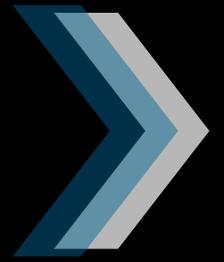


**DOING JUSTICE TO
SUSTAINABLE DEVELOPMENT**
INTEGRATING THE RULE OF LAW INTO
THE POST-2015 DEVELOPMENT AGENDA



The International Development Law Organization (IDLO) is an intergovernmental organisation devoted to empowering people and enabling governments to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

Front cover image: UN Photo_Lucien Rajaonina





IRENE KHAN
IDLO Director-General

The international community has embarked on an ambitious endeavor to establish a new development paradigm. The challenges are enormous. Poverty endures and inequality grows. Discrimination and denial of rights persist. Conflict and civil strife engulf nations with renewed vengeance. Corruption corrodes societies. In many countries, women and girls are subjected to appalling violence.

No one disputes the progress over the past decade to eradicate extreme poverty, nor what the Millennium Development Goals (MDGs) have achieved. Equally, no one disputes that this progress is insufficient, that it has occurred unevenly, both between and within countries, and that climate change, by undermining today's livelihoods and compromising tomorrow's, threatens to reverse it.

Broad consensus is emerging on the solution: sustainable development. But there is no clear agreement yet on what should fall definitively within this umbrella concept.

IDLO sees the rule of law as an integral part of sustainable development – underpinning social and economic progress and environmental protection with strong institutions and good governance, formal legal frameworks and legal empowerment of people, equal opportunity and equitable access to basic services, due process and fair outcomes for all.

In both developed and developing countries, inequality grows when the rule of law does not function properly: when

the law does not protect against discrimination; when opportunities are only open to a few based on wealth and privilege; when environmental protection is weakened in favor of private interests and against the public good; when corruption and bribery distort access to basic services; when the law is selectively enforced in favor of the powerful and against the poor.

Development is undermined when people are unable to access information, express their views and participate freely in decisions that affect their lives and livelihoods.

By setting the standards and institutions for equitable development, and creating avenues of redress when rules and regulations are breached or rights are violated, the rule of law promotes equality, accountability and inclusive participation in the development process at the national level.

By promoting fairer rules for trade, investment, intellectual property, technology transfer and global measures to address climate change, the rule of law also contributes to a more equitable, inclusive and sustainable model of development at the international level.

Only by embedding the rule of law in the sustainable development goals can we ensure that progress will be lasting, justice served, our planet preserved and our wealth augmented and shared more equitably.

Unfortunately, the debate about the rule of law and sustainable development has become entangled in concerns about national sovereignty and cultural hegemony. These misperceptions about the rule of law need to be challenged and set straight.

That the rule of law is closely related to human rights strengthens, rather than hampers, governments' ability to promote development. Experience shows that laws and institutions do not by themselves always provide justice and equity. The law may discriminate against women and minorities, and institutions may exclude and marginalize poor people. That is why we set out in this report concrete case-studies from around the world to demonstrate that the rule of law, properly understood and applied, ensures not only the certainty and predictability of the law but also equality, accountability and respect for human rights – economic, social and cultural rights as well

as civil and political rights.

The rule of law upholds the universal values of human rights – and that includes the provision of clean water as much as the right to fair trial. Indeed, as this report shows, some governments have legislated the right to clean water: none that did so ceded sovereignty, suffered cultural subjugation or went bankrupt as a result.

This report also shows that where the rule of law works well, it does not import foreign norms and mindsets; rather it works in context-specific ways, with systems that may be formal, customary or spontaneously evolved, to spread equity across diverse societies. Just as the development challenges of each country is unique, the legal system and jurisprudence of each country are deeply rooted in its specific history, politics, values, customs and traditions. National ownership and understanding of the national and local context are fundamental to a proper application of the rule of law to development.

Critics have pointed out that justice is not easy to measure and data collection will pose major political and practical challenges. On the other hand, every country measures some aspect of its justice sector – whether it is the effectiveness of laws and regulations, or the speed of judicial decision-making or the capacity of institutions. The rule of law in the context of sustainable development will allow governments to check not only whether institutions are functioning well but whether poor and marginalized groups, women, slum-dwellers, migrant workers, minorities are able to access justice. That cannot but be a plus point for sustainable development.

Critics have often – quite rightly – pointed out that in the arena of development, too much attention is paid to reaching nominal milestones and not enough to measuring real-life gains or checking how equitably these gains have flowed. By embracing the “end-users” of institutions, the rule of law provides an equitable, people-oriented perspective to sustainable development.

There is high expectation that the post-2015 agenda will be truly transformative. Rooting sustainable development in a culture of justice through the rule of law would indeed be a game-changer.

Rome, June 2014



EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda seeks to demonstrate how and why the rule of law is indispensable to reaching sustainable development objectives. The rule of law as a principle of governance, which holds all accountable to just laws, ensures that states honor their commitments and work towards inclusive and equitable development.

Inclusivity, equity and justice are at the core of the sustainable development paradigm, driving our collective efforts to correct artificial and harmful imbalances in economic growth, to remedy the miseries of lives lived in extreme poverty, and to ensure that resources and natural habitats are preserved for future generations. As this report demonstrates, the rule of law is key in this regard, placing a much-needed but often overlooked focus on adopting sound and fair laws and policies, on building the capacity of institutions, and on empowering the poor and marginalized through a greater awareness and realization of their rights. Indeed, it is these very factors – inadequate laws and policies, poor implementation by institutions, and the inability of the poor to assert their rights and contribute to society’s progress – that are among the root causes of poverty, inequality and environmental degradation and are major impediments to development and its sustainability. Without commitment to the rule of law, supported by specific measurement indices, investments in health, education, renewable energy and climate change reduction, will not be effective or sustainable.

Against this background, Doing Justice to Sustainable Development delineates the interventions that would help realize the transformational changes in society without which economic, social and environmental progress cannot be sustained.

Under the economic dimension of sustainable development, strong legislative frameworks can provide for clarity, predictability and certainty in commercial affairs, facilitating business transactions while discouraging

predatory and corrupt behaviors. Commercial and other disputes can be addressed through enhanced institutional capacity, providing for increased investor confidence and wider social cohesion. Moreover, legal empowerment efforts, including access to markets and financial services, help create a level playing field and thus ensure that the poor have opportunities to participate in the broader economy. Growing inequalities, unchecked by the rule of law, are now widely recognized as one of the key impediments to sustainable economic growth.

To promote equitable economic development, IDLO through this report advocates:

- *strengthening laws and policies to ensure secure access to information and transparency;*
- *fostering access to markets and financial services for the poor and marginalized; and*
- *providing for secure land tenure and property rights.*

The rule of law provides for equitable social development through strong legal frameworks that promote social progress and social cohesion. Coupled with enhanced state capacity to implement related policies, laws and regulations, the rule of law provides for transparent and participatory dispute resolution mechanisms that allow individuals and groups to claim their rights to equal opportunity, education, health, housing, and other economic and social rights.

To ensure equitable social development, IDLO advocates:

- *according health care, education and other social services their due status in law and policy, as rights to which the poor are entitled;*
- *providing legal identity to all;*
- *ensuring access to justice and administrative redress; and*
- *promoting gender equality and women’s empowerment.*

The rule of law provides for meaningful efforts to address environmental issues, including climate change, through robust legal frameworks

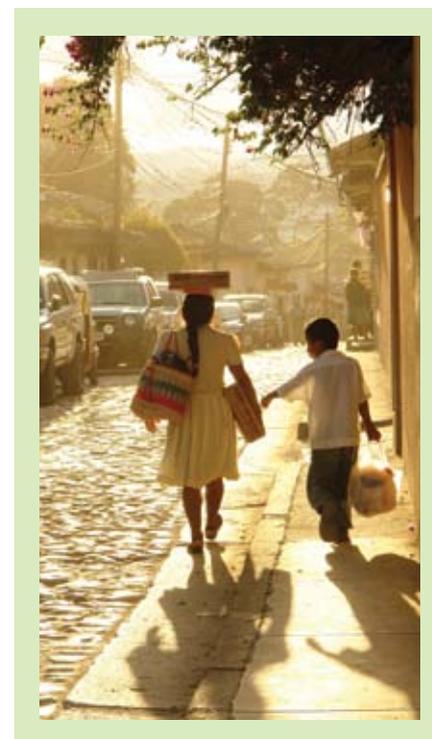


Image: Flickr_chamoestudio

➤ INCLUSIVITY, EQUITY AND JUSTICE ARE AT THE CORE OF THE SUSTAINABLE DEVELOPMENT PARADIGM, DRIVING OUR COLLECTIVE EFFORTS TO CORRECT ARTIFICIAL AND HARMFUL IMBALANCES IN ECONOMIC GROWTH, TO REMEDY THE MISERIES OF LIVES LIVED IN EXTREME POVERTY, AND TO ENSURE THAT RESOURCES AND NATURAL HABITATS ARE PRESERVED FOR FUTURE GENERATIONS ◀

TABLE OF CONTENTS

> FORWARD	03	3.3 Environmental Sustainability	34
> EXECUTIVE SUMMARY	05	> Legal systems for environmental sustainability	35
SECTION 1: A TRANSFORMATIVE POST-2015 AGENDA		> Indigenous peoples and environmental protection	36
1.1 From MDGs to SDGs	09	> Integrated natural resource management policies, laws and plans	37
1.2 The Rule of Law: A Concept of Justice	10	> Ensuring access to information and justice for environmental stewardship	39
SECTION 2: SHIFTING THE DEVELOPMENT PARADIGM		SECTION 4: MEASUREMENT CHALLENGES	
2.1 Strengthening Laws	16	4.1 A Multifaceted Sector, A Multifaceted Challenge	41
2.2 Building Institutions	18	> The rule of law can be measured	42
2.3 Empowering People	19	> Political will to measure the rule of law	42
SECTION 3: INTEGRATING THE RULE OF LAW IN SUSTAINABLE DEVELOPMENT		4.2 Measuring the Rule of Law: What the MDGs Taught Us	43
3.1 Economic Growth	23	> Legal pluralism and local contexts	43
> Ensuring access to information and transparency of government processes	24	> Accountability and credibility	43
> Fostering access to markets and financial services	26	> Avoiding perverse outcomes	44
> Securing land tenure and property rights	27	4.3 Measurement Approaches and Considerations	44
3.2 Social Development	28	> Objective change indicators	45
> Legal protection of social and economic rights	27	> Structural indicators	46
> Legal identity to access social rights	31	> Baskets of indicators	46
> Access to justice	32	> Composite indicators	46
> Gender equality and women's empowerment	33	CONCLUSION	48



SECTION ONE:
A TRANSFORMATIVE
POST-2015 AGENDA

A TRANSFORMATIVE POST-2015 AGENDA



Image: CIAT_Neil Palmer

The flurry of debates on the post-2015 development agenda has made one thing clear: in order to address the challenges confronting the international community, a truly transformative approach is required, one that places inclusivity, equity and justice at the center of a global pursuit for sustainable development. The rule of law is key to realizing equitable growth, inclusive social development and environmental sustainability. It must play a central part in this transformative agenda.

The post-2015 development agenda is being designed against a backdrop of political and economic turmoil. Policies focusing on economic growth at the expense of full employment have exacerbated inequality. In some fast-growing economies, industrial accidents have highlighted poor regulation and enforcement. Food price shocks have maximized the risk of hunger and malnutrition. In parts of the world, entrenched armed conflicts are taking a heavy toll, while in others, emerging tensions are spreading instability.

Popular disaffection with state institutions has affected both developed and developing countries, fueling a democratic demand for justice. In the words of Amartya Sen, “justice cannot be indifferent to the lives that people... actually live.”¹ People’s call for change is multiplying. In some settings, this has led to more sensitivity to citizen demands and more efforts to widen participation. In others, it has triggered a tightening of political freedoms or paved the way for increasingly exclusionary policies. All told, state legitimacy is now closely linked – at least in the public’s eyes – to conditions of equity, equality and employment opportunity.²

In the developed world, with inequality rising, Joseph Stiglitz in his book, *The Price of Inequality*, has warned against the danger of seeing “justice for all” replaced by “justice for those who can afford it.”

Given rising levels of inequality, increasing numbers of scholars and policy makers are beginning to reconsider the global financial system, the international governance structure,

and the nature of development aid. There is more discussion of the need for reform of the international tax and trade architecture and related disputes mechanisms.

There is a deeper appreciation of the damage caused by illicit financial flows and the small arms and light weapons trade. Policy makers are realizing that inequality and exclusion harms national economies and provokes social discord. What is “possible” is being redefined. In its report, *An Action Agenda for Sustainable Development*, the Sustainable Development Solutions Network states that “thanks to the powerful forces of technological advances and the rapid growth in emerging economies and many low-income countries, it is now possible – though far from assured – to envision a world by 2030 in which all households are able to meet their basic needs for income, food, health and basic infrastructure.”³

In short, the space for a genuine dialogue on human rights and democratic governance is opening up and, along with it, a grassroots, “bottom up” demand for justice and the rule of law. The challenge is enormous: it will require a cast-iron commitment to make the right investments in the post-2015 agenda, including concerted action to enhance legal frameworks, build institutional capacity and provide for legal empowerment of the poor. The objective of this report is to explore the linkages between the rule of law and sustainable development and demonstrate, through concrete examples, why the rule of law is essential to the post-2015 agenda.

¹ Amartya Sen, *The Idea of Justice*. Harvard University Press, 2009

² Human Development Report 2013: *The Rise of the South*. UNDP, 2013, p. 9

³ *An Action Agenda for Sustainable Development: Report for the United Nations Secretary-General*. Sustainable Development Solutions Network. 2013, p. 2

1.1

From MDGs to SDGs

The Millennium Development Goals (MDGs) are widely regarded as the most ambitious effort to end poverty in the history of the United Nations. In the *Millennium Declaration*, world leaders committed themselves to “free our fellow men, women and children from abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected,”⁴ and to “making the right to development a reality for everyone and to freeing the entire human race from want.”⁵ The eight MDGs that followed were seen as a road map for implementation of these aspirations. According to some observers, the marriage of norms to measurable indicators was one of the most powerful ideas the United Nations had ever generated.⁶ The MDGs aligned funding, expertise and political commitments towards agreed-upon, high-priority development challenges, while maintaining an international platform for states to report on progress.

While much has been achieved, a review of progress on the MDGs reveals significant shortcomings. The goals did not address variation across contexts, or pay attention

A comprehensive consultative process

The design of the post-2015 development agenda has been informed by a number of initiatives, including a High-level Panel of Eminent Persons, regional consultations and widespread consultations with civil society, private sector and other major groups.

*In the outcome document of the United Nations Conference on Sustainable Development (Rio+20), *The future we want*, Member States agreed to launch the Open Working Group on Sustainable Development Goals responsible for creating a proposed set of goals for consideration by the United Nations General Assembly during its 68th session. It also mandated the Intergovernmental Committee of Experts on Sustainable Development Financing, for proposing options on an effective sustainable development financing strategy.*

As this report goes to print, a Zero Draft of Goals and Targets has been issued for consultation within the Open Working Group.

to the relative ease with which some countries (e.g. growing middle-income countries) could reach articulated goals, while others (e.g. conflict-affected and least developed countries) would struggle to achieve minimal results. The goals also failed to account for differences between baseline conditions at the sub-national level, masking growing inequalities and levels of extreme poverty. Targets did not provide for disaggregated measures of progress between rural and urban populations, between men and women, and between different population groups. For instance, although there were gains on girls’ education and maternal mortality in many countries, gender inequities in health and education went largely unaddressed.

