

RULE OF LAW AND DEVELOPMENT

Integrating Rule of Law in the Post-2015 Development Framework

“The Millennium Declaration[’s]... core values of human rights, the rule of law and democratic governance... remain as valid as ever, both as fundamental for defining a life in dignity for all human beings, and as an enabling framework for efforts to expand the benefits of human progress to all....”

Source: *Accelerating Achievement of the MDGs by Ways and Means of Economic and Social Rights*, (UNDP 2012)

The experience of the Millennium Development Goals (MDGs) has highlighted the links between the rule of law and sustainable development. The rule of law has shaped development processes through the operation of laws, regulation and enforcement; enabled conditions and capacities necessary for development outcomes; and remained a core development end in itself. Although it was not addressed explicitly in any of the MDGs, country experience has revealed the importance of the rule of law to achieving development goals. UN Member States have recently renewed their commitment to the strengthening the rule of law as a basis for development, notably in the 2012 UN General Assembly High Level Meeting on the Rule of Law and the Rio +20 Conference.

The discussions around a post-2015 development agenda provide a unique opportunity to translate this commitment into action, by learning from a growing body of experience and evidence on the links between the rule of law and sustainable human development. The concept of the rule of law resonates across borders and boundaries. States have adopted a diverse set of perspectives and approaches to the

rule of law that reflect their culture, history, politics, institutions and conceptions of justice. The evidence base for the relationship between the rule of law and development is multi-faceted, complex and sometimes contested. Nonetheless, it demonstrates that the rule of law is linked to outcomes across sectors of development, and points to specific ways in which it could be incorporated into the post-2015 agenda.

To translate this commitment to the rule of law into action, discussions around the post-2015 agenda are likely to reflect both internationally agreed norms and standards and the context specificity of the rule of law. Discussions are also likely to be informed by evidence of the multiple linkages between rule of law and development, including from development practice over the last fifty years. This Policy Brief aims to help frame this discussion by (1) clarifying the relationship between the rule of law and development; (2) summarizing the lessons of rule of law development efforts and the experience of the MDGs; and (3) pointing to options for how the rule of law might be incorporated into the post-2015 development agenda.



What is the Rule of Law?

At its core, the rule of law is a means of ordering society, including the state-society relationship, and so determines

political, social and economic justice. The rule of law includes systems of rules and regulations, the values that infuse them (as influenced by international, national and local norms), and the means of adjudicating and enforcing them. The expression of these values - including the nature of the rules and means of enforcing them - go far beyond property, security or formal legal systems. Everything from the operation of *nizam* (man-made regulation in some Islamic law systems), to common law precedent, to *kastom* (or customary law in some parts of Melanesia) can be relevant to the rule of law.

The rule of law varies across cultures and contexts

“So actually looking at the [state] court, they only focus on the nature of your complaint and care less to know what transpired in the past. So in short, the court does not satisfy the both parties when cases are resolved by them. But for our traditional people they look at the nature of the case and also dig out the past to know what happened, and based upon that they peacefully resolved the matter. And at the climax the both parties leave with smile.” - Male adult in Nimba, Liberia.

Source: Isser, Lubkemann and N'Tow (2009)

The substance of values, rules and their application vary deeply across cultures and contexts, and evolve in response to political and social forces including development and globalization. For example, in enforcing norms of social justice in a given society, the rule of law determines varying forms of recognition among groups and individuals, public participation, individual and group agency, human and physical security, and the distribution of resources and public services.

UN definitions of the rule of law

- According to the UN Secretary-General, the rule of law refers to “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.”
- In the Declaration of the 2012 High Level Meeting on the Rule of Law, the UN General Assembly recognized that “all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.”

At the global level, the UN has adopted a set of definitions within a framework of internationally agreed norms and standards. These incorporate two key principles: first, that no one and no institution - regardless of position and authority,

including the state itself - is above the law; second, that everyone - regardless of ethnicity, religion, gender, sexual orientation or class - is equal before the law. This framework provides a counterweight to patterns of marginalization and exclusion - including around gender - that are reinforced by legal systems that reflect patterns of power in societies. During the 2012 UN General Assembly High Level Meeting on the Rule of Law, Member States recognized that “all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law” whilst also recognizing that the “common features founded on international norms and standards... are reflected in a broad diversity of national experiences”.

