(k) Urge countries to become parties of the biodiversity related international agreements and provide the necessary financing, incentives and mechanisms for adequate technology transfer and capacity-building support to developing countries to facilitate their effective implementation.

40. Forests and trees cover nearly one third of the earth's surface. Sustainable forest management of both natural and planted forests is essential to achieving sustainable development and is a critical means to eradicate poverty, reduce land and resource degradation, improve food security as well as access to safe drinking water and affordable energy, and contributes to the well-being of the planet and humanity. Achievement of sustainable forest management, globally, is an essential goal of sustainable development and will require actions at all levels to:

41. Mining, minerals and metals are important to the economic and social development of many countries. Mining operations should be conducted in accordance with international human rights, as well as international and domestic environmental law. To enhance the contribution of mining, minerals and metal to sustainable development, actions at international, regional and national levels are required to:

(a) Address the environmental, economic, health and social impacts and benefits of mining, minerals and metals, including workers' health and safety, throughout their lifecycle and use existing mechanisms, including partnerships arrangements among interested governments, intergovernmental organizations and other stakeholders to promote greater efforts, transparency and accountability for sustainability of the mining and minerals industry, as well as establish effective local, national and international regulations and mandatory codes of conduct;

(b) Enhance the participation of local and indigenous and other local communities to play an active stakeholder role in minerals, metals and mining development through the life cycles of mines, including after ~~its~~ their closure;

NEW (d) Encourage successive shift of investments from mineral extraction towards resource conservation, reuse and recycling.

V. Sustainable Development in a Globalizing World

42. The potential of globalization to promote sustainable development for all remains yet to be realized. Efforts at international, regional and national levels are required to make globalization equitable, inclusive, environmentally sound and responsive to the needs of the developing countries and needy communities everywhere. In the context, states should cooperate to comply with their existing obligations under international law, and assert their authority to ensure that state and non-state actors affecting sustainable development and human rights, are held responsible and accountable. Actions will be required at all levels to:

(f) Ensure that preferential trade schemes supports sustainable development and reduce or eliminate environmentally harmful subsidies;

(j) Reduce global financial volatility by adopting better and more transparent forms of financial market regulation including through, *inter alia*, the implementation of [the Monterrey Consensus](#);

(k) Strengthen the capacities of developing countries by increasing assistance from multilateral financial institutions for public/private initiatives that improve access, accuracy, timeliness and coverage of information on countries and financial markets, [and that support measures taken in conformance with paragraph \(n\) below](#);

(l) Promote, [with a view towards binding enforceable obligations](#), corporate responsibility and accountability and the exchange of good practices, including through public/private partnerships and voluntary initiatives [**building, inter alia, on the UN Global Compact and the OECD Guidelines for Multilateral Enterprises, and other initiatives to develop international legal standards for corporate responsibility and accountability, as appropriate**²], as well as by using tools such as environmental management accounting and environmental reporting;

(m) Provide assistance to developing countries to promote [environmental and social](#) impact assessments that identify trade, environment and development linkages and related policy measures; [and-](#)

(n) NEW: [Ensure that harms are minimized based on the results of the assessments conducted under the previous paragraph, and that adequate policy and legal regimes are in place to manage globalization so that the social benefits are maximized and the harms are mitigated.](#)

VI. Health and Sustainable Development

43. The Rio Declaration states that human beings are at the centre of concerns for sustainable development, and that they are entitled to a healthy and productive life in harmony with nature. The goals of sustainable development can only be achieved in the absence of a high prevalence of debilitating illnesses while population health requires poverty eradication. ~~There is an urgent need to address the causes of ill health and their impact on development.~~ [Environmental quality is an important determinant of human health and there is an urgent need to act on ill health arising from poverty and resulting from environmental degradation](#) with particular emphasis on women and children, as well as other vulnerable groups of society such as people with disabilities, elderly persons, and indigenous people.