There was insufficient awareness of the role that discrimination and marginalization played in the distribution of resources, in services and at key junctures of the development process. Not enough attention was paid to legal discrimination against women and girls or to legal empowerment as a means of combatting poverty and gender inequality. Accountability for delivering on development processes was often lacking.

The absence of any meaningful targets and indicators on the rule of law, human rights and democratic governance significantly reduced the development impact of the MDGs. A people-centered development agenda cannot afford to ignore these issues.

➤ YOU CANNOT FIGHT POVERTY, YOU CANNOT PROMOTE SUSTAINABLE DEVELOPMENT WITHOUT THE RULE OF LAW. WHETHER PRESERVING PEACE OR PROTECTING THE PLANET, ERADICATING POVERTY OR ENCOURAGING ECONOMIC OPPORTUNITY, WE REQUIRE GOOD LAWS AND REGULATIONS THAT ARE FAIRLY ADMINISTERED BY TRANSPARENT AND ACCOUNTABLE INSTITUTIONS, AND THAT PRODUCE FAIR OUTCOMES – FOR THIS GENERATION AND THE NEXT ◀

Source: Irene Khan, Director-General IDLO, *Global Dialogue on the Rule of Law and the Post-2015 Agenda*. New York, September 26, 2013

⁴ *United Nations Millennium Declaration (A/RES/55/2)*. 18 September 2000, para. 11

⁵ *ibid*

⁶ Sakiko Fukuda-Parr, “Should Global Goal Setting Continue, and How, in the Post-2015 era?” *DESA Working Paper No 117 (ST/ESA/2012/DWP/117)*. 2012, p. 2

A TRANSFORMATIVE POST-2015 AGENDA (continued)

1.2

**The Rule of Law:
A concept of justice**

The UN Secretary-General has referred to the rule of law as "... a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."⁷

The rule of law recognizes the essential characteristics of our shared human existence, both as individuals with inalienable rights, and as a part of a social whole with obligations to respect the compelling interests of the group and the environment. This balancing between the various rights and needs of the individual and society is particularly relevant to sustainable development. Competing demands to promote economic growth, ensure social development and provide for environmental sustainability call for rule-based processes and mechanisms to ensure appropriate and equitable compromises so that these objectives are achieved in a mutually reinforcing way.



Image: UN Photo_Eskinder Debebe

One concept, multiple articulations***Interpretations of the rule of law fall into two broad categories.***

The "thin definition" of the rule of law refers to a set of formal decision-making processes developed and managed by pre-defined entities. The emphasis is on consistency, efficiency, and universality in the application of the laws, rules and regulations.

Under the "thick definition" of the rule of law, equal emphasis is placed on substantive outcomes and procedural formality. Rights are protected through due process as well as legal norms, including human rights treaties, constitutions, and other legal texts that seek to advance common values and interests.

⁷ *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616)*. 23 August 2004, para. 6

The rule of law provides clarity and predictability in human affairs, allowing for efficient transactions and peaceful resolution of disputes. Under the rule of law, rights to property, to contractual performance, and to the integrity and wellbeing of the person are publicly disclosed, as are the consequences of failing to respect these rights. The rule of law thus deters illegal acts, including economic or “white collar” crimes, involving embezzlement or other forms of corruption. When a person is charged with a crime, the rule of law ensures that the accused is given an opportunity to mount a defense. Due process in criminal and civil affairs engenders considerable confidence and trust in the state, and is widely recognized as a prerequisite of peace and economic development. Through certainty, legality and predictability, the rule of law inspires the stability and confidence to invest in human resources, industry and infrastructure, fostering political stability and economic growth.

Beyond due process, the concept of rule of law taps into broader notions of justice, often defined as an absence of bias, as rights fulfillment, and as the pursuit and realization of equality, as well as a norm or virtue that permeates institutions of governance.⁸ The UN Secretary-General has referred to justice as “an ideal of accountability and fairness in the protection and

vindication of rights and the prevention and punishment of wrongs.”⁹ Justice is also increasingly understood as the realization of human rights, including social, economic and cultural rights as well as political and civil rights. Thus, justice is both an outcome of, and a guideline for, a governance system based on the rule of law.

The rule of law is the means by which human rights are operationalized. The *Universal Declaration of Human Rights* of 1948 provides that “... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...” Indeed, human rights institutions have long recognized the function of the rule of law as a core component in human rights practice. In the development setting, the rule of law ensures human rights are brought to life as a means of addressing the deprivation, exclusion and discrimination that lie at the heart of poverty and marginalization. This understanding of the rule of law is in sharp contrast to rule *by law*, in which the law may be used as a tool to oppress people and avoid accountability under the guise of formality, legality, and legitimacy.

Non-discrimination and equity, participation and accountability are

fundamental principles of rights-based approaches to sustainable development. At the heart of the rule of law lies the notion of equal protection: that all persons are equal in the eyes of the law. Effective rule of law frameworks ensure that the poor and marginalized are able to enjoy equal rights and are given space to participate in planning processes. By doing so, rule of law frameworks also promote peace, stability and social harmony.¹⁰ Well-formulated rule of law frameworks promote equality and fair treatment by ensuring equal opportunity and non-discriminatory access to services and resources critical to human development.

Effective rule of law frameworks promote accountability by ensuring that individual actors and institutions execute agreed-upon processes and actions that lead to development gains. Accountability implies that actors are identifiable and accessible, that there are mechanisms to provide redress when agreements, understandings or rights are breached, and that officials are held responsible for breaching commitments, engaging in corruption, or violating rights.

⁸ See, for example: Eric Heinze, *The Concept of Injustice*. Routledge, 2013; John Rawls, *A Theory of Justice* (revised edn.). Oxford University Press, 1999, p. 3; Plato, “*The Republic*.” Trans. by Robin Waterfield. Oxford World’s Classics. Oxford University Press, 1984

⁹ *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (S/2004/616). 23 August 2004, para. 7

¹⁰ For example, a lack of opportunity to participate in the drafting of agreements or regulations on land sales and natural resource extraction is noted as a common source of violent conflict. See: *Toolkit and Guidance for Preventing and Managing Land and Natural Resource Conflict*. UNEP, 2012

A TRANSFORMATIVE POST-2015 AGENDA (continued)

➤ THE RULE OF LAW IS NOT A MERE ADORNMENT TO DEVELOPMENT, IT IS A VITAL SOURCE OF PROGRESS. IT CREATES AN ENVIRONMENT IN WHICH THE FULL SPECTRUM OF HUMAN CREATIVITY CAN FLOURISH, AND PROSPERITY CAN BE BUILT ◀

Source: United Nations Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*. UNDP, 2008

Increasingly, the rule of law is being seen both as an outcome and the means of development, a key measure of progress for any country, at any stage of the development trajectory. Much of this approach is inspired by the thinking of leading scholars such as Amartya Sen, who advocates a “realization-focused understanding of justice,” and advances the “need to focus on actual realizations and accomplishments, rather than only on the establishment of what are identified as the right institutions and rules.”¹¹

National ownership and understanding of the national and local context are fundamental to a proper application

of the rule of law to development. Each country has a distinct legal system with its own jurisprudence, and respect for legal pluralism is therefore key to successful development. Just as the development challenges of each country are unique, the rule of law frameworks and justice-making efforts of each country are also deeply rooted in specific history, politics, jurisprudence, values, customs and traditions. Furthermore, rules and remedies may be informed not just by the national legal system but by local, customary or informal practices.

A properly formulated approach to rule of law and sustainable development should take into account the diversity

of challenges for countries along the development spectrum, from countries emerging from conflict or large scale violence to those aspiring to become middle-income countries. It should aim to tackle the challenges faced by developed and developing countries alike, and to design a single framework and set of goals integrating the economic, social and environmental dimensions of development, universally applicable to all.

The rule of law enables sustainable development through:

- equality, equal protection and equity, prioritizing those who are being left behind;
- predictability, clarity and legality in everyday affairs, including due process guarantees;
- processes and mechanisms to balance the economic, social and environmental dimensions of sustainable development;
- peaceful resolution of disputes, leading to wider political and socio-economic stability.

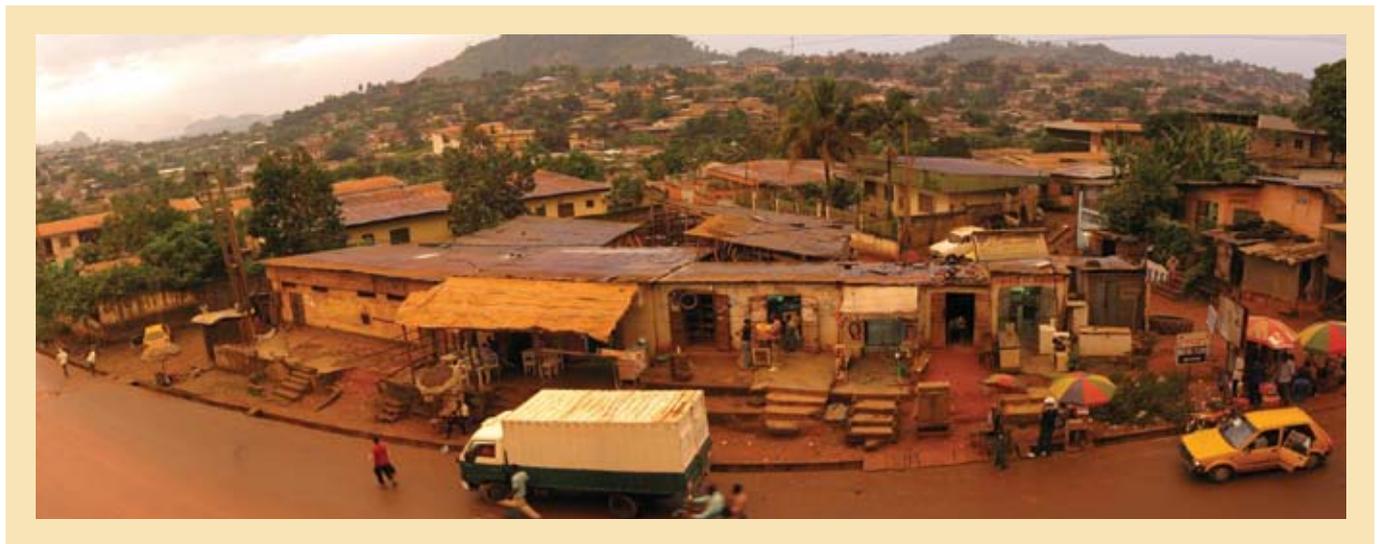


Image: Flickr_Jane Boles

¹¹ Amartya Sen, *The Idea of Justice*, Harvard University Press, 2009, p. 10



SECTION TWO:
SHIFTING THE
DEVELOPMENT PARADIGM

SHIFTING THE DEVELOPMENT PARADIGM

Sustainable development is, at its core, a call to address imbalances and injustices created by extreme poverty, growing inequalities and environmental damage. Sustainable development is “a moral concept that seeks to define a ‘fair and just’ development.”¹² It is driven by a conviction that the present generation must not deprive future generations of their right to thriving ecosystems, robust economies and stable societies. This focus on inter-generational justice, however, cannot come at the expense of those who are most desperate and deprived. Thus, sustainable development also calls for intra-generational justice: a demand that the present generation address the needs of the poor and marginalized today, as a matter of equity and moral certitude.¹³ In this way, sustainable development provides an “ethical framework that could enable national societies, and indeed the global human society, to respond to emerging environmental and developmental problems in an equitable manner.”¹⁴



Image: UN Photo_Logan Abassi

➤ WE ACKNOWLEDGE THAT DEMOCRACY, GOOD GOVERNANCE AND THE RULE OF LAW, AT THE NATIONAL AND INTERNATIONAL LEVELS, AS WELL AS AN ENABLING ENVIRONMENT ARE ESSENTIAL FOR SUSTAINABLE DEVELOPMENT, INCLUDING SUSTAINED AND INCLUSIVE ECONOMIC GROWTH, SOCIAL DEVELOPMENT, ENVIRONMENTAL PROTECTION AND THE ERADICATION OF POVERTY AND HUNGER. WE REAFFIRM THAT TO ACHIEVE OUR SUSTAINABLE DEVELOPMENT GOALS, WE NEED INSTITUTIONS AT ALL LEVELS THAT ARE EFFECTIVE, TRANSPARENT, ACCOUNTABLE AND DEMOCRATIC ◀

Source: *The Future We Want* (A/RES/66/288), 11 September 2012, para. 10

¹² Richard Welford and Richard Starkey, *The Earthscan Reader in Business and Sustainable Development*. Earthscan Publications, 2001, cited in: Jennifer Elliot, *An Introduction to Sustainable Development*. Routledge, 2013, p. 24

¹³ World Commission on Environment and Development, *Our Common Future*. Oxford University Press, 1987; Sudhir Anand and Amartya Sen, “Human Development and Economic Sustainability.” *World Development* Vol. 28, No. 12 (2000): p. 2038: “It would be a gross violation of the universalist principle... if we were to be obsessed about intergenerational equity without at the same time seizing the problem of intra-generational equity.”

¹⁴ Oluf Langhelle, “Sustainable Development and Social Justice: Expanding the Rawlsian Framework of Global Justice.” *Environmental Values* Vol. 9, No. 3 (2000): p. 296

The centrality of the rule of law to sustainable development is well recognized internationally.¹⁵ In the 2005 World Summit outcome document, member states noted that “good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.”¹⁶

Building on these conclusions, the Rio+20 outcome document, *The Future We Want*, noted that the rule of law was essential for inclusive economic development, social development and environmental protection.¹⁷ Similarly, the Declaration adopted at the High-level Meeting of the General Assembly on the Rule of Law in September 2012 stated that the “advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms including the right to development, all of which in turn reinforce the rule of law.”¹⁸ It stated that “the rule of law and development are strongly interrelated and mutually reinforcing” and should be “considered in the post-2015 international development agenda.”¹⁹



Image: ILRI_Mann

There is wide recognition of the indispensability of the rule of law to sustainable development.

The rule of law:

- *strengthens laws and policies to drive transparency and participation and steers responsible and equitable investments in economic, social, and environmental priorities;*
- *builds the capacity of institutions to eradicate poverty, uphold human rights and ensure the sustainable governance of resources; and*
- *empowers individuals and groups to claim their rights, including to resources and services, and demand accountability.*

➤ DEVELOPMENT THAT MEETS THE NEEDS OF THE PRESENT WITHOUT COMPROMISING THE ABILITY OF FUTURE GENERATIONS TO MEET THEIR OWN NEEDS ◀

Source: World Commission on Environment and Development, *Our Common Future*. Oxford University Press, 1987

¹⁵ See for example: Report of the United Nations Conference on the Human Environment [A/CONF.48/14/Rev.1], 16 June 1972; Rio Declaration on Environment and Development [A/CONF.151/26 (Vol. 1)], 13 June 1992; World Summit on Sustainable Development [A/CONF.199/L.6/Rev.2], 4 September 2002

¹⁶ 2005 World Summit Outcome [A/RES/60/1], 24 October 2005, para. 11

¹⁷ *The Future We Want* [A/RES/66/288], 11 September 2012, para. 10

¹⁸ Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels [A/RES/67/1], 30 November 2012, para. 7

¹⁹ *Ibid*

SHIFTING THE DEVELOPMENT PARADIGM (continued)

2.1

Strengthening Laws

When laws are unclear, inconsistent or ambiguous they hinder commercial transactions, sustainable land use, social welfare or crime prevention, or enforce outdated social codes that discriminate against poor and vulnerable groups. On the other hand, good legal frameworks bring clarity, certainty and predictability to business transactions, provide for recourse in case of commercial and civil disputes,²⁰ and help fight discrimination and exclusion and promote equal rights and fair access to benefits, services and other resources.