At the national level, policy makers and practitioners have used a variety of conceptions of the rule of law that reflect their experiences, objectives and contexts. Some have adopted a broad conception of the rule of law as a principle of governance regulating the use of public and private power. Others have understood the rule of law more narrowly, as a limited set of institutions that enforce and adjudicate the law, such as courts, prosecutors, police, prisons, customary tribunals and human rights defenders.

In relation to development, policy makers have applied the concept in a variety of ways, many of which overlap and are used in concert. Rule of law has been understood as an outcome of development. In this sense, it is a legal and political order with a set of values, a state of human security, and an outcome of justice. It is also an enabling condition for development, for instance in establishing the basic social order and security required for other development activities to be effective. It is also a process through which other development outcomes are achieved: it determines how decisions are made, rules are adopted and enforced, and grievances and disputes are resolved. Such processes are crucial parts of the framework for the equitable delivery of education, health, jobs, and other aspects of development.



Given the particular context of the post-2015 development agenda, this brief is grounded in the UN's definition, whilst also incorporating diverse national approaches and lessons from policy experience. As such the rule of law can be understood as (1) a social and political reality that exists according to different values, norms and institutional forms; (2) a system of rules, values and organizations that underpins governance; and (3) a set of processes, enabling conditions and outcomes that operates at multiple levels and cuts across sectors to affect sustainable human development.

The Rule of Law and Development Policy

Policy makers now tend to understand the relationship between the rule of law and development in terms of the functions the rule of law is expected to carry out, from the rules that govern public administration to how disputes and grievances over land, natural resources and public services are handled in society. In other words, they are less concerned with what the rule of law looks like than what it does.

International commitments to the rule of law as a basis for development

- “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” - *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 2012*
- “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.” - *The Rio +20 Conference on Sustainable Development Outcome Document, 2012*
- “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.” – *UN Commission on Legal Empowerment of the Poor Final Report, 2008.*

The functions the rule of law is expected to play in terms of development are multiple and complex; each function emphasizes certain elements of the rule of law and its relationship to development.

- **Enable economic growth.** The rule of law has been linked to economic development through a range of factors such as the protection of individual property rights; guarantee of fair, credible and predictable contract enforcement; labor regulation; and facilitation of market creation and access, including for the poor and marginalized (for example, protecting women’s inheritance rights or legal capability to enter into contracts). There is considerable evidence for these relationships both within and across countries. It is less evident, however, whether certain legal arrangements cause more growth than others. The economic effects of formal land titling, for instance, have varied significantly in different contexts, as have the social costs. It would seem

necessary to further explore exactly why and how much the rule of law affects growth, and which comes first. For example, some countries and sectors have grown as a result of an industrial policy of favorable treatment for certain companies, while others have benefited from equal treatment under the law. In addition, the pathways between the rule of law and economic distribution, including pro-poor growth, should be better understood. In some cases, efforts to strengthen the rule of law can be inequitable if they focus on lowering transaction costs for elites rather than facilitating redistributive action, broader access to opportunities, or social justice.

- **Equity, inclusion and social justice.** Elements of the rule of law related to legal recognition, enabling public participation and agency, and the allocation and enforcement of rights for all segments of society – including economic and social rights – have been linked more directly to equitable growth, delivery of public services, and the possibility of more effective redistribution. This cuts across all levels of a legal system, from high-level rules (such as constitutions) that can facilitate recognition and participation, to national and local administrative law regulating the delivery of basic services, to customary law governing the allocation of natural resource rights. The existing research, though limited, emphasizes the long, historical sociopolitical processes that have come to define citizenship and identity and their impact on distribution of rights, resources and services. Some recent studies suggest that some dimensions of the rule of law, including legal knowledge, access to information and effective enforcement mechanisms, in conjunction with social mobilization (for example by local advocacy or paralegal groups), can improve social and economic justice.

The rule of law, equity and inclusion

Legal institutions such as courts can play an important role in defining identity, thereby enabling equitable access to economic and social opportunities. In *Karanja v. Karanja* (1976), the High Court of Kenya set a precedent by rejecting the argument that under Kikuyu customary law, married women do not own property because they have no independent legal identity. The court awarded the woman a third of the couple’s property in divorce proceedings.