44. Strengthen the capacity of [states and their](#) healthcare systems to [realize the right to health, in particular core obligations related to primary health care for all. This requires programs to](#) deliver basic health services to all in an efficient, accessible and affordable manner aimed at preventing, controlling and treating diseases and to reduce environmental health threats and, to this end, take measures to:

(g) Target research efforts and [their](#) dissemination to reduce exposures, in particular of susceptible and vulnerable populations, to all kinds of pathogenic agents, building on

² The Chairman has not proposed any compromise language and further discussion will be needed to reach consensus.

equal access to healthcare services, education, training, and medical treatment and technology, as well as to address the secondary effects of poor health;

(h) Promote the use of traditional medicine, where appropriate in combination with modern medicine, with an approval and involvement of the indigenous and other local communities who are the holders of such knowledge and practices, and encourage governments to develop and implement strategies ensuring effective protection of traditional knowledge [through approaches mechanisms/instruments such as, inter alia, intellectual property rights, the use of contractual agreements, and sui-generis protection regimes / ensuring sui-generis protection of traditional knowledge³];

(l) Strengthen and promote ILO programmes to reduce occupational deaths, injuries, and illnesses originating from unsustainable work practices and conditions and to link occupational health with public health promotion as a means for promoting public health and education;

47. Implement the commitments and objectives contained in the Declaration on the TRIPS Agreement and Public Health adopted at Doha in a manner supportive of the protection of public health and of the promotion of access to medicines for all, while recognizing the gravity of the public health problems afflicting many developing and least developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics; and ensure that the implementation of these commitments also be reflected in the technical cooperation programs of WTO, WIPO, WHO and any other relevant UN organizations.

VII. Sustainable Development of Small Island Developing States

VIII. Sustainable development initiatives for Africa

51.

(f) Create effective and transparent regulatory frameworks systems regarding the mining sector while also achieving that attract investments and an conducive environment conducive to the sustainable development of the mining sector;

52. Deal effectively with natural disasters and conflicts through initiatives to:

(c) Provide support to African countries to enable them to better deal with protect and implement the rights of people displaced as a the displacement of people as a result of natural disasters and conflicts; and

IX. Means of Implementation

59. The implementation of Agenda 21 and the achievement of the internationally agreed development goals requires a substantially increased effort, both by countries themselves and by the international community, based on the principle of common but

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differentiated responsibilities, to significantly increase financial resources including new and additional financial resources, and to improve trade opportunities, domestic regulatory and enforcement regimes, transfer of environmentally sound technologies, on a concessional or preferential basis as mutually agreed, –education and awareness-raising, capacity-building, information for decision-making, and scientific capabilities.

67. Facilitate access to markets for the exports of developing countries, particularly in areas of interest to these countries, with action to:

(a) Remove tariff, and unjustified non-tariff barriers, protectionist measures and **[unilateral restrictive trade practices/ unilateral trade sanctions to reinforce the environmental agenda;⁴]**

(d) **[Reduce, as appropriate, and eliminate tariffs on non-agricultural products, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as unjustified non-tariff barriers, in particular on products of interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions;]**

69. Make trade and environment mutually supportive, with action to:

(b) **[Continue undertaking social, environmental and developmental assessments of trade policies and, based on these assessments, ensure that trade and investment rules do not infringe on the ability of all levels of government to regulate to achieve environmental and developmental priorities];**

(c) Eliminate, or as appropriate, reduce environmentally harmful subsidies, [particularly in developed countries while preserving the ability to use environmentally beneficial subsidies as appropriate].

70. Promote the creation of domestic and international markets for organic produce and other ecologically preferable goods or services –through technical assistance and co-operation with developing countries, with due attention to the need for quality control compliance and preservation of consumer confidence in order to encourage ecologically preferable organic production and trade.

72.

(e) **[Establish an (effective) mechanism by 2004] for the development, transfer and diffusion of environmentally sound technologies to developing countries.**

75. Improve policy and decision-making at all levels through, *inter alia*, improved collaboration between natural and social scientists, and between scientists and policy-makers, with action to:

(a) Increase the use of scientific knowledge and technology, including ~~local and~~ indigenous and other local knowledge;

⁴ The Chairman has not proposed any compromise language and further discussion will be needed to reach consensus.

83. Allocate national and international resources **to implement the right to education, in particular for** basic education, and for improved integration of sustainable development into education and in bilateral and multilateral development programmes and improve integration between publicly funded R&D and development programmes.

91.

(c) Develop the capacity of civil society to participate in designing, implementing and monitoring sustainable development policies and strategies at **the national all levels**; and

100. **[Further develop and promote sustainability impact assessments at the national all levels as a tool to better identify trade, environment, human rights and development linkages as well as appropriate mitigating and enhancing measures, and encourage countries and international organizations with experience in this field to provide assistance to developing countries, for this purpose.⁵]**

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⁵ The Chairman has not proposed any compromise language and further discussion will be needed to reach consensus. Same for paragraph 100.