An effective legal framework will be critical to tackling the wide spectrum of issues that are emerging in the post-2015 development agenda, from social protection and decent work to ending child labor, organized crime and corruption, from promoting legal equality to ensuring universal access to water, sanitation and energy.

Frequently, developing countries do not possess laws that adequately protect their interests in complex technology-related areas such as water management and sanitation, energy generation and distribution, seed and plant varieties. Often legal frameworks designed to attract investments, including employment and taxation laws, are outdated or inadequate.

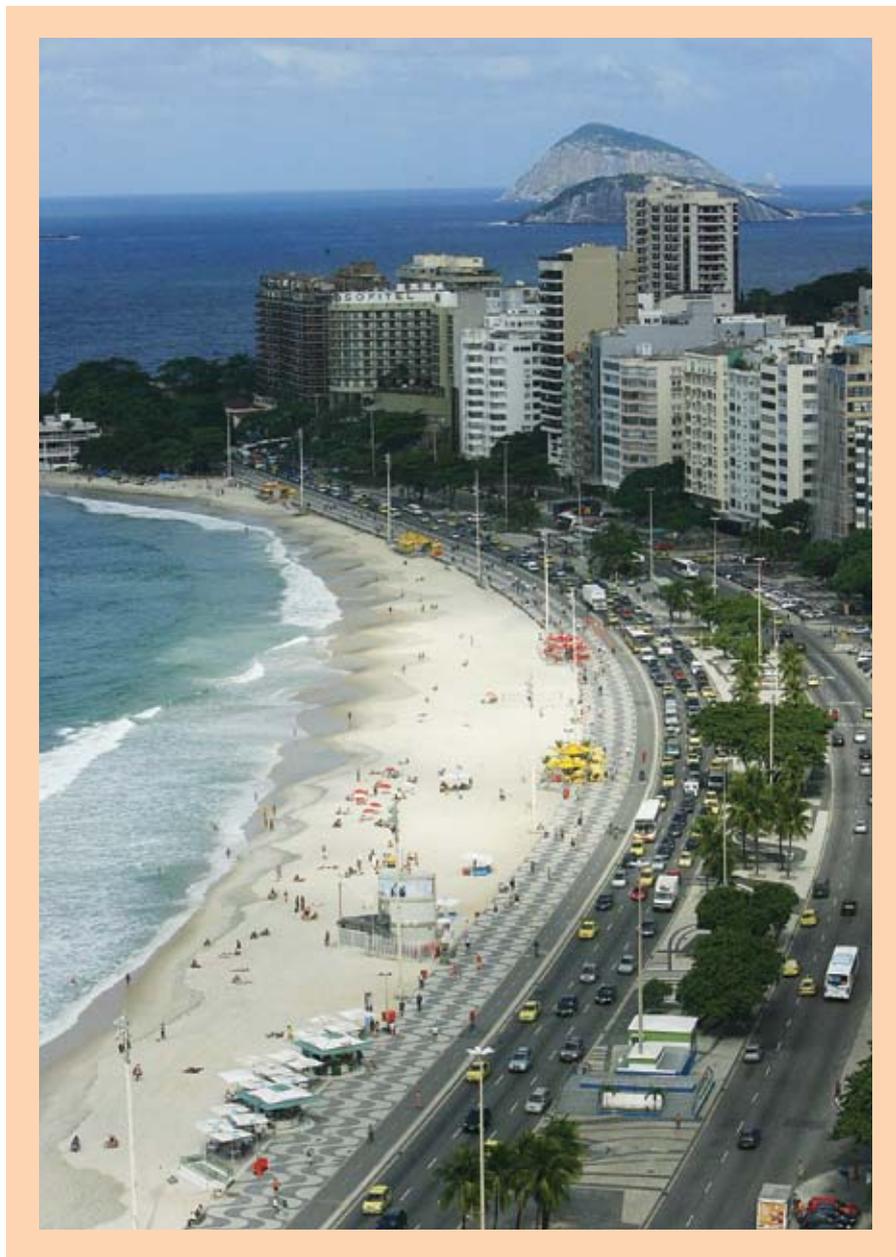


Image: UN Photo_Evan Schneider

²⁰ See: Thomas Carothers, "The Rule of Law Revival." *Foreign Affairs*, Vol. 77, No. 2 (1998): pp. 95, 97; William B.T. Mock. "An Interdisciplinary Introduction to Legal Transparency: A Tool for Rational Development." *Dickinson Journal of International Law*, Vol. 18 (2000): p. 304

Furthermore, intellectual property and technology transfer legislation often fail to take sufficient advantage of the flexibility and exceptions available under international treaties that would allow a proper balance between intellectual property rights and the legitimate expectations of citizens. Even more frequently, developing countries do not have the human and institutional capacity to negotiate agreements and ensure the proper application of these laws, even if they conform to best practice standards.

The result of an inadequate legal system combined with an insufficient capacity is clear: many developing countries only marginally benefit from advances in science, technology and innovation that could help them confront their development challenges. Developing capacity and improving the rule of law in many parts of the world must be given high priority in the new development agenda.

Applying equally to the international as well as the national level, the principles underpinning the rule of law necessitate an open, rules based, non-discriminatory and equitable approach to multilateral law making. International legal frameworks benefit greatly from broad stakeholder engagement and stronger efforts to balance economic, social and environmental policies towards sustainable growth. When policy prescriptions from multilateral financial institutions do not adequately respond to these essential requirements, they fail to win broad support and their impact is reduced considerably.



Image: Flickr_Julio Gonzalez

Brazilian constitutional and municipal legislation work to make the right to food a reality

The right to food is recognized explicitly, as a self-standing right, in 23 countries. For example, the South African Constitution provides the right to "sufficient food and water." Section 28 of the Constitution also guarantees every child the right to "basic nutrition." In Brazil, the right to food is an unqualified right; it is not subject to progressive realization and available resources, as it is in some countries.

Constitutional protection is often referred to as the strongest legal basis for the right to food at the domestic level. However, the effective protection afforded to the right to food, among other social rights, may ultimately depend on the strength of local initiatives.

In 1993, the city of Belo Horizonte in Brazil enacted municipal legislation that committed the city to the right of peoples to define their own food and agricultural policies and to protect and regulate their production and trade in a manner that would promote sustainable development, among other initiatives. A Secretariat for Food Policy and Supply was created involving 20 member council of citizens, workers and business leaders, and church representatives to advise in the design and implementation of a new food system. This participatory approach, led to a variety of innovative solutions to increase access to healthy food for all. For example, noting that conventional markets are often too expensive for low-income groups, channels were created to ensure affordable access to healthy food. In shantytowns, mobile services were set up to facilitate food distribution. Free health assessments and food supplements were also made available, among other initiatives.

The results of the municipal legislation have been significant. Hunger has almost been eliminated and 25 per cent fewer people live in poverty.

Source: Dr. Maja Göpel, "Celebrating the Belo Horizonte." Future Policy Award 2009: Solutions for the Food Crisis. World Future Council, 2009

SHIFTING THE DEVELOPMENT PARADIGM (continued)

2.2

Building Institutions

Effective and capable institutions are widely recognized as essential to implementing any future development agenda.

Institutions play a large role in defining the relationship between state and citizen and cementing development gains, as well as promoting economic growth. Studies have shown that strong institutions are correlated with substantial reductions in child mortality and illiteracy and enhanced achievement of sustainability and other development targets.²¹

Institutions in their broadest sense denote the rules, regulations, laws, government entities, and informal codes of social conduct. Institutional organizations are created to ensure that agreed rules of behavior are systematically followed, and that responsibility for executing decisions and correcting deficiencies is clarified. Unfortunately, state institutions are too often hollowed out, abused as avenues for rent seeking and patronage. In other settings, even if their integrity is strong, their capacity to deliver on their mandates may be lacking.

In rule of law practice, institutional capacity building traditionally involves courts, ministries of justice, police and correction facilities, as well as other structures created to resolve disputes and ensure accountability. In this context, institutional capacity building may require the introduction of court management systems, technical assistance to justice ministries, or development of the legal profession, police and prosecutors. Increased capacity of justice institutions can

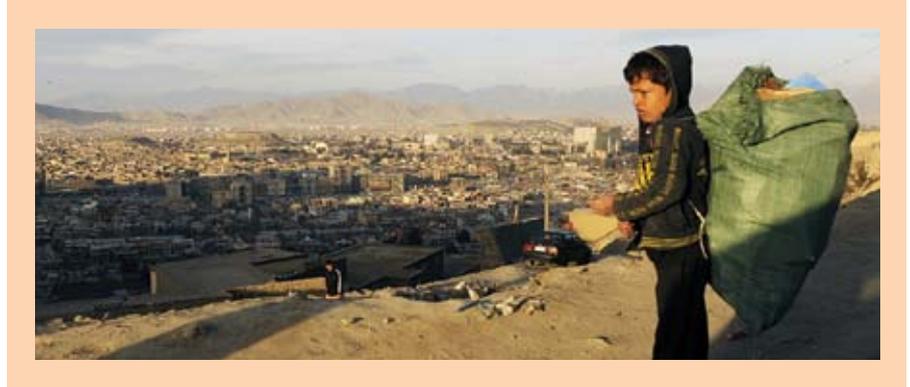


Image: Jawad Jalali

Increased judicial capacity and integrity: Stimulating foreign investment and economic development in Kyrgyzstan

In 2005, Kyrgyzstan's judiciary faced critical capacity challenges including a lack of transparency and high administrative costs. A baseline study of 46 commercial claims revealed that each claim took commercial courts an average of 492 days to resolve. The cost of each claim was around 50 percent of its total value.

IDLO and the European Bank of Reconstruction and Development partnered to strengthen the commercial law capacity of the Kyrgyz judiciary through a variety of means, including training of judges, institutional strengthening and regional cooperation.

A recent program evaluation revealed significant improvement in the public perception of Kyrgyz judges' competence. Complementing this finding, the World Bank's Doing Business 2014 indicated that the ease of doing business in Kyrgyzstan has improved significantly since 2005. In 2014, commercial disputes took an average of 260 days to enforce, just over half the time required in 2005 and cost approximately 10 percent less to adjudicate.

Sources: "Raising the Bar for Judges in Central Asia." Law in Transition 2011. European Bank for Reconstruction and Development; The World Bank Doing Business 2014

impact the behavior of other institutions, by ensuring non-discrimination in the provision of social services, accountability and transparency in procurement and delivery of development projects, and enforcement of environmental laws and regulations.

Increasingly, work is also being done more directly with administrative and bureaucratic machinery of the state to realize specific development outcomes through rule of law frameworks, shifting the focus beyond justice institutions

and towards equitable delivery of social services such as health and education. The rule of law is being seen as relevant to strengthening the capacity of institutions such as national human rights bodies, anti-corruption and integrity commissions, land registries, social welfare institutions, local government offices, small business licensing bureau – in other words, the mechanisms and processes that touch the lives and livelihoods of ordinary people.

²¹ Kevin Davis and Michale J. Trebilcock. "The Relationship between Law and Development: Optimist versus Skeptics." *The American Journal of Comparative Law*, Vol. 56, No. 4 (2008): 895, p. 939 "The effects of improved governance on income in the long run are found to be very large, with an estimated 400 percent improvement in per capita income associated with an improvement in governance by one standard deviation, and similar improvements in reducing child mortality and illiteracy. To illustrate, an improvement in the rule of law by one standard deviation from the current level in Ukraine to those "middling levels prevailing in South Africa would lead to a fourfold increase in per capita income in the long run . . . and in similar improvements in reducing child mortality by 75 percent and major gains in literacy." Citing, Daniel Kaugmann et al. "Governance Matters." *World Bank Policy Research Working Papers No. 2196. The World Bank, 1999.*

2.3

Empowering People

The end-users of justice, particularly women, the poor and marginalized are often unaware of their rights to government services and protection. They may be unable to secure their entitlements because of opaque practices, financial impediments, linguistic and cultural differences, and other obstructions.

The rule of law can strengthen the post-2015 development agenda by turning the poor and marginalized into empowered agents of development. There is stronger appreciation that the poor and marginalized must be treated as equal partners in the process of development, and be given the tools and knowledge necessary to hold the state and other actors accountable for delivering on their commitments.²² When excluded groups are given a stake in development processes, the results are more impactful and sustained.

Legal empowerment approaches enable the poor and marginalized to use “the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.”²³ Legal empowerment often involves efforts to adapt the capacity and sensitivity of justice mechanisms — both traditional justice mechanisms and formal state institutions — to the needs of the poor.²⁴ It ensures that efforts by the poor to better their lot are fully supported as a means to increase security, resolve disputes peacefully



Image: Flickr_Mirko Eggert

and enhance development objectives. Combining legal literacy, awareness of rights and public mobilization, legal empowerment can be a major impetus to legal and social reform. Optimally, legal empowerment also results in increased trust between citizen and state institutions, giving citizens a sense of ownership in state services and procedures.

Legal empowerment often involves the provision of legal aid – which has been recognized in the debate on the post-2015 development agenda as a powerful tool to ensure institutions respond to the needs of the poor and marginalized. Legal aid lawyers articulate claims for the poor in legal settings and employ litigation strategies to increase the likelihood of success. Along with public interest lawyers and community-based paralegals, they are critical to raising awareness among the poor about their rights and the processes for claiming those rights. Crucially, competent legal aid lawyers improve the balance of power between the poor and elite groups. Public interest lawyers may choose to offer free legal services to those living in poverty, or to litigate

cases. Both categories of lawyers, particularly in common-law systems, have advanced law reform for the poor through new legal precedent.

The post-2015 discussions have acknowledged the importance of ending gender discrimination and empowering women and girls. Legal empowerment approaches often focus on the realization of women’s rights, challenging the structural norms and discriminatory practices that perpetuate women’s inequality, sensitizing justice and security institutions to the special needs of women. These interventions may involve training private lawyers, police, prosecutors and judges in gender sensitive interviewing methods. They also involve working with male relatives and community leaders to address norms that may unduly pressure women to resolve disputes within family or village structures. Such approaches may also include rights awareness campaigns that recognize women’s priority interests and acknowledge the competing demands on women’s time as both breadwinners and caretakers. Legal empowerment programs for women often involve securing

²² Ana Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank*. World Bank, 2005, p. 9; Francis Fukuyama. *State-Building: Governance and World Order in the 21st Century*. Cornell University Press, 2004

²³ *Making the Law Work for Everyone*. UNDP, 2008, p. 19

²⁴ Stephen Golub, “What is Legal Empowerment? An Introduction.” IDLO *Legal Empowerment: Practitioners’ Perspectives*. IDLO, 2010, p. 13

SHIFTING THE DEVELOPMENT PARADIGM (continued)

women's rights related to inheritance, property, and child custody, as well as domestic violence and sexual violence issues coupled with efforts to ensure psychological and social support throughout the dispute resolution process.

To be effective, legal empowerment approaches in a post-2015 agenda should pay attention to informal justice practices, widely prevalent in rural, resource-poor and post-conflict settings. Informal justice systems are often governed by customary practices and norms, including explicit references to religious beliefs. They may involve mediation or arbitration for the resolution of disputes between individuals, relying heavily on restitution as a form of punishment. Legal empowerment approaches seek to ensure that informal justice upholds the rights of women, the poor and vulnerable groups. Typical interventions may include building the capacity of informal justice leaders through training on international human rights, national legal codes and the specialized needs of women. Paralegals are important actors in this regard, often accompanying a more vulnerable party to a dispute resolution session for support, and steering informal justice actors towards their duties and obligations under national and international law.