Source: *Hallward-Driemeyer and Hasan (2012)*

- **Prevent and mitigate violent crime and conflict.** The rule of law is widely associated with the ability of states to ensure the human security of their citizens, including both physical safety and fulfillment of basic needs. No state affected by widespread conflict or fragility has achieved an

MDG target, while pervasive violent crime can also severely undermine development. The World Development Report 2011 highlighted the importance of “security and justice” in facilitating transitions out of fragility and conflict, although it cautioned against overemphasizing security and order at the expense of other dimensions of rule of law and development. Recent studies strongly suggest that credible rule of law institutions that can resolve grievances, contain violent disputes, and punish violent crime are a significant

impact assessments; and defining rules for natural resource exploitation and governance. International principles on environmental protection can influence the strength of these rules, for example through their incorporation in the constitution. In some countries, the rights of indigenous peoples to manage and share in the benefits of their land and natural resources are incorporated into national laws and policies with the establishment of protected areas. There is an increasing body of evidence on the effect of legal protections on the protection of natural resources and recent theoretical work and several case studies assert the importance of this relationship.

The rule of law and conflict, crime and violence

In perception surveys of six conflict-affected countries and territories, injustice, inequality and corruption were cited as the leading drivers of violence. In Central America, crime and violence were consistently cited as the top five constraints to productivity and growth. According to local business owners, the high cost of crime acts as a drag on competitiveness, reduces profit margins, and can make the difference in whether a company survives or fails. In a 2008 survey of all Central American countries, 71% of the adult population said they view crime as a major threat to future well-being, and more than 50% believed high crime rates would justify a military coup.

Source: World Bank (2011)

factor in enabling economic recovery and growth.

- ***Strengthen accountability and checks on power.*** The rule of law – more particularly, the accountability of everyone, including the state itself, to the law - can reduce abuses of power and corruption, including through the enforcement of civil and political rights. Institutions that enforce and adjudicate the law in a fair manner, such as independent judiciaries and regulatory agencies, create a check on arbitrary action, while open and equitable participation in rule-making processes (such as laws and constitutions) can strengthen the legitimacy of rules and their enforcement. The evidence for the relationship between accountability and development is strong, although the direction of causation is a matter of debate: while rules and institutions matter, where they come from and the reasons for which people follow them may be rooted in other factors that need to be better understood, such as the nature of political coalitions and sources of authority. In other words, effective accountability mechanisms enable development, but they may be the result, rather than the cause, of agreed checks on power.
- ***Support sustainable environment and natural resources management.*** The rule of law enables the sustainable use of the environment by protecting environmental rights in constitutions and legislation; enforcing regulations; requiring administrative protections such as environmental

Each of these functions is important, yet the relationship between the rule of law and development is more multifaceted than any of these functions alone suggest. The ways in which the rule of law and sustainable development influence each other are multiple and dynamic. In the context of land titling, for example, there may be compromises between generalized or context-specific rules and understandings of property, ownership and inheritance, such as individual or community title; between actors, such as whether to focus on problems as understood by the state, local communities, or individuals; and between institutions, such as how to engage with non-state or informal institutions like customary title to land. No one policy option is ex ante the best and choices will often entail trade-offs and tensions: for example, the universe of state and non-state institutions can be relevant to or distant from people’s needs, trusted or illegitimate, costly or cheap.

Understanding the various pathways through which the rule of law affects development can broaden consensus around the functions where the evidence is stronger and highlight those where more exploration and research are needed, such as the relationship between the rule of law and environmental sustainability. Ultimately the evidence can help to clarify trade-offs and inform policy choices that can improve development outcomes.



Lessons from the Evolution of the Rule of Law in Development Programming

The benefits of rule of law for development have fueled efforts by governments and development actors since the 1960s. Attention to the links between rule of law and development originated among U.S. legal academics and foreign aid agencies, which promoted legal education to transmit liberal values to legal elites. By the mid-1970s, these efforts were largely abandoned after critiques that they were driven by “Western” values and decontextualized from the political, institutional and cultural reality of recipient countries.

In the 1990s three sets of changes spurred a “rule of law revival” as policymakers turned their attention toward strengthening legal and judicial institutions. Theory and evidence from new institutional economics led to a renewed focus on “the rules of the game” that enable markets to function. Simultaneously, the collapse of communist and authoritarian regimes led to efforts to strengthen independent judicial and legal institutions as part of transitions to democracy and free market economies. Finally, with the end of the Cold War, peacekeeping and peacebuilding missions included efforts to restructure and rebuild criminal justice and dispute resolution systems to mitigate sources of conflict, while promoting accountability for past atrocities through transitional justice. “Rule of law” work became synonymous with strengthening legal, judicial and law enforcement institutions to promote predictable, credible enforcement of laws and contracts, provide security and resolve disputes.