Image: Flickr_ Andre Thiel

Land rights in Uganda: legal empowerment and traditional justice

In Uganda, where almost three-quarters of the population are subsistence farmers, the adjudication of land rights disputes has significant implications for both livelihoods and security. However, Uganda's formal and informal justice systems in rural areas are largely ill-equipped to handle land-related matters. Access to justice on land issues is poor for all groups, but women tend to suffer more. Rural women in some parts of Uganda are often divested of their rights to lands, and in some cases actively discouraged from being landowners themselves.

In 1995, the Uganda Land Alliance (ULA) was set up to advocate and lobby for fair land laws and policies. Since its inception, the ULA has expanded to provide legal empowerment to local communities through Land Rights Information Centers, and to strengthen traditional leaders' knowledge of land law and dispute resolution techniques. In 2012, ULA trained 103 elders in the Karamoja region and 40 in Apac district. The training is reported to have led to more effective identification and demarcation of land boundaries, as well as more equitable division of land among widows and children.

Source: Maggi Carfield, Land Justice in Uganda: Preserving Peace, Promoting Integration. IDLO, 2011; Uganda Land Alliance. ulaug.org. 20 May 2014



SECTION THREE:
INTEGRATING THE RULE OF LAW
IN SUSTAINABLE DEVELOPMENT

INTEGRATING THE RULE OF LAW IN SUSTAINABLE DEVELOPMENT

As illustrated by the chart below, the rule of law provides a robust template of dynamic approaches to ensure the delivery of development objectives and transformative change:

DIMENSIONS OF SUSTAINABLE DEVELOPMENT			
	ECONOMIC GROWTH	SOCIAL DEVELOPMENT	ENVIRONMENTAL SUSTAINABILITY
STRENGTHENING LEGAL FRAMEWORKS	Increased predictability, secure land title, balanced investment incentives	Social rights enshrined, laws resulting in discrimination abolished, legal identity secured at birth	Enforcement mechanisms strengthened, greater participation by the poor in environmental management
BUILDING INSTITUTIONAL CAPACITY	Commercial dispute resolution capacity strengthened	Justice & security institutions capacity strengthened, in line with international legal standards	Justice capacity to manage environmental issues increased, decisions executed
SUPPORTING LEGAL EMPOWERMENT	Greater access to information & markets, women's empowerment	Greater access to justice, redress mechanisms, women's access to justice	Indigenous people empowered, stronger monitoring and enforcement measures implemented



Image: Flickr_thanhluu

ECONOMIC GROWTH

3.1

Strong, inclusive and sustainable economic growth, full employment and decent work are emerging as key priorities for the post-2015 agenda.

The debate on economic growth has been informed by the threat posed by growing inequalities.²⁵ There is also greater acknowledgement that growth alone does not lead to poverty reduction. Per capita indices mask huge disparities in wealth, while growth in gross domestic production figures do not capture unemployment among the youth and uneducated. Nor do these measures account for the degree of unequal pay and unequal access to opportunity to which women and marginalized groups are subjected.

Gross inequalities can dampen economic vitality where they lead to disparate health, education and environmental standards, leading to the declining fortunes of groups. The lack of sustainable economic growth and the persistence of poverty and inequality are correlated with deep deficits in governance, human rights and the rule of law.

The rule of law activates investments and enhanced efficiencies that lead to competitive economies.²⁶ The rule of law ensures that agreements between the private sector and the state are equitably enforced, that instances of coercion and predatory behavior are minimized, and that institutional capacity is enhanced for enforcement and compensation when transgressions do occur. Effective

legislative frameworks and enhanced institutional capacity to adjudicate commercial disputes help to level the playing field for economic actors, and promote the growth of entrepreneurship, small and medium sized enterprises, and innovation.

There is now strong consensus that the poor must be put at the center of development strategies if efforts to enhance economic growth are to be successful and sustainable. This requires, among other things, secure rights to own land, property and other productive resources and access to financial services and markets. This also requires ensuring safe and secure working conditions for all workers, including migrant workers.

➤ SOARING INEQUALITIES DISTORT BUDGETS AND POLITICAL PROCESSES, LEAVING THEM EVER MORE ATTUNED TO ENTRENCHED ELITES. THIS MAKES IT MORE DIFFICULT FOR CITIZENS TO HAVE A SAY IN THE DECISIONS WHICH IMPACT ON THEM AND TO BE ABLE TO LIVE LIVES THEY VALUE. REMINDERS OF THE SHARP DIFFERENCES IN WEALTH, EDUCATION, AND OTHER MATERIAL RESOURCES INFLUENCE THE WAY IN WHICH PEOPLE VIEW THEMSELVES AND OTHERS, AND CAN MAKE THE EQUAL PARTICIPATION OF CITIZENS IN POLITICAL AND PUBLIC LIFE ALMOST IMPOSSIBLE. ◀

Source: *Humanity Divided: Confronting Inequality in Developing Countries*. UNDP, 2013, p. xi

²⁵ See for example: Joseph Stiglitz. *The Price of Inequality: How Today's Divided Society Endangers Our Future*. W. W. Norton & Company, 2013

²⁶ See for example: Christopher Clague, Philip Keefer, Stephen Knack and Mancur Olson. "Property and Contract Rights in Autocracies and Democracies." *Journal of Economic Growth*, Vol. 1 (1996): 243-276; Thomas Carothers. "The Rule of Law Revival." *Foreign Affairs*, Vol. 77, No. 2 (1998): 95-106; and Thomas L. Friedman. *The Lexus and the Olive Tree*. New York: Farrar, Straux and Giroux, 1999, p. 129

ECONOMIC GROWTH (continued)

These conditions are heavily dependent on appropriate laws and institutions, and on the empowerment of the poor – all of which are key elements of a rule of law approach.

Legal certainty in land use and tenure encourages balanced development, while secure land tenure is correlated with increased levels of investment in agricultural land, leading to greater food security. In short, the rule of law provides for equity as well as predictability, transparency and legality required for sustainable economic growth.

The rule of law:

- creates an enabling environment for inclusive and equitable economic growth;
- establishes strong legal institutions and policies that support investment and promote competition;
- provides access to information and markets for the poor and marginalized;
- secures land and property title and business identity; and
- provides mechanisms for equitable commercial dispute resolution.

Some examples are listed below.

Ensuring access to information and transparency of government processes

Access to information for citizens, civil society and private sector groups is critical to ensuring effective use of government resources towards sustainable growth.²⁷ It ensures transparency of government processes – including budgetary and procurement processes – and allows progress towards development objectives to be tracked.²⁸ Poor and marginalized groups require information in order to engage meaningfully in development initiatives, to take advantage of income generating opportunities, and to protect themselves from land seizures and labor exploitation.²⁹ Access to information on public-private partnerships must also be made available by both governments and private sector firms to ensure that development objectives are not being thrown off course, and that government officials are not being unjustly enriched. Indeed, innumerable studies show that corrupt practices flourish where access to information is low, undermining health, education and other essential services for the poor.³⁰ Access to information, including legal information, is also critical to the realization of inclusive development.³¹ Studies have demonstrated, for example,

that better access to information on school budgets, resource inflows, and appointment procedures for teachers and school administrators is strongly correlated with higher rates of literacy among youths.³² In Kenya, the National Council for Law Reporting is making significant efforts to provide free access to legal information. In southern Africa, rural communities have successfully used access to information laws and the courts to ensure the provision of scarce water resources. In this context, civil society is a critical partner for government.³³

²⁷ See: *Choice & Empowerment: Turning information into action on poverty - The case for including access to information in the post-2015 framework*. Development Initiatives, 2013; Sean Fraser, "The Role of Access to Information in Promoting Development." Hassane Cissé, N.R. Madhava Menon, Marie-Claire Cordonier Segger, Vincent O. Nmeihelle (eds.). *The World Bank Legal Review Volume 5: Fostering Development through Opportunity, Inclusion, and Equity*. World Bank, 2014, p. 39

²⁸ Fred Schenkelaars and Ahmad Imram. "Concept Paper 4: Access to Information, Transparency and Accountability." *Transparency and Accountability in the Public Sector in the Arab Region (IRAB/01/006)*. UNDESA, 2004, p. 1

²⁹ *Building From the Ground Up: How the Foundations of a Post-2015 Framework Should Translate into Change for People in Poverty*. CAFOD, 2013, p. 20

³⁰ For example, a recent study by Amnesty International on maternal health in a West African country reported that corruption among medical personnel is one of the main causes of death for thousands of women during pregnancy. Poor women are turned away from hospitals, unable to make the illegal payments allegedly demanded by hospital staff to administer care. [Cited in *The Anti-Corruption Catalyst: Realizing the MDGs by 2015*. Transparency International, 2010, p. 3]; See also, Paolo Mauro. "Corruption and the composition of government expenditure." *Journal of Public Economics*, Vol. 69 (1998): 263–279

³¹ See Laura Goodwin and Vivek Maru. *What Do We Know About Legal Empowerment? Mapping the Evidence*. Namati, 2014

³² *The Anti-Corruption Catalyst: Realizing the MDGs by 2015*. Transparency International, 2010, p. 5

³³ Andrew Puddephat. *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom*. The World Bank, 2009

Access to information: helping to secure water in South Africa

Through advocacy and legal empowerment, the Open Democracy Advice Centre (ODAC), based in South Africa, operates to promote open and transparent democracy, foster a culture of corporate and government accountability, and assist local people in South Africa to realize their right to information.

In one case, ODAC empowered villagers in Emkhandlwini, Kwazulu-Natal, who were facing drought conditions, to use South Africa's Freedom of Information law to gain the minutes of council meetings that involved the provision and distribution of water. The information detailed plans to provide the village with access to clean water – provisions that were never acted upon. Villagers used the information to publicize the issue, and the municipality was forced to install fixed water tanks and to deliver mobile water tanks to the community. When the supply became erratic, villagers used the law again to request a service-level agreement between the municipality and the company delivering water. As the municipality failed to draw up the contract, constituting a breach of South Africa's public finance legislation, the municipality was reported to the auditor general for investigation.

Source: Anupama Dokeniya, "The Right to Information as a Tool for Community Empowerment." Hassane Cissé, N.R. Madhava Menon, Marie-Claire Cordonier Segger, Vincent O. Nmehielle (eds.), The World Bank Legal Review Volume 5: Fostering Development through Opportunity, Inclusion, and Equity. World Bank, 2014, p. 607



Image: ILRI_Stevie Mann

ECONOMIC GROWTH (continued)

Fostering access to markets and financial services

Access to markets and financial services for all is a prerequisite of sustainable development and economic growth.³⁴ There is a strong correlation between inequitable access to markets and financial services on the one hand, and poverty and lack of voice on the other.³⁵ When the poor are locked out of the marketplace due to discrimination, a lack of legal awareness and education, or artificial barriers erected to enrich middlemen at the expense of primary producers,³⁶ poverty persists and the contributions of the poor and marginalized groups go wasted.³⁷ Economies are weaker and less efficient as a result.³⁸

Access to markets and financial services requires legal reform to ensure active contributions of the poor. Reforms may include the enactment of laws that provide incentives to financial institutions to reach out to under-served communities, or laws that support micro-finance opportunities coupled with strong regulations governing lenders. Legal empowerment initiatives can ensure that the poor and marginalized realize equitable access to markets and financial services in order to sell their products, services and labor without undue obstacles.³⁹

Promoting economic opportunity: access to fair trade markets in Ecuador

Increased awareness of legal rights has led to greater protection of the assets of the poor, and has scaled up their capacity to commit to commercial transactions. According to a study undertaken by the Natural Resources Institute, access to fair trade markets can promote economic opportunities for rural communities by improving economic stability, enabling diversification of income sources and improving access to credit. The impact of fair trade on the livelihoods of the poor has been strongly felt in Latin America.

In Ecuador, IDLO promoted access to fair trade markets for two indigenous rural communities, Rumicorral and Ambrosio Laso. The communities were trained in the legal aspects of forming and running microenterprises and in their constitutionally protected rights, including 'Sumak Kawsay' rights ("good living" rights). Local women were also trained on legal aspects of microfinance. Two years later, Rumicorral and Ambrosio Laso community members reported that the interventions had provided them with substantial leverage in entering new markets and accessing new income streams.

Also in Ecuador, IDLO partnered with the International Fund for Agricultural Development to raise awareness of local communities on the formation of agricultural cooperatives. With the added leverage that these efforts entailed, indigenous women enjoyed significant gains in accessing lucrative fair trade markets.

Source: Legal Empowerment for Fair trade, Food Security and Natural Resources Management in Ecuador. IDLO Final Report, 2013



Image: IDLO_Fabiano de Andrade Correa

³⁴ "Improving access and building inclusive financial systems is a goal that is relevant to economies at all levels of development." Asli Demircug-Kunt, "Access to Finance and Development: Theory and Measurement." *Finance for All? Policies and Pitfalls in Expanding Access*. The World Bank, 2008, p. 21. See also: Jillian Friedman, "Legal and Institutional Barriers to Fair Trade." *Legal Aspects of Sustainable Natural Resources Legal Working Paper Series*. IDLO, 2011; *Enhancing Women's Access to Markets: An Overview of Donor Programs and Best Practices*. USAID, 2005; and *Promoting Market Access for the Rural Poor in Order to Achieve the Millennium Development Goals*. IFAD, 2003

³⁵ *World Development Report 2006: Equity and Development*. World Bank, 2005, pp. 178-185

³⁶ Anthony Bebbington et al, *Institutional Pathways to Equity: Addressing Inequality Traps*. World Bank, 2008; *Human Development Report 2013: The Rise of the South*. UNDP, 2013

³⁷ Sarojini Ganju Thakur et al, *Promoting Pro-Poor Growth: Social Protection*. OECD, 2009, p. 170

³⁸ Asli Demircug-Kunt, "Access to Finance and Development: Theory and Measurement." *Finance for All? Policies and Pitfalls in Expanding Access*. The World Bank, 2008, p. 22

³⁹ John W. Bruce et al, *Legal Empowerment of the Poor: From Concepts to Assessment*. USAID, 2007, pp. 5, 8; and Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities for Our Time*. Penguin Press, 2005

Securing land tenure and property rights

Establishing secure land rights for the poor significantly boosts economic activity.⁴⁰ Research shows that secure land tenure generally leads to greater land production, preservation efforts and food security.⁴¹ Further, the issuance of title deeds has been shown to increase the value of land held in rural areas.⁴²

In some developing-country settings, 90 percent of the poor live in rural areas where fertile land is in short supply.⁴³ Yet conversions of customary lands to government and private use without due process or compensation are not uncommon.⁴⁴ In many contexts, customary rules on land ownership offer insufficient protection. Land surveys may be required to identify landowners and issue land titles. Legal awareness of land titling procedures is also necessary, as well as greater access to administrative authorities for rural communities.⁴⁵ Further, the enforcement of ownership rights must be secured through justice and security institutions.⁴⁶ In Liberia and Uganda, civil society organizations are expanding the knowledge that traditional dispute-resolution actors may have of land issues, of national land law, and of women's land-related rights and interests.⁴⁷ In other cases, mobile

Access to justice: empowering rural women and resolving land disputes in India

High costs and slow case processing rates in India's justice system obstruct the ability of the rural poor to secure their customary land rights. Compounding this, a lack of rights awareness around land issues and a dearth of legal support often result in a grossly asymmetrical relationship between the poor and their legal adversaries in the courtroom.

The Indira Kranti Patham (IKP) Non-Purchase Program, implemented by the Society for Elimination of Rural Poverty (SERP), empowers rural women's groups to secure land rights in Andhra Pradesh State. Paralegals train women's self-help groups on legal empowerment approaches and provide legal support to women to help resolve land tenure and land titling issues.

From 2003 to 2006, SERP provided legal assistance to the poor in 152 cases and secured 1,648 acres of land in a pilot area in the Cuddapah District. In late 2006, the program expanded to more than 400 mandals in 22 of 23 districts of Andhra Pradesh. Following the expansion, SERP was able to help resolve 27 percent of the land issues, involving a total of 78,873 people and covering over 44,500 hectares of land. A 2007 study revealed that the program was successful in empowering rural women to seek redress for violations of their land rights.

Source: Darryl Vughen, Karuna Vakati, and Renee Giovarelli, Ensuring secure land rights for the rural poor in Andhra Pradesh. FAO, 2007

legal clinic services are deployed to adjudicate competing claims to land.⁴⁸

Strong property rights protection is also required to ensure that women can engage as productive agents of economic growth, and avoid destitution

in case of widowhood and divorce.⁴⁹ Where land is securely held, women are better able to support themselves, encourage extended family support, and otherwise turn land related assets into health care, education services, and material items required for survival.⁵⁰

⁴⁰ See for example: J.M. Lusugga Kironde, "Access to Land by the Urban Poor in Tanzania: Some Findings From Dar es Salaam." *Environment and Urbanization*, Vol. 7, No. 1 (1995): 77-96

⁴¹ See: Allison Garland, Mejgan Masoumi, and Blair Ruble, *Global Urban Poverty: Setting the Agenda*. Woodrow Wilson International Centre for Scholars, 2007; Rachael Knight, Judy Adoko, Teresa Auma, Ali Kaba, Alda Salomao, Silas Siakor, Issufo Tankar. *Protecting Community Lands and Resources: Evidence from Liberia, Mozambique, and Uganda*. IDLO and Namati, 2012

⁴² See for example: *The Economist*, "Order in the Jungle." *Theeconomist.com*. 13 March 2008: "The value of rural land in Brazil, Indonesia, the Philippines and Thailand increased sharply when people were given title deeds, because owners were more willing to invest."

⁴³ See: Siri Gloppe, "Courts and the poor in Malawi: Economic marginalization, vulnerability, and the law." *International Journal of Constitutional Law*. OUP, 2007, p.7

⁴⁴ Jeffrey Hatcher, Lucia Palombi and Paul Mathieu, "Securing the land rights of the rural poor: experiences in legal empowerment." *Legal Empowerment: Practitioners' Perspectives*. IDLO, 2010, p. 236; Siri Gloppe. "Courts and the poor in Malawi: Economic marginalization, vulnerability, and the law." *International Journal of Constitutional Law*. OUP, 2007, p.7

⁴⁵ Jeffrey Hatcher et al, "Securing the land rights of the rural poor: experiences in legal empowerment." *Legal Empowerment: Practitioners' Perspectives*. IDLO, 2010, p. 238; *Improving access to land and tenure security*. IFAD, 2008, p. 40

⁴⁶ Jeffrey Hatcher et al, "Securing the land rights of the rural poor: experiences in legal empowerment." *Legal Empowerment: Practitioners' Perspectives*. IDLO, 2010, p. 240

⁴⁷ Rachael Knight et al, *Protecting Community Lands and Resources: Evidence from Liberia, Mozambique and Uganda*. IDLO, 2012

⁴⁸ F. Rappocciolo, *Rehabilitating rural Burundi through legal clinics*. IFAD, 2012

⁴⁹ Nina Berg, Haley Horan and Deena Patel, "Women's inheritance and property rights: a vehicle to accelerate progress towards the achievement of the Millennium Development Goals." *Legal Empowerment: Practitioners' Perspectives*. IDLO, 2010, p. 205; See also Amanda Ellis, Claire Manuel, and Mark Blackden. *Gender and Economic Growth in Uganda: Unleashing the Power of Women, Directions in Development*. World Bank, 2006

⁵⁰ Ana Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank*. World Bank, 2005, p. 7

SOCIAL DEVELOPMENT

3.2

Poverty is a multidimensional concept defined not merely by a lack of economic well-being but also by discrimination and severe deprivation of basic human needs, including food, clean water and adequate sanitation, health, housing, and education.

Though gains have been made over the last decades, 1.2 billion people are estimated to still live in extreme poverty.⁵¹ Hundreds of millions remain chronically undernourished, and the number of people who call urban slums their home has only grown.

Due to overlapping forms of discrimination, the deprivations and indignities of poverty are not suffered equally by men and women. Women are denied equal pay and equal access to economic livelihood opportunities in all contexts.⁵² Women experience unequal health care provision and educational opportunities. Discrimination on inheritance and land rights, may force them into destitution. On a global level, young women and girls are “less educated, less healthy

and less free” than their male peers.⁵³

In order to be sustainable, development efforts must be inclusive. Inclusive social development means eliminating all forms of discrimination and ensuring that all, without exclusion, have access to the resources, opportunities and benefits of development.⁵⁴ Inclusive practices in one area of sustainable development, such as education or access to clean water,⁵⁵ can assist in bolstering gains in other areas such as health or economic growth.⁵⁶

Strong legal frameworks are required to address the needs of the poor and marginalized groups, including women, coupled with state capacity to implement related laws, regulations and policies. Legal empowerment strategies are needed to combat the powerlessness that is both a cause and consequence of poverty and marginalization.

Transparent and participatory dispute resolution mechanisms that allow individuals and groups to claim their rights to equal opportunity, education, health, land and other economic and social rights are also required, alongside empowered civil society organizations that hold institutions accountable for the delivery of equitable services, and the efficient and appropriate use of revenues. Rule of law measures can facilitate social inclusion by ensuring:



Image: IDLO / Andre Vornic

- legal protection of social and economic rights;
- legal identity to claim rights and services;
- access to justice, including administrative redress mechanisms; fair access to services; and
- gender equality and empowerment of women and girls.

Some examples are included below.

⁵¹ According to the Millennium Development Goals Report 2013, Sub-Saharan Africa saw the number of people living in extreme poverty rise from 290 million in 1990 to 414 million in 2010. The Millennium Development Goals Report 2013. p.7

⁵² In North Africa, South Asia and West Asia, differences in the employment-to-population ratio between men and women approached 50 percent in 2012. The Millennium Development Goals Report 2013. 2013, p.5

⁵³ A Holistic and Human Rights-Based Approach for Addressing Inequalities in the Post-2015 Development Agenda. Beyond 2015, 2012, p.6

⁵⁴ Declaration on the Right to Development (A/RES/41/128). 4 December 1986; and Harry Jones, Equity in development: Why it is important and how to achieve it. Overseas Development Institute. 2009, p. 27

⁵⁵ Leon Feinstein et al, “What are the effects of education on health?” Measuring the Effects of Education on Health and Civic Engagement: Proceedings of the Copenhagen Symposium. OECD, 2006, pp. 173-174

⁵⁶ Framework Convention on Global Health and the Post-2015 Development Agenda. JALI, 2012, p.3: “Eliminating inequities in maternal and child deaths, for example, demands quality education for even the poorest mothers.”

Legal protection of social and economic rights

The rule of law can strengthen the capacity of rights holders, including the poor and marginalized, to claim and realize their rights through awareness campaigns and civic education.⁵⁷ It can also increase the representation of those groups in society and government to help enact laws protecting their rights.

Health and education are emerging as priorities for the post-2015 development agenda. To have optimal impact, these basic social rights must be enshrined in national laws and implemented with a focus on those who are most likely to be left behind, including women and the poor.⁵⁸ Laws that discriminate against these groups must be stricken or amended in consultation with affected populations.

The case for health

The post-2015 development agenda needs to be based on strong legal frameworks that focus state attention and resources on social development objectives, such as health. The law is central to assuring the highest attainable standards of physical and mental health and social well-being. Constitutions and laws help respect, protect and fulfill the right to health, including through the regulation of the health sector and services, and of other sectors which affect

Women's political participation in Rwanda to support women's rights

Women play a prominent leadership role in Rwanda's parliament. In the 2003 election, 49 percent of seats of the lower house of Parliament were won by women. The proportion increased to 64% in the 2013 elections.

Increased women's participation has resulted in improved gender-sensitive policy making in Parliament and greater consideration of 'grassroots' issues such as rural peoples' livelihoods, as well as set the path for long-term meaningful participation of women in a genuine democracy. The Law on the Prevention, Protection and Punishment of Any Gender-Based Violence is an example of a law that would likely not have been as strong, or even passed, had it not been for the level of female representation in Parliament. Nor would the law's provisions relating to polygamy and marital rape, which were important but controversial, have remained in the text if not for strong female leadership.

The higher number of women in Parliament has been a result of both changing gender roles following the 1994 genocide and proactive laws and policies that promote women's leadership. The 2003 Constitution is particularly noteworthy for its leading position on women's rights in general, and specifically for women's participation in society and government. More innovatively, Rwanda also has a number of Women's Councils, established by the Ministry of Gender and Women in Development. The Women's Councils exist alongside local councils and represent women's concerns in local decision-making processes. They also implement skills training and rights awareness education to local women and girls.

Sources: Institute for Democracy and Electoral Assistance. Jennie Burnet.

"Gender Balance and the Meanings of Women in Government in Post-Genocide Rwanda.

"African Affairs, Vol. 107/428 (2008): 361-386

the social determinants of health.

The right to preventative care and affordable, effective and quality medicines, vaccines and medical technologies must be enshrined in laws that are publically promulgated and implemented equitably, providing for the

needs of persons with disabilities, youth, migrants, ageing populations and other vulnerable groups. Strong leadership providing for health in all policies and whole-of-government approaches are required to prevent and combat non-communicable diseases.⁵⁹ International trade agreements that impact on public

⁵⁷ Through coalition building and strategic litigation, civil society groups in Chile were able to take a case (*Reyes v. Chile*) from domestic courts all the way to the Inter American Court of Human Rights, successfully arguing for a decision declaring that the right of access to information is a fundamental human right. Dario Soto Abril, *The role of civil society in the recognition of access to information as a fundamental human right in the Americas*. Organization of American States, 2012. See also: Andrew Puddephat, *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom*. The World Bank, 2009

⁵⁸ For example, the role of legal frameworks and judicial-enforcement in increasing access to medicines is discussed in: Benjamin Mason Meier, and Alicia Ely Yamin, "Right to Health Litigation and HIV/AIDS Policy." *The Journal of Law, Medicine & Ethics*, Spring 2011 Supplement

⁵⁹ Political Declaration of the High Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases (A/66/L.1). 16 September 2011

SOCIAL DEVELOPMENT (continued)

health must be subordinated to national health priorities. It is also necessary to ensure that laws prohibit discrimination on prescribed grounds (e.g. sex, race, disability), and in prescribed areas (e.g. employment, accommodation, education), thus contributing to an enabling legal environment for health for all, including access to medical care for people living with HIV/AIDS.

Fighting discrimination and providing access to justice can be important for ensuring the right to health. For example, strengthening the legal response to HIV and AIDS in developing nations, fostering awareness of public health goals and human rights among government officials, and among those communities most at risk of HIV infection; and building lawmakers' capacity for reform based on evidence, international law and best practice.

Rights for people living with HIV in Papua New Guinea

Papua New Guinea (PNG) has the highest rates of HIV/AIDS in the Pacific region. People living with HIV/AIDS (PLHIV) in PNG often face various forms of stigma and discrimination. In particular, evidence has shown that PLHIV are mistreated within the health care system and by law enforcement agencies, are subject to physical abuse, rape and sexual assault, and are not given access to social services. They are also affected by the criminalization of sex work and sex between men.

The ability of PLHIV to access social services and to gain redress for violations of their rights is essential to allow them to live a life of dignity. However, there are many legal challenges that can stop them from accessing their rights. IDLO's program focused on providing legal aid, increasing rights awareness with key social institutions, training on HIV-related legal issues to law and justice sector professionals, parliamentarians, PLHIV themselves, and NGO staff. It provided legal counseling and legal education to hundreds of Papua New Guineans, and created a referral system for HIV-related legal services.

Evaluation of the project revealed an increased level of empowerment for PLHIV, including an improved ability to claim their rights and access health services.

Source: HIV and Law Project Papua New Guinea: Evaluation Report. IDLO, 2012



Image: Flickr_Michael Johnson

Legal identity to access social rights

The lack of legal identity can hinder freedom of movement, access to education, property, and social services, including justice services.⁶⁰ According to the High Level Panel report, about 50 million births per year go unregistered, leaving these children on the margins of society, unaccounted for in schools and hospitals.⁶¹ Later on in life, the lack of legal identity makes it difficult to open bank accounts and secure land or property rights.

Securing legal identity in Morocco: essential to social and economic development for women

Social stigmatization, criminal repression and legal discrimination marginalize unwed mothers and their children and impact on their ability to obtain legal identity papers. Without such legal identity, they cannot access a host of other fundamental rights including social services, free medical care, legal aid assistance and official birth marriage and residence certificates, or enrolment in schools.

Women's rights NGOs carried out grass-roots level legal rights education across Morocco and launched a pilot Court Accompanying program primarily for illiterate women in their respective communities which led to shifts in attitudes and behavior among local authorities charged with helping them access their rights.

Source: Accessing Justice: Models, Strategies and Best Practices in Women's Empowerment. IDLO, 2013

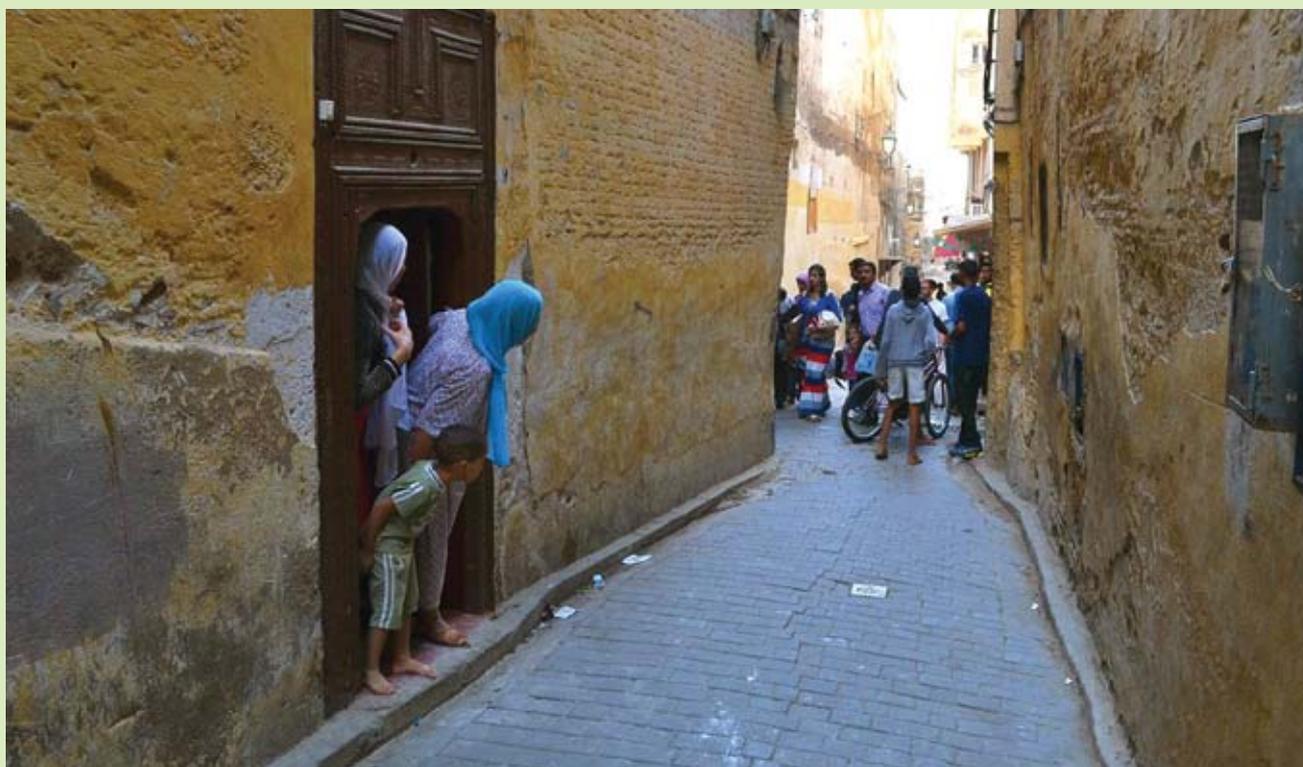


Image: IDLO_Livia Hengel

⁶⁰ *Making the Law Work for Everyone*. UNDP, 2008, p.32

⁶¹ *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development*. 2013, p. 50

SOCIAL DEVELOPMENT (continued)

Access to justice

There are strong linkages between access to justice and gains in health, education and other development sectors.⁶² In many countries, judges, legal aid lawyers, public interest lawyers, and paralegals are champions of efforts to enable the equitable allocation of social services, and to address violations of a host of social rights.⁶³ To address inequalities and end discrimination in the provision of social services, a sustainable development framework must include access to justice. Capacity development across the justice and security chain is also required to ensure the efficient dispensation of justice and effective execution of judicial decisions.