Since then, the landscape of rule of law efforts has broadened to tackle a range of development objectives. Some states have focused on addressing the threats of transnational crime and terrorism. Yet others have sought to strengthen global norms in the face of threats to civil and political rights, or to improve states’ ability to address economic and social rights. Legal groups, development practitioners and civil society organizations have re-directed rule of law programmes toward protecting the rights of the poor, and reducing barriers to



political participation, economic opportunities and social services for vulnerable groups through “legal empowerment” initiatives. New information and communication technologies (ICTs) that enable individuals to express their grievances, participate in decision-making and monitor government performance have helped to expand the focus of rule of law efforts to protecting the rights of vulnerable groups.

Throughout this evolution, policy makers and practitioners have struggled to demonstrate the effectiveness of efforts aimed at strengthening the rule of law. Like some other dimensions of governance, there are usually multiple steps and numerous actors involved in affecting rule of law outcomes, such as strengthened property rights or improved judicial performance, which can make the impact of policy and programmes difficult to prove. This has tended to be especially the case in post-conflict and crisis-affected settings where rapid and tangible progress is often expected. Rule of law programmes have frequently been criticized for transplanting models from elsewhere, for paying insufficient attention to the contextual basis of change, and for pursuing overly-short time horizons, often at the expense of meaningful local engagement with reforms. When policy has focused on one dimension of the rule of law to the detriment of others, such as security in the aftermath of September 11, or legal frameworks for privatization in many developing countries, programming has led to unintended consequences, sometimes weakening other elements of the rule of law and human rights. Measuring impact has also been challenging: measures often focus on narrow activities, like police training or contract enforcement, while not addressing linkages to other dimensions of the rule of law – broadly understood – as well as to development outcomes more generally, such as service delivery, poverty reduction or natural resource management. Where policymakers have sought to strengthen broader elements of the rule of law, they have struggled to measure impact due to limited collection or availability of good quality data.

In response to these challenges, and in light of growing emphasis on strengthening country systems, policymakers have increasingly focused on the legal and institutional underpinnings of development. Viewing the rule of law both as an outcome and element of process, development agencies have incorporated attention to rule of law into a variety of development programmes, from employment, health and education to natural resource management, crisis prevention and mitigation, poverty reduction, and economic growth. They have also engaged a broader range of state and non-state actors, legal systems and dispute resolution mechanisms.

These lessons have informed the development of a problem-solving approach adopted by many development actors. This approach, aiming to avoid past mistakes, begins not by strengthening any particular set of institutions, but by

identifying a particular development challenge in conversation with a broad range of partners and understanding the local context in order to design a range of institutional responses, policies and programmatic efforts.

Practitioners and researchers have also developed new approaches to measuring the rule of law. As programmes have moved toward a problem solving approach, they have sought to move beyond narrow measures of institutional performance, by measuring broader outcomes and objectives. This often includes collecting user perspectives through methods like surveys focus groups and ethnographic research, and working with government and civil society to improve the quality and availability of data. Recent approaches have sought to combine multiple elements and reflect varying local contexts through broad indices that aggregate multiple measures, or through “baskets” of indicators that can be tailored to local contexts. It can no longer be asserted that rule of law dimensions of development cannot be measured, even if the measurements remain imperfect. These efforts also provide the basis for improved understanding of what types of development policy intervention can strengthen the rule of law.

Examples of rule of law measurement tools

- At the global level, the World Bank’s World Governance Indicators aggregate several indicators focused on property rights, contract enforcement and security of persons and property; while the World Justice Project’s Rule of Law Index defines 9 factors and 48 sub-factors of the rule of law and conducts public and expert surveys to measure country’s performance.
- Other indices measure more specific aspects of the rule of law, including the Cingranelli-Richards CIRI Human Rights Dataset, the Freedom House Freedom in the World, the World Bank’s Doing Business survey, the Judicial Independence Index and the Global Corruption Barometer.
- Country-level diagnostics and assessment tools measure the performance of specific institutions within the justice sector, including the American Bar Association/Rule Of Law Initiative legal and judicial reform indices, the National Center for State Court’s Court Tools, and the National Judicial Institute of Canada’s framework for assessing judicial independence, transparency and accountability. The UN Rule of Law Index uses a “basket” of indicators and data sources to measure performance across the criminal justice system.
- Review processes measure country’s compliance with international norms, such as the Human Rights Council’s Universal Periodic Review process, or the UN Convention Against Corruption’s peer review process.
- Regional or global surveys measure citizen perception and experience, including the Afrobarometer, Asian Barometer, Latinobarometer, and Transparency International’s Corruption Barometer.