Administrative redress procedures are critical to ensuring equitable delivery of social services, as they provide remedies to acts of discrimination within line-ministries and local government offices.⁶⁴ To be effective, administrative redress mechanisms must be independent, well financed, and enjoy sufficient authority based on a legal framework to execute decisions and provide for adequate compensation or other remedy.⁶⁵

Access to justice for children: Paralegal Committees in Nepal

Children face daunting challenges when pursuing remedies for breaches of their rights, including economic and social rights. They are highly dependent on adults to understand the processes involved and pay for any associated costs. They are easily intimidated by justice systems which often involve bureaucratic and formalized environments, obscure procedures, and technical language. Women, children, the poor and marginalized are at a distinct disadvantage even before proceedings begin.

In Nepal, an extensive network of Paralegal Committees (PLCs) seeks to address these challenges, facilitating access to justice and mediation services for women and children dealing with a wide range of criminal and civil cases, including domestic violence and property. The PLCs mediate cases, conduct follow up to ongoing cases, or refer them as needed to a range of service providers, including local authorities, law enforcement, health services, NGOs, and the judicial system. PLCs also promote greater awareness of gender equality and women's rights through social mobilization and awareness raising in their communities. PLCs are comprised of women from diverse ethnic, socio-economic, caste and religious backgrounds.

According to a 2009 evaluation of this program, the PLCs "provided approximately 13,500 individuals with access to justice and local mediation services and were able to resolve a wide range of disputes and violations". Paralegals note their services are effective because they are accessible, affordable, cooperative, and community-focused.

Source: Anne Grandjean, "No rights without accountability: promoting access to justice for children." Legal Empowerment: Practitioners' Perspectives. IDLO, 2010



Image: Bread for the World_Laura Elizabeth Pohl

⁶² See: *Making the Law Work for Everyone*. UNDP, 2008; *World Development Report 2006: Equity and Development*. World Bank, 2005, p.156; Harry Jones. *Equity in development: Why it is important and how to achieve it*. Overseas Development Institute, 2009, p. 27.

⁶³ As Lawyers Without Borders notes, "People living in extreme poverty live in a state of disempowerment in which their most basic human rights, such as the right to the highest attainable standard of health, education, food, water and sanitation, housing and an adequate standard of living are nearly impossible to realise. Without the benefit of these rights, accessing legal mechanisms, and thus justice to vindicate their rights, also becomes nearly impossible." "The obstacles people living in extreme poverty face in accessing justice." *Avocats sans Frontières*, 2012

⁶⁴ Per Bergling, Lars Bejstam, Jenny Ederlov, Erik Wennerstrom, and Richard Zajac Sannerholm. *Rule of Law and Public Administration: Problems and Ways Ahead in Peace Building and Development*. Folke Bernadotte Academy, 2008

⁶⁵ In Ukraine, where housing is the source of significant tension, efforts are being made to measure the rule of law in public administration, leading to greater awareness of discrimination in housing rights. The Folke Bernadotte Academy and UNDP are undertaking a project to measure the rule of law in the Ukrainian housing sector. See: Olena Ursu. "Measuring the Rule of Law in Lviv." *Europe and CIS*. UNDP. 13 January 2012

Gender equality and women's empowerment

The law is an essential tool for advancing women's and girls' rights and equality. A robust and effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development.

When a society is governed by the rule of law, with an accessible and just legal system, women can thrive, contribute to the system and improve it for future generations. The rule of law requires that laws are free from bias and discrimination, equally enforced and independently adjudicated, and consistent with international human rights norms and standards. As such, a robust and effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development. Just as a strong legal system can protect and open up opportunities for women, a justice system that is inaccessible or that contains discriminatory rules or practices can significantly impede the advancement of women's rights and leave them vulnerable to appalling levels of violence and exploitation.

Many women are unable to access and navigate their way through formal legal institutions. This can be due to structural as well as cultural barriers, including women's inadequate knowledge of rights and remedies, illiteracy or poor literacy, and lack of resources and time to participate in justice processes, especially given the heavy burden of labor that women bear for their families. These challenges are even greater for women who are subject to multiple forms of discrimination

Justice for women through 'House of Rights' structures in Costa Rica

In Costa Rica, IDLO is working with the government and local authorities to improve access to justice for migrant women. The Casa de Derechos is in Upala, an area characterized by the presence of large numbers of migrants whose socio-economic conditions make them highly vulnerable to violence and human rights violations. It creates a clear pathway of care and protection for this group, providing information, counseling and legal assistance. Where necessary due to the threat of violence, the program also provides a women's shelter as a temporary protective measure.

Source: "Costa Rica: Migrants' House of Rights." IDLO.int. 2014

Afghanistan: Units to Eliminate Violence Against Women

Women in Afghanistan are often subjected to extreme forms of violence, including murder, rape, domestic abuse, and trafficking. Despite the Law on the Elimination of Violence Against Women (L/EVAW) being passed by presidential decree in 2009, the implementation of the law has faced major challenges and the benefits of its provisions have not been felt by many women.

Working with the Attorney General's Office, IDLO has supported establishment of EVAW Units in and around Afghanistan's urban hubs. Since 2010, EVAW Units have opened in 19 provinces. As of early 2014, the EVAW Units have assisted with more than 4,000 cases across the country. Qualitative assessments of the EVAW Units have shown that they have been effective in addressing various forms of violence against women.

Source: Accessing Justice: Models, Strategies and Best Practices in Women's Empowerment. IDLO, 2013

based on factors such as being part of indigenous or ethnic minority communities, religious minorities or sexual minorities, or for disabled women, migrant workers, and women living with HIV/AIDS.

Violence against women is a form of discrimination that denies a woman's capacity, agency and dignity. In addition to being a pernicious violation of human rights itself, violence complicates a woman's ability to access education,

health care, and a host of other social rights. Further, it has proven negative effects on childhood development and reduces social cohesion.

Ensuring women's rights through abolishing legal discrimination and providing greater access to justice builds women's confidence in their future, and instills in them a greater sense of freedom of choice.⁶⁶ This in turn leads to greater investments in their health, well-being and productive endeavors.⁶⁷

⁶⁶ See: *Voice and Agency: Empowering Women and Girls for Shared Prosperity*, World Bank, 2014

⁶⁷ *ibid*

ENVIRONMENTAL SUSTAINABILITY

3.3

Environmental deterioration and climate change are existential threats to the health and wellbeing of all, especially the poorest and most marginalized groups.⁶⁸ Climate change is leading to serious impacts, causing extreme weather events, prolonged drought in many areas and significant losses of arable land. If current trends continue, an additional 1.8 billion people could face water shortages globally and in Africa, up to 600 million more people could face malnutrition.⁶⁹ Indeed, it is the poor that are suffering most from environmental disasters, weak natural resource management and shifting climatic patterns. Their lack of wealth makes them more vulnerable to the ill effects of water shortages and air pollution. The poor often live on the margins of society, near polluted areas or in geographically dangerous locations.⁷⁰ Natural resource extraction is often conducted in environmentally sensitive areas, and can lead to irreparable environmental damage, including habitat loss, extinction of wildlife, and displacement of indigenous communities.

Meaningful environmental protection that balances the needs of humanity



Image: Flickr_John Schinker

with those of eco-systems and wildlife requires robust legal frameworks, aligned with international standards and enforced through strong mechanisms, such as government institutions. Responsible environmental stewardship also requires that institutions be held accountable through legal mechanisms and with the aid of civil society. Further, the poor and vulnerable, especially indigenous groups, must be empowered to demand action when their environment is spoiled, their livelihoods stolen, and their land and water rights violated. To this end, the rule of law provides:

- *legal enforcement mechanisms that include effective local regulations based on environmental and social impact assessments;*
- *participation by local communities and indigenous peoples in the development of environmental regulations or investment incentives;*
- *judicial capacity to properly adjudicate land use laws and regulations;*
- *approaches to empower indigenous people to manage their environmental endowments; and*
- *better monitoring of environmental protection and sustainable use of natural resources.*

⁶⁸ See: Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. *Climate Change 2013: The Physical Science Basis*. Cambridge University Press, 2013, p. 121-143; Steve Rayner and Elizabeth L. Malone. "Climate Change, Poverty, and Intragenerational Equity: The National Level". *International Journal of Global Environment Issues*, Vol. 1, No. 2: 175-202; *Human Development Report 2007/2008: Fighting Climate Change*. UNDP, 2008

⁶⁹ *Human Development Report 2007/2008: Fighting Climate Change*. UNDP, 2008, p. 9

⁷⁰ *Human Development Report 2011: Sustainability and Equity*. UNDP, 2011, p. 52

Legal systems for environmental sustainability

Environmental pollution is increasing worldwide, causing impacts on human health, and overloading critical ecosystems beyond their capacity to absorb waste. At the same time, global consumption and demand for energy, minerals, timber, food and other resource-based products is growing, driven by the development needs of the world's expanding population and aspirations for unsustainable lifestyles. Increasingly, investment in natural resources is directed towards developing countries. Natural resource investments in the developing world can be challenging - while they may generate benefits such as local employment and infrastructure development, these are not automatic. Given that natural resource investments often take place in rural areas, inhabited by communities generally unfamiliar with large-scale projects, who have been excluded from policy processes affecting them, and with unclear land rights, investments may not translate to equitable and long-term economic growth for the country without strong legal safeguards. The post-2015 development framework must be based on strong legal systems capable of protecting the environment and promoting sustainability,⁷¹ through the provision of enforcement mechanisms and strong local regulations,⁷² including environmental and social impact assessments.⁷³

Strengthening legal frameworks to ensure wildlife conservation and respond to climate change in Kenya

Women in Afghanistan are often subjected to extreme forms of violence, including murder, rape, domestic abuse, and trafficking. Despite the Law on the Elimination of Violence Against Women (L/EVAW) being passed by presidential decree in 2009, the implementation of the law has faced major challenges and the benefits of its provisions have not been felt by many women.

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Source: Accessing Justice: Models, Strategies and Best Practices in Women's Empowerment. IDLO, 2013

Legal frameworks may also involve provisions for regulating natural resource extraction and participatory processes for impacted communities.⁷⁴ Importantly, dedicated commissions and other mechanisms can assist law-making institutions in ensuring that the needs of future generations are respected and taken into account, and justice institutions need to have the capacity to adjudicate sometimes highly technical approaches to sustainable development issues, including climate change, biodiversity, and natural resources laws and regulations.⁷⁵

To support the protection of the environment and promote sustainability, the post-2015 development framework should include a target to provide for the enactment of strong environmental protection and sustainable development laws, coupled with implementation provisions, including budgetary support and capacity building of key institutions. Further, strengthening the capacity of law and justice institutions in environmental and sustainable development matters, including measures to ensure the needs of future generations are considered in decision-making, is also needed.

⁷¹ There are many varied forms of regulation which can achieve this purpose, for a discussion of such options see: Jonathan B. Wiener, "Global Environmental Regulation: Instrument Choice in Legal Context." *The Yale Law Journal*, Vol. 108, No. 4 (1999): 677-800; and Robert Percival, Christopher Schroeder, Alan Miller, and James Leape, *Environmental Regulation: Law, Science, and Policy* (7ed.). Wolters Kluwer Law & Business, 2013

⁷² For a discussion on the importance of fair and equitable laws and regulations and their enforcement in the forestry sector see: Luca Tacconi (ed.), *Illegal Logging: Law Enforcement, Livelihoods and the Timber Trade*. Earthscan, 2007. Enforcement of environmental laws and regulations has also been described as a key enabler of sustainable development in other sectors, see: Marie-Claire Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices and Prospects*. Oxford University Press, 2004

⁷³ An environmental impact assessment is "a key technique for incorporating concepts such as the precautionary principle and the avoidance of net loss of capital, central to the achievement of sustainable development, into decision making." See: Christopher Wood, *Environmental Impact Assessment: A Comparative Review* (2ed.). Pearson Education Limited, 2003

⁷⁴ Public participation is important in the equitable management, use, and conservation of natural resources. See for example: Malgorzata Grodzinska-Jurezak, and Joanna Cent, "Can Public Participation Increase Nature Conservation Effectiveness." *Innovation – The European Journal of Social Science Research*, Vol. 24, No. 3 (2011): 371-378; and Arnold Lum, "Natural Resources Management and Public Participation." *Natural Resources and Environment*, Vol. 23 (2008-2009), p. 60

⁷⁵ The Supreme Court of India provides an example of a court that has historically had the capacity to effectively adjudicate such issues applying principles of sustainable development, see for example the cases of: *State of H.P. v. Ganesh Wood Products* 1995 (6) SCC 363; and *MC Mehta v Union of India* (1999) I.C.H.R.L. 58, cited in Hon. Justice U.C. Banerjee, "The Doctrine of Sustainable Development – A Discussion." Marie-Claire Cordonier Segger and Judge C.G. Weeramantry, *Sustainable Justice: Reconciling Economic, Social and Environmental Law*. Martinus Nijhoff Publishers, 2005, p. 47.

ENVIRONMENTAL SUSTAINABILITY (continued)

Indigenous peoples and environmental protection

The rights of indigenous people to participate in natural resource management are increasingly recognized in international and domestic law and policy.⁷⁶ Efforts to empower communities to govern their natural resources, such as water, minerals, and forests, lead to significant returns in sustainable development.⁷⁷ They can also minimize disputes over rights to develop and use natural assets. Indigenous peoples have traditional knowledge about ecosystem services, habitats, and natural systems which can be crucial for effective sustainable resources governance. Further, oversight and transparency measures are necessary to ensure that natural resource extraction is producing benefits for all citizens, and that revenues are not being misused or misappropriated by either the state or private firms. In Peru, the government enacted the Natural Protected Areas Act, which in consultation with indigenous and other groups led to the establishment of protected forests and watershed areas. The act led to greater conservation of scarce water resources benefiting rural communities nationwide.⁷⁸

To ensure environmental resources are protected and used in a sustainable manner, consideration should be given to the enactment of new laws to protect the rights of indigenous people to act as stewards of their environmental endowments, ensuring their free, prior informed consent in decision making and natural resources management.

Protection for indigenous people and their relationship with the environment

In India, the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act provided legal recognition to forest dwelling communities and provided them with rights to live in harmony with their forests, and to protect and manage their land. The Act includes the right for them to veto projects that would impinge on their lands, a right that has recently been upheld in the Supreme Court of India. In a landmark case, the court held that a foreign mining company in partnership with a state-owned mining company could not continue operations in the Dongria Kondh's sacred lands without the consent of forest dwelling communities.

In Ecuador, the 2008 Constitution includes a groundbreaking chapter on the Rights of Nature, reflecting an indigenous conception of the relationship between society and the environment. Article 1 provides that nature, or Pacha Mama, "has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes." Further, any person, community, or peoples are empowered to call on public authorities to enforce the rights of nature.

In the Philippines, decision-makers are working to engage indigenous communities and local level authorities in managing its abundant natural resources. The Philippines Republic Act focused on the need to protect the biodiversity-rich Palawan Province, creating a Palawan Council for Sustainable Development. The Palawan Council recognizes that conservation to be effective requires the engagement of all stakeholders, thus membership includes tribal communities, local governments, business, police, military, NGOs, and state/national governments. The Philippines Indigenous People Rights Act 1998 legally recognizes the rights of indigenous peoples to manage their ancestral domains according to their traditions and cultures (customary laws).

In Peru, a legal framework is being established to ensure clear access by researchers/companies and equitable benefit sharing of genetic resources and traditional knowledge. Under its law, Peru established its own sui generis regime for the protection of traditional knowledge in Peru. Through awareness and capacity building campaigns, Peru has reached out to indigenous communities to better understand their traditional knowledge - 1634 traditional knowledge registries were completed in 2013, a resource of global value for research and innovation.

In The Gambia, the Forest Act and Forest Regulations 1998 set a national target of 30% minimum forest cover. This extensive forest cover would be difficult and costly to achieve through nationally government protected areas alone. Thus, to engage indigenous and local communities and private citizens in achieving this goal, the Act and Regulations offered a mix of rights and responsibilities - secure land rights in exchange for commitments to help combat forest fires and erosion, set forest inventory and plans, and require environmental impact assessments for forest area development.

Source: Legal Aspects of the Aichi Targets. IDLO, forthcoming

⁷⁶ See for example: Declaration on the Rights of Indigenous Peoples (A/RES/61/295). 13 September 2007, para 26. See also: Svein Jentoft, Henry Minde, and Ragnar Nilsen, *Indigenous Peoples: Resource Management and Global Rights*. Eburon Academic Publishers, 2003; Richard Howitt, *Rethinking Resource Management: Justice, Sustainability and Indigenous Peoples*. Routledge, 2001

⁷⁷ Lorenzo Cotula, "Increasing Local Voice and Benefit in Natural Resource Investment: A Legal Empowerment Approach." *Legal Empowerment: Practitioners' Perspectives*. IDLO, 2010, p. 251

⁷⁸ *Legal Aspects of the Aichi Biodiversity Target 3: A Scoping Study*. IDLO, forthcoming, p. 26

Integrated natural resource management policies, laws and plans

For legal frameworks related to natural resource management and environmental protection to have their intended impact, they must be accompanied by implementation strategies, budgetary support, strong leadership, and efforts to strengthen the capacity of responsible institutions.⁷⁹ Natural resource management also requires cross-sectoral collaboration between institutions. To ensure sustainable landscape governance on different levels, for instance, forestry, agriculture, energy, minerals, water and

finance ministries are very important, as well as environment authorities. Inter-institutional collaboration is essential, and laws can set the mandate to do so in the interest of sustainable resources governance, for future generations.

Efforts to decentralize decision-making are also needed to strengthen the voice and role of local governments. Local governments and civil society organizations are closer to the resources and communities, leading to better implementation and enforcement. Further, sustainable resource management is often costly

and overly complex to implement solely by States. Civil society, private citizen and community involvement is necessary to manage natural resources sustainably. But citizens and communities require qualified and dedicated legal assistance, as well as support through legal empowerment, to facilitate their participation in sustainable natural resources governance decision-making. Among other interventions, IDLO is currently equipping over 50 young lawyers in over 30 countries with the expertise required to develop context-specific solutions to preserving biodiversity while ensuring its sustainable use.⁸⁰



Image: Flickr_Gerrigje Engelen

⁷⁹ Halvor Mehlum, Karl Moene and Ragnar Torvik, "Institutions and the Resource Curse." *The Economic Journal*, vol. 116 (2006): 1-20; Daron Acemoglu, Simon Johnson, and James Robinson, "An African Success Story: Botswana." Dani Rodrik (ed.), *In Search of Prosperity: Analytic Narratives on Economic Growth*. Princeton University Press, 2003, p. 80; Christa N. Brunnschweiler, "Cursing the Blessings? Natural Resource Abundance, Institutions, and Economic Growth." *World Development*, Vol. 36, No. 3 (2008): 399-419

⁸⁰ *Legal Preparedness for Achieving the Aichi Biodiversity Targets*. IDLO, forthcoming

ENVIRONMENTAL SUSTAINABILITY (continued)

Centralization and local participation in sustainable management of resources

The governance of natural resource sectors often remains centralized, with national departments holding principal responsibility for the implementation of sector-specific laws and regulations. In Tanzania, for example, the Ministry of Natural Resources and Tourism, the Ministry of Agriculture and Food Security and the Ministry of Energy and Minerals promulgate regulations, issue investment licenses and monitor investor compliance with environmental protection laws and natural resource management agreements. However, centralized decision-making can be at odds with sustainable development goals. The livelihoods and environments of large numbers of people and their communities are often impacted by natural resource extraction and other energy projects. By definition, centralized decision-making does not involve participation of local authorities and communities. Their voices are not heard.

In Mozambique, legal mechanisms to strengthen participatory management of forest resources are established under the Forestry Act, through the creation of institutions known as Local Management Councils for Forestry and Wildlife (COGEPs). COGEPs are comprised of an equal number of members from the local community; individual or corporate persons conducting activities linked to forest and wildlife resources; associations, organizations or NGOs linked to forest and wildlife resources or to local community development; and the government.

Not only does the law provide that COGEPs be involved in the authorization of forestry concession applications, it also ensures they are able to consider a wide range of activities impacting forest resources, such as the development of activities whereby the sustainable use of forest and wildlife resources contributes to raising the standard of living of members of local communities. This also contributes to mechanisms for resolution of conflicts that involve different parties involved in the use and exploitation of forest and wildlife resources. Further, it gives stakeholders an opportunity to engage in ongoing discussions on issues beyond forest concession application to equally important issues such as policy development and conflict resolution.

Sources: Enabling Legal Frameworks for Sustainable Land Use Investments in Mozambique: Legal Assessment Report. IDLO and CIFOR, forthcoming; Enabling Legal Frameworks for Sustainable Land Use Investments in Tanzania: Legal Assessment Report. IDLO and CIFOR, forthcoming



Image: ILRI_Stevie Mann

Ensuring access to information and justice for environmental stewardship

Public participation in environmental and sustainability decision-making often needs to be supported by legally-protected access to information and access to justice measures.⁸¹ In many countries, laws to ensure freedom of information, even if simply to facilitate citizen information about pollution levels in their homes and communities, or to ensure that local people are informed about proposed natural resources development plans, are still lacking. Further, in many countries public participation in environmental and sustainability impact assessment procedures, even where legally mandated, is still weak or patchy, resulting in a lack of public support for the management plans eventually adopted. While public interest groups are increasingly granted standing to access courts and other claims mechanisms on behalf of the environment, there is still a great deal of work to be done. Coupled with enhanced institutional capacity to manage environmental issues, and led by legal frameworks that balance environmental issues against social

Using the law for community engagement in the management of natural resources

Namibia has created "Conservation Conservancies" that empower rural communities to establish and operate game reserves and wildlife protection areas. These same Community Conservancies are now being considered as a pre-established mechanism that can help Namibia work with local communities to determine benefit sharing agreements when researchers/companies apply to access their genetic resources and/or traditional knowledge.

Many local communities in South Africa have established "community protocols" which are quasi legal documents that set out the priorities and governance structure of indigenous and local communities. The communities that have defined these protocols can now more readily interact with resource extraction companies to ensure better engagement with the decision-making (including prior informed consent) and ultimately the benefit sharing (through agreements/contracts properly negotiated, avoiding elite capture).

Sources: Larrye Weaver and Patricia Skyer, Conservancies: integrating wildlife land-use options into the livelihood, development, and conservation strategies of Namibian communities. USAID, 2013; Harry Jonas, Kabir Bavikatte, and Holly Shrumm, "Community Protocols and Access and Benefit Sharing." Asian Biotechnology and Development Review, Vol. 12, No. 3 (2010): 49-76

and economic imperatives, access to justice mechanisms provide the poor with a powerful tool to ensure that development projects do not threaten the environment, and that laws are respected. Legal empowerment and

accountability for enforcement of environmental laws starts with public participation, supported by access to information and access to justice.

⁸¹ The importance of access to justice measures to environmental stewardship is recognized in the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) which guarantees public participation in environmental management, and access to information and justice on environmental issues



SECTION FOUR: MEASUREMENT CHALLENGES

A MULTIFACETED SECTOR, A MULTIFACETED CHALLENGE

4.1

Measuring the rule of law is a complex task. This is because the rule of law encompasses a multiplicity of actors, institutions and approaches, and does not enjoy a singular or primary point of reference by which to draw conclusive evidence of improvements. Measurement efforts would necessarily include a review of the capacity and performance of local government institutions, courts, prosecutor's offices, police, Ministries of Justice, administrative redress procedures and informal justice mechanisms, among others. It would require an assessment of the effectiveness and relevance of laws, the consistency in the execution of those laws, and their alignment with international human rights standards. It might also require a measure of the public's perceptions of access to justice, to markets and financial services, to government data and information. Measurement of public sentiment might also be required to better appreciate the effective and equitable application of laws, the level of transparency of public institutions, as well as of public confidence in the governance, security sector and formal and informal justice systems. Measuring the rule of law in the public administration of services might also be required to better appreciate the level of discrimination faced by poor and marginalized groups.

Efforts to measure progress in the rule of law sector at the program level have been limited, scattered, and short term in nature, leading some to question whether the rule of law can

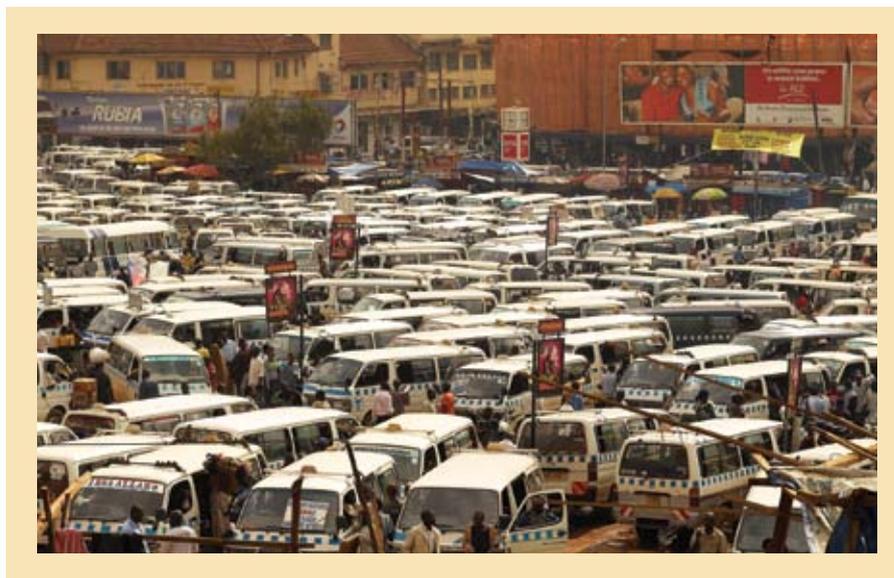


Image: Flickr_Weesam

be measured at all. Speaking for the UN system, the Secretary-General noted in 2011 that "the Organization's effectiveness in the area of the rule of law had been hampered by incomplete baseline data, weak and competing monitoring and evaluation frameworks, and a lack of incentives to share results between entities."⁸² The rule of law was also criticized by one leading academic for "operating from a disturbingly thin base of knowledge at every level."⁸³

Arguably, the uneven results of rule of law interventions are due in part to the post-conflict context within which the majority of large-scale rule of law programs have been implemented. Over the last two decades, rule of law programs in post-conflict settings have enjoyed the lion's share of international attention and support, even as demonstrable progress has proved elusive.

The challenges of producing results in transitional, post-conflict settings are by no means unique to the rule of law

field. Local capacities are often lacking and statistical data is scarce, if not altogether absent. Continued external stresses and shocks spark relapses in wide-scale armed violence or lead to rapid changes in political circumstances, thus short-circuiting programmatic gains. To date, implementation of rule of law interventions has been piecemeal, and the commitment from the UN system, donor countries, and national authorities has been uneven.⁸⁴ More importantly, the time horizons for rule of law programs have been unrealistically short; in some cases, programs have been shuttered just as they were beginning to establish strong relationships with national justice and security actors.⁸⁵ Taken together, the various challenges of implementing rule of law activities in the post-conflict context — some self-inflicted, some circumstantial—have done much to encourage the misperception that the rule of law cannot be measured.

⁸² *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616)*. 23 August 2004, para. 59

⁸³ Thomas Carothers, *Promoting the Rule of Law Abroad: The Problem of Knowledge*. Carnegie Endowment for International Peace, 2003, p. 12

⁸⁴ See Camino Kavanagh and Bruce Jones, *Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda*. New York University, 2011, pp. 42, 63

⁸⁵ *World Development Report 2011*. World Bank, 2011, p. 193

A MULTIFACETED SECTOR, A MULTIFACETED CHALLENGE (continued)

The rule of law can be measured

In fact, the rule of law is already being measured. In the vast majority of countries, justice, security, and a host of other areas related to the rule of law are measured as core functions of the state, and used to justify policies and budget allocations. Data is harvested to induce positive changes in court efficiency and effectiveness, leading to increased confidence in the formal justice sector. Data has been used to identify high crime areas and place security sector assets more strategically, leading to a proven reduction in violent crime rates. In the rule of law sector, efforts at measurement have justified new alignments of resources and activities, leading to successful reform efforts.

The implementation of the MDGs brought about new efforts to strengthen statistical data capacities in many

countries. For example, at the time that the MDGs were launched, maternal mortality rates were considered highly unreliable or were lacking altogether. Yet the focus the MDG process placed on reducing maternal mortality ensured that concerted efforts were made to build capacity in statistical data collection in this area. Today, a variety of resources are available for countries to draw upon to ensure rule of law capacity is measured accurately and efficiently. Administrative records, public opinion surveys, expert opinion surveys, archival reviews, program data, and a host of other sources provide deep wells of information on progress in the rule of law. There are also new technological advances that will do much to cover gaps that were once thought unbridgeable for some countries, particularly in post-conflict contexts.

Political will to measure the rule of law

Data collection activities offer opportunities to enhance service delivery but also challenges, as efforts to harvest data on the performance of institutions, particularly in justice and security institutions, can be seen as threats to established political orders. Indeed, political constraints may limit the extent to which data can be gathered from administrative sources or public surveys on issues related to the rule of law. Consultations on indicators will be necessary to build constituencies in support of rule of law goals, targets and indicators, and of efforts to populate these indicators with data. Briefings with a variety of state and civil society actors on the rule of law's applications outside of justice and security institutions are also required to better demonstrate the rule of law's application towards the entire spectrum of sustainable development practice.