Promoting the Rule of Law through the Post-2015 Agenda

The relationship between the rule of law and development has received growing attention. States have repeatedly expressed their commitment to the rule of law through international fora, including the UN General Assembly, regional organizations and international treaties establishing states’ responsibility to protect human rights. Empirically, fifty years of lessons from development experience suggests that building the rule of law requires a multifaceted approach that is grounded in contextual realities. Emerging evidence also points to the benefits of integrating the rule of law into the post-2015 agenda for sustainable human development.

Incorporating the rule of law into the post-2015 agenda could spur a clearer conception of the actions and investments needed to bring political commitments to the rule of law and development into practice. As states outlined in the Rio +20 Outcome document, the post-2015 development goals should have universal appeal. Although the rule of law is highly complex, it is part of the deep structure of all societies. It reflects a shared sense that human dignity and justice matter, and thus has global political, social and economic resonance. Given the prevalence of poverty and inequality in both developed and developing countries, it is possible to say, for example, that all countries face challenges related to ensuring effective access to justice by the poorest and most marginalized sectors of their societies. Additional global focus on the rule of law can channel resources toward generating effective solutions to challenges related to the rule of law and development while improving the evidence base. It could also spur efforts to improve the quality of national-level data sources, and to invest in improved techniques to measure multiple dimensions of the rule of law.

The rule of law and the MDGs: Promoting gender equality

After a survey of Albanian students found that only 3% of victims of domestic violence had reported their case or asked for support from the government or justice system, the government emphasized the importance of the legislative and policy framework, and of raising awareness among lawyers and police officials as a front line in preventing gender-based violence and protecting survivors.

Source: UNDP/Albania

The value of incorporating the rule of law in the development framework has also emerged from the experience of the MDGs. Although the rule of law was not explicitly incorporated into the eight goals, country reports have highlighted the value of addressing the rule of law to achieve their targets. Establishing

transparent and legitimate legal frameworks, ensuring predictable enforcement of rules and procedures, and reducing corruption have enabled effective delivery of health, education and other social services. The absence of these elements has been cited as a factor in countries' failure to meet targets. Legitimate laws and credible enforcement mechanisms have contributed to expanding opportunities for women and vulnerable groups to participate in economic and political life – as required by the third MDG on gender equality. Recognizing these linkages, a few countries including Mongolia, Albania and Cambodia adopted a ninth goal focused on rule of law, governance or human security, accompanied by a range of related targets and indicators. From these and the years of broader experiences of rule of law and development practice, lessons can be drawn for efforts to incorporate rule of law into the post-2015 development agenda. First, in addressing the rule of law, any future global framework should remain sufficiently adaptable to reflect its context-specific and complex nature. Although universally applicable goals and targets were important to the value of the MDGs, it is also widely recognized that a future framework should pay greater attention to varying local contexts and conditions. It should also incorporate broader consultation in defining goals and targets to increase effectiveness and avoid setting unrealistic targets. This lesson is especially applicable to the rule of law, with its wide variety of normative commitments, institutions involved, and development functions. Some of the countries that adopted additional goals related to the rule of law benefited from widespread consultations and careful research to set context-specific targets and indicators. This experience suggests the importance of broad input in defining rule of law elements of the development framework, including voices within and across countries with varying conceptions and priorities. While it would be desirable to achieve consensus on a goal that encompasses the elements of the rule of law to be pursued through the post-2015 framework, specific targets and indicators might remain flexible and adaptable to national and local contexts and priorities.

A second lesson is the importance of the rule of law across sectors of development. It is increasingly understood that the rule of law shapes outcomes across sectors, from health and education to equitable growth, through institutions and processes that ensure legitimate legal frameworks, predictable and fair enforcement, and opportunities to equitably resolve grievances and claims. Attention to the rule of law across sectors of development shifts focus from particular government agencies or outputs to incorporating the experience of citizens in defining objectives and targets that address their aspirations and fulfill their rights. This broad view

of the rule of law implies that it could be integrated into the development framework beyond a single goal, objective or institution by addressing the enabling factors for development, or informing the definition of targets across objectives and how they are achieved.