➤ THE CHALLENGE AHEAD IS HOW TO COMMUNICATE RULE OF LAW TARGETS AND/OR GOALS THAT 193 COUNTRIES WILL AGREE TO ENDORSE. BY NECESSITY WE WILL HAVE TO TRANSLATE OUR VALUES, OUR PRINCIPLES, OUR LESSONS LEARNED, INTO INDICATORS THAT FINANCE MINISTERS, STATISTICAL OFFICERS, AND MEMBERS OF PARLIAMENT CAN UNDERSTAND, PUT INTO POLICY, AND TRACK OVER THE NEXT 15 YEARS. IT IS AN AWESOME TASK◀

Source: Irene Khan, Director-General, IDLO. Open Working Group, Eighth Session. New York. 7 February 2014

MEASURING THE RULE OF LAW: WHAT THE MDGS TAUGHT US

4.2

A number of overarching challenges and opportunities for measuring the rule of law will need to be addressed to facilitate reporting against the post-2015 agenda. Experiences from the MDG process provide some food for thought.

Legal pluralism and local contexts

Particular national circumstances will shape the progress of development in the rule of law, including institutional capacities, literacy rates, corruption levels, economic development status, and histories of violent conflict. The laws of each country vary not only by legal system, but also by local, customary or informal practices. Drafters of the sustainable development goals will need to take into account these circumstances if measurements are to be credible and useful. As one expert offered, "It does not make sense to apply a set of one-size-fits-all targets to countries of enormously divergent conditions and means, and judge their success and failure."⁸⁶ Whether the goals and targets will be adapted to context at the instigation of each country has benefits and drawbacks depending upon how much latitude states exercise. Others note that variations are just as significant within countries as between them, and have advocated for sub-national goals.

Accountability and credibility

Many of the MDGs were notable not for their ambition but for their ambiguous and loosely worded character. Further, accountability mechanisms at both the national and international levels demonstrated considerable shortcomings. A higher degree of specification of goals, targets and indicators is required to ensure accountability in reporting. More transparency in how data is gathered and how fiscal and budgetary processes are aligned with goals is required to enhance the legitimacy and credibility of published results. Importantly, national statistical agencies need to be involved in training, gathering and analysis to ensure accuracy and integrity of the data provided by justice institutions. Statistics related to justice may also involve handling and protecting a significant degree of confidential information, particularly in matters involving violence against women.

Although many states made significant investments in MDG-related data collection capacity, the consistency of reporting against all eight goals and 18 targets was uneven; some goals were quietly ignored. Accounting mechanisms at the national and international levels must ensure that states do not neglect reporting on progress made in justice sectors. As the SDG process is exposed to a wider public, more buy-in from more actors may equate to more scrutiny and accountability. States must provide space for civil society organizations to review results, provide feedback, and ensure greater transparency, accountability and integrity in reporting.



Image: UN Photo_Albert González Farran

Avoiding perverse outcomes

Significant sensitivity to the potential unintended consequences for which rule of law indicators are chosen and drafted is required to avoid perverse outcomes. In some circumstances, indicators create incentives that distort the smooth operation of institutional functions. The sudden adoption of particular indicators of progress may create a hurried policy response that concentrates financial and human resources in particular areas without regard to the political, administrative, and social consequences. Poorly chosen indicators can even result in human rights violations. For example, indicators that focus attention on the arrest of criminals may lead to a spike in pre-trial detention and cause (or intensify) overcrowding in substandard facilities.

⁸⁶ Sakiko Fukuda-Parr, "Should Global Goal Setting Continue, and How, in the Post-2015 era?" DESA Working Paper No 117 (ST/ESA/2012/DWP/117). 2012, p. 13

MEASUREMENT APPROACHES AND CONSIDERATIONS

4.3

The Rio+20 outcome document, among other documents, provides basic parameters to guide member states in formulating Sustainable Development Goals, targets and indicators. Indicators must be limited in number, universal in application, measurable, easy to communicate, and adaptable to country conditions. Where possible, indicators should be aligned with ongoing data gathering efforts at the national level, and linked to sustainable country level capacities and practices. Baseline studies will need to be completed in each country before measurement of progress can proceed. Outlays of resources to enhance data collection systems will be significant, particularly in least developed contexts, and these will have to be weighed against other compelling justice needs.

Goals must be able to galvanize widespread support for government efforts, bringing processes out of the shadows and into the headlines. They must be “action-oriented,” allowing for demonstrations of planning and implementation, and otherwise underscoring a government’s goodwill towards their realization. Goals and targets should also be disaggregated according to “gender, disability, age and other factors leading to inequality, human rights, demographics, migration and partnerships” to ensure equality and inclusiveness of development efforts.⁸⁷

It is important to employ a variety of indicators – both quantitative and qualitative – measuring institutional capacity, objective change and public perceptions of change to ensure a complete picture of any progress in any particular area of the rule of law. Normally, the capacity of institutions can be measured through indicators looking at performance, resource inputs, integrity, transparency, accountability

and quality.⁸⁸ In the rule of law context, institutional capacity is traditionally measured by the performance of courts, prosecutor’s offices and the police. Data is primarily in the form of administrative statistics, and is mostly concerned with efficiency of procedures (e.g. numbers and type of cases adjudicated or investigated per year). Data can also include inputs such as resource allocations, trainings, and numbers of staff.

It is also important for countries to measure the effectiveness of institutions from the client perspective. User surveys can be employed to measure, inter alia: the ease of accessing services for the poor and marginalized groups; whether or not they are accorded fair hearings when using the justice system; and whether or not they are able to establish legal identity and to claim property. User surveys can also help gauge the quality of interactions with officials in the appropriate ministries, to help determine if they are being fair or discriminatory.

⁸⁷ *A Life of Dignity for All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015* (A/68/202). 26 July 2013, para. 18

⁸⁸ *United Nations Rule of Law Indicators: Implementation Guide and Project Tools*. United Nations, 2011

Objective change indicators

Objective change is usually tracked to measure whether the social environment has been impacted by changes in organizational policies and practices. Objective change indicators employ objects, facts or direct observation to help analysts draw conclusions. To increase the accuracy of findings, objective change can be measured by data provided from two or more sources of administrative records. For example, hospital records that

demonstrate reduced infant mortality, and ministry of health statistics that show increased access to pre-natal health education, may indicate improvements in the right to health. Objective change can also be tracked by prevalence surveys. Household surveys that measure the prevalence of domestic violence can be compared with data on reporting rates to the police, thus giving a better picture of women's willingness to report abuse, or of their trust in justice institutions.

Indicators for rule of law

"In Liberia, indicators helped to identify an increase in reporting to the police and a marked improvement in victims' perception of police services compared with the first data collection exercise, which had been carried out in 2009. Despite this progress, the indicators also highlighted the perception of corruption and of insufficient accountability in the police system as areas that required policy attention. Such information assists national authorities in identifying priority areas for further work and ways to build on successes."

Source: Measuring the effectiveness of the support provided by the United Nations system for the promotion of the rule of law in conflict and post-conflict situations: Report of the Secretary-General to the Security Council (S/2013/341). 11 June 2013, para. 37



Image: Flickr_Mirko Eggert

MEASUREMENT APPROACHES AND CONSIDERATIONS (continued)

Structural indicators

Structural indicators relate to domestic laws, policies, regulations, and strategies used to reach critical development objectives. Facts as to whether a law exists, has been amended, or conflicts with other laws or with human rights norms, can serve as a measure of progress towards establishing the rule of law.

Baskets of indicators

Due to the rule of law's multifaceted nature, efforts to measure it with baskets of indicators can be particularly important. A basket approach to indicators combines one or more capacity indicators, objective measures and public survey data measurements to provide a more complete picture of progress. States might also consider a

larger menu of indicators under each type of measurement as a means of adapting rule of law indicators to local conditions, thus creating context-specific baskets. However, where a long list of indicators is made available, states may be tempted to choose the lowest common denominator, or the easiest indicators for their countries to meet, which subverts the intent of the post-2015 agenda. For example, states may choose targets where evidence already indicates significant change is in process. Furthermore, it is difficult to compare progress between states when the targets and indicators include dramatic differences in measurement approaches.

Composite indicators

Composite indicators are broad indices of conditions at the country level that

combine several different types of data streams, from various sources, to provide an overall picture of progress. Examples of composite indicators include the World Bank's Worldwide Governance Indicators, Freedom House Index, CIRI, Polity, Corruption Perceptions Index, and Global and Regional Barometers. Most of these give different degrees of weight to various categories of rule of law and governance conditions. They are complicated by the need to aggregate different types of data sources to create a final score. Where there are significant data gaps within countries, this can distort an overall picture of conditions. Nevertheless, these composite indicators are growing in reliability and enjoying a broader base of support. They can be adopted as part of a basket of indicators, and may help triangulate reporting on goals.



Image: IDLO_Livia Hengel

CONCLUSION

The post-2015 development agenda is an opportunity to demonstrate the transformative potential of the rule of law. It is the rule of law which empowers the poor by giving them a voice in lawmaking, which allows them to hold institutions accountable for delivering rights and services, and which creates avenues of redress when services are denied and rights violated.

As well as certainty and predictability, the rule of law provides for substantive justice. By ensuring the rights of communities as well as business, and by strengthening institutions to curb corruption, the rule of law enhances economic sustainability. By focusing on equal opportunity and non-discrimination, the rule of law promotes social development. And by strengthening participatory frameworks

to protect and manage resources, it nurtures environmental sustainability.

For all these reasons, the post-2015 development agenda should transcend political differences: far from fueling controversy, it should set its sights on a just legal order. The resulting development framework must be one that offers equity for all peoples, and does so measurably and sustainably.

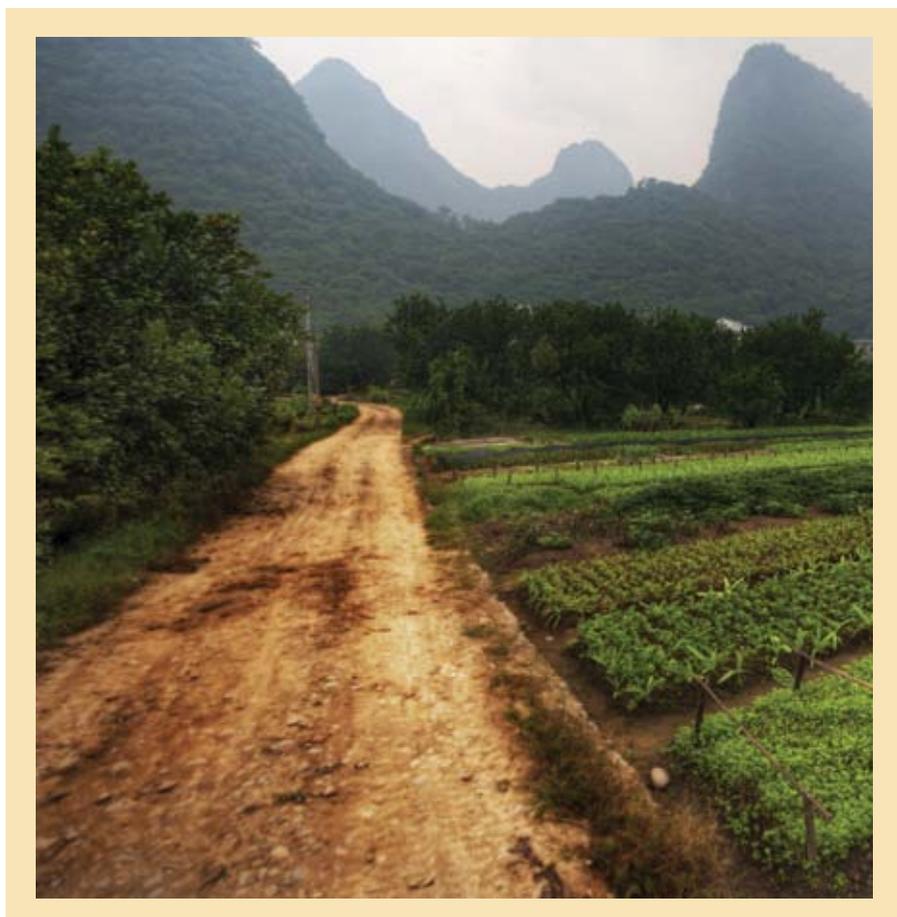


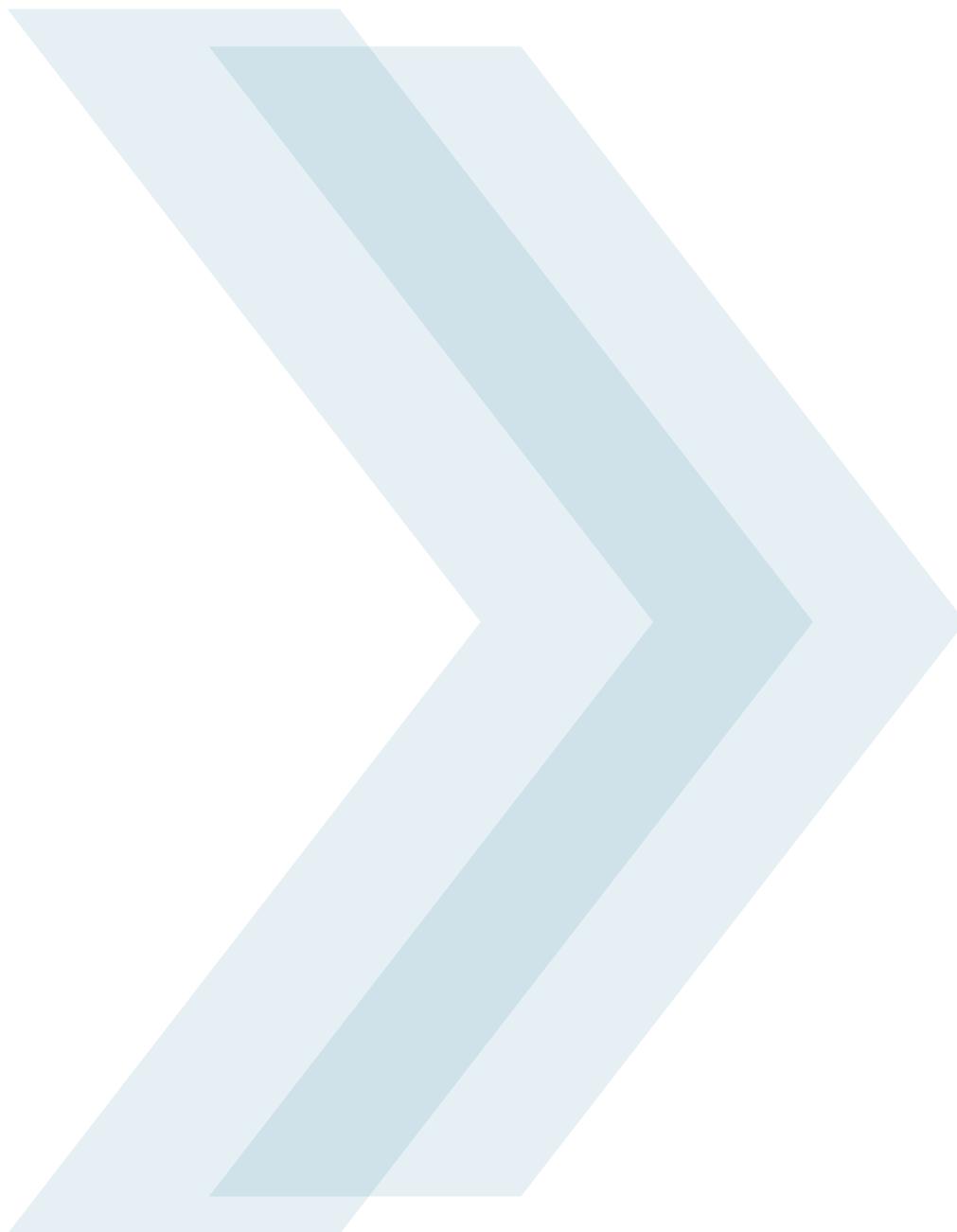
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