Third, goals, targets and indicators related to the rule of law should reflect its multiple dimensions and functions. As a multi-dimensional social and political reality that varies by context, changes in the rule of law cannot easily be captured through a single, time-bound or specific indicator. Many measures of the rule of law have tended to privilege certain conceptions of the rule of law over others – such as security of property rather than equitable enforcement – and to focus on institutional performance – such as case processing time – rather than outcomes for citizens. Since data on each of these elements tends to be fragmented and unreliable, selecting a single indicator that can be measured across countries can be tricky. Efforts to define “baskets” of indicators and to ground them in local challenges and context may be more appropriate. For example, a measure of access to justice might include survey data showing the types of cases of most concern to citizens, capture user perception and experience, measure the performance of several institutions, and assess the availability and quality of a range of services – from courts and paralegals to community mediation and media access – that are relevant to a given context. Such an approach can measure global outcomes while remaining adaptable to local contexts.

Finally, efforts to measure the rule of law should take into account the potential for unintended consequences in adopting indicators for complex and multi-dimensional concepts like the rule of law. Even where policymakers intend to address various elements of the rule of law, selecting indicators for measuring policy impact can empower certain actors over others, or distort institutional performance toward fulfilling targets while neglecting other crucial functions. Significant gaps in the availability of data, both on the performance of institutions and on outcomes for the public can exacerbate these consequences if policymakers choose to measure what is available rather than what matters. For example, the measure of homicide rates is often used as a proxy for the rule of law, since it is relatively reliable, sensitive to policy change, and can be compared across countries. Yet it also implies a very narrow conception of the rule of law focused on one aspect of physical safety. Focusing exclusively on homicide rates may distort policy efforts by directing resources toward certain forms of violent crime rather than other sources of insecurity, dispute or grievance that more commonly affect citizens.

Potential Approaches for Integrating the Rule of Law into the Post-2015 Agenda

Given these lessons, three general approaches to incorporating the rule of law into the post-2015 development agenda could be considered. These approaches, based on current deliberations regarding the future framework as reflected in intergovernmental discussions and outcomes, are not mutually exclusive and could be adopted in concert.

- **Define a specific rule of law goal and targets with a flexible basket of indicators that can be tailored to country contexts.** A rule of law goal would signal the importance of the rule of law as an outcome of development on par with other outcomes such as poverty reduction and health. Selecting a rule of law goal would require broad consultations to facilitate consensus on a particular aspect of the rule of law that is broadly desired for development, such as safety and security, an instrument of governance, access to justice or social and economic justice. The goal and its targets would be specific, time-bound and universally applied in referring to an agreed-upon rule of law outcome. At the same time, lessons from the MDGs suggest that countries should retain flexibility by designing at least some of their own targets and indicators, drawing from “baskets” of indicators that can be tailored to specific contexts. For example, a goal related to public safety and security might involve a target of reducing violent crime by a certain percentage, but allow countries to define the type of crime that is most salient in its context, and complement indicators based on crime statistics with measures of citizen experience. Defining these indicators would require broad consultations at the country level to ensure that they resonate with each society’s priorities and experience.
- **Adopt the rule of law as a high level “enabling” goal.** Operating at a level beyond the primary development goals, this enabling goal would commit countries to make national-level policy changes that enable progress on other goals. The enabling goal would focus on a specific element of the rule of law that, according to the empirical evidence, facilitates other aspects of the new development framework, such as fair and predictable property rights and enforcement of contracts; accountable and transparent application of executive authority; protection of physical safety and property; or access for vulnerable groups to knowledge about rights and means to enforce them. For example, a post-2015 emphasis on poverty reduction and inequality might lead to a rule of law enabling goal on participation, access to information and rights protection for vulnerable groups to ensure they benefit equally from poverty reduction efforts. In contrast to the following option, which entails the rule of law being incorporated

across other goals, the enabling goal would entail concrete commitments to adopt national-level legal or policy changes beyond the sectors related to the other development goals. The details of these commitments would vary, as each country would define their own targets and indicators based on their institutional needs and contexts. For example, to fulfill an enabling goal related to expanding access to information and protection of rights, countries might adopt a range of targets from implementing freedom of information laws, to improving performance of law enforcement or providing paralegal services. Each country would measure progress in ways that are appropriate to their institutions, social contexts and development challenges.

- **Incorporate the rule of law across development goals.** This would require clarifying the elements of process that are essential to achieve the post-2015 goals, such as legitimate and transparent legal frameworks; public participation and agency; the fair and equitable resolution of disputes and grievances; credible enforcement of the law; and/or rights protection. These elements could be applied across relevant goals by incorporating specific targets and indicators related to the rule of law. For example, a development goal on improving maternal health could include targets on equitable access to services, and include indicators on the adoption of a legal framework establishing rights to services, along with mechanisms that enforce rights and handle grievances fairly and equitably. These indicators, carefully formulated to address a range of country contexts and institutional needs, might combine user perspectives collected through surveys, output indicators showing numbers of individuals served, and input indicators revealing legal changes.

Options for incorporating the rule of law into the post-2015 agenda

- Define a specific rule of law goal and targets with a flexible basket of indicators that can be tailored to country contexts.
- Adopt the rule of law as a high level “enabling” goal.
- Incorporate the rule of law across development goals.

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Contact Information: Aparna Basnyat, Policy Specialist, Rule of Law: Access to Justice and Security, Legal Empowerment of the Poor, Democratic Governance Group, BDP/UNDP, aparna.basnyat@undp.org

ANNEX

Selected readings and resources

The following is a brief list of further resources on the rule of law and development

Definitions and Concepts

Isser, D., Lubkemann, S. and N'Tow, S. 2009. "Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options," Peaceworks No. 63, United States Institute of Peace.

Kahn, P., 2002. *The Reign of Law*. New Haven: Yale University Press.

Kesby, A., 2012. *The Right to Have Rights: Citizenship, Humanity, and International Law*. Oxford: Oxford University Press.

Sen, A., 1999. *Development as Freedom*, New York: Knopf

Waldron, J., 2008. "The concept and the rule of law". *Georgia Law Review*, 43(1), pp.1-61.

Sen, A. 2000. 'What is the Role of Legal and Judicial Reform in the Development Process?' In: *World Bank Legal Review Vol 2*. Washington: World Bank.

Tamanaha, B.Z. 2004. *On the rule of law: history, politics, theory*. Cambridge: Cambridge University Press.

Trebilcock, M.J. and Daniels, R.J. 2008. *Rule of law reform and development: charting the fragile path of progress*. Northampton: Edward Elgar.

The Rule of Law and Development

Economic Growth

Acemoglu, D., Johnson, S., & Robinson, J. 2001. "The colonial origins of comparative development: An empirical investigation". *American Economic Review*, 91(5), pp. 1369–1401.

Amsden, A.H. 2001. *The rise of the rest: challenges to the West from late-industrializing economies*. Oxford: Oxford University Press.

Haggard, S. and Tiede, L., 2011. "The Rule of Law and Economic Growth: Where are We?" *World Development*, 39(5), pp. 673–85.

Hallward-Driemeyer, M. and Hasan, T. 2012. *Empowering Women: Legal Rights and Economic Opportunities in Africa*. Washington, D.C.: World Bank.

Kaufmann, D., Kraay, A. and Zoido-Lobaton, P. 1999. "Governance Matters." *World Bank Policy Research Working Paper Series* 2196.

North, D. 1990. *Institutions, Institutional Change and Performance*. Cambridge University Press.

Rodrik, D., Subramanian, A. and Trebbi, F. 2004. "Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development." *Journal of Economic Growth* 9(2), pp. 131–65.

Son, H. and Kakwani, N. 2007. "Global estimates of pro-poor growth," *World Development*, 36(6), pp. 1048-1066.

Trubek, D.M. and Santos, A., eds. 2006. *The new law and economic development: a critical appraisal*. Cambridge: Cambridge University Press.

Equity, Inclusion and Social Justice

Banerjee, A., Banerji, R., Duflo, E., Glennerster, R. and Khemani, S. 2010. "Pitfalls of Participatory Programs: Evidence from a Randomized Evaluation in Education in India." *American Economic Journal: Economic Policy*, 2(1), pp. 1-30.

Commission on Legal Empowerment of the Poor. 2008. [Making the Law Work For Everyone: Volume 1](#). New York: UNDP.

Gauri, V. 2011. "Redressing Grievances and Complaints Regarding Basic Service Delivery", *World Bank Policy Research Working Paper Series* 5699.

Gauri, V. and Brinks, D., eds. 2008. *Courting social justice: judicial enforcement of social and economic rights in the developing world*. New York: Cambridge University Press.

Golub, S., 2010. "What is legal empowerment? An introduction", in Golub, S. ed. 2010. *Legal empowerment: practitioners' perspectives*. Rome: International Development Law Organisation.

Holston, J., 1991. "The misrule of law: land and usurpation in Brazil". *Comparative Studies in Society and History*, 33(4), pp.695-725.

Narayan D, Patel R, Schafft K, Rademacher A, Koch-Schulte S. 2000. *Voices of the Poor*. New York: Oxford University Press.

Violent Crime and Conflict

Collier P. 1999. "On the economic consequences of civil war". *Oxford Economic Papers*, 51, pp. 168–83.

Haggard, S. and Tiede, L. 2011. "The Rule of Law and Economic Growth: Where are We?" *World Development* 39 (5), pp. 673–85.

Morrison, A. 1999. *Violence as an obstacle in development*. Washington, DC: Inter American Development Bank.

Teitel, R. 2002. *Transitional Justice*. Oxford University Press.

Tiede, L. and Haggard, S. 2012. "The Revival of the Rule of Law in the Wake of Civil War," *The Hague Journal on the Rule of Law*, 4(1), pp. 120-134.

World Bank. 2011. *World Development Report: Conflict, Security and Development*. Washington, DC: The World Bank.

World Bank. 2011. *Crime and Violence in Central America: A Development Challenge*. Washington, DC: The World Bank.

Accountability and checks on power

Feld, L., & Voigt, S. 2003. "Economic growth and judicial independence: Cross-country evidence using a new set of indicators" *European Journal of Political Economy*, 19(3), pp. 497-527.

Helmke, G., & Rosenbluth, R. 2009. "Regimes and the rule of law: Judicial independence in comparative perspective". *Annual Review of Political Science*, 12, pp. 345-366.

Henisz, W. J. 2000. "The institutional environment for economic growth", *Economics & Politics*, 12(1), pp. 1-31.

Mauro, P. 1998. "Corruption and the composition of government expenditure." *Journal of Public Economics*, 69, pp. 263-279.

McGuire, M., & Olson, M. 1996. "The economics of autocracy and majority rule: The invisible hand and the use of force", *Journal of Economic Literature*, 34(1), pp. 72-96.

O'Donnell, G. 2004. "Why the Rule of Law Matters," *Journal of Democracy* 15(4), pp. 32-46.

Tanzi V. & Davoodi H. 1997. "Corruption, public investment and growth", *IMF Working Paper Series WP/97/139*.

Weingast, B. 1997. "The political foundations of democracy and the rule of law." *American Political Science Review*, 91(2), pp. 245-263

Sustainable environment and natural resources management

Anaya, S. and Williams Jr., R. 2001. "The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under The Inter-American Human Rights System." *Harvard Human Rights Journal* 14, pp. 33-86.

Dasgupta, S., Mody, A., Roy, S. and Wheeler, D. 2001. "Environmental Regulation and Development: A Cross-country Empirical Analysis", *Oxford Development Studies* 29 (2), 173-187.

Godden, L., Langton, M., Mazel, O. and Tehan, M. 2008. "Accommodating Interests in Resource Extraction: Indigenous Peoples, Local Communities and the Role of Law in Economic and Social Sustainability." *Journal of Energy and Natural Resources Law*, 26, pp. 1-30.

Kloppers, H. and du Plessis, W. 2008. "Corporate Social Responsibility, Legislative Reforms and Mining in South Africa." *Journal of Energy and Natural Resources Law*, 26, pp. 91-119.

Lehtonen, M. 2004. "The environmental-social interface of sustainable development: capabilities, social capital, institutions", *Ecological Economics*, 49(2), pp. 199-214.

Norman, C., 2009. "Rule of Law and the Resource Curse: Abundance Versus Intensity", *Environmental and Resource Economics*, 43(2), pp. 183-207.

Xanthaki, A. 2003. "Land Rights of Indigenous Peoples in South-East Asia." *Melbourne Journal of International Law*, 4, pp. 467-96.

The Evolution of Rule of Law Development

Carothers, T. ed. 2006. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington, DC: Carnegie Endowment for International Peace.

Humphreys, S., 2011. *Theatre of the rule of law: transnational legal intervention in theory and practice*. Cambridge: Cambridge University Press.

Jensen, E. and Heller, T. 2003. *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*. Stanford, CA: Stanford University Press.

Tamanaha, B.Z., 2004. *On the rule of law: history, politics, theory*. Cambridge: Cambridge University Press.

Trebilcock, M.J. and Daniels, R.J., 2008. *Rule of law reform and development: charting the fragile path of progress*. Northampton: Edward Elgar.

Trubek, D.M. and Galanter, M. 1974. "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," *Wisconsin Law Review*, 4, 1062-1102.

Trubek, D.M. and Santos, A., eds. 2006. *The new law and economic development: a critical appraisal*. Cambridge: Cambridge University Press.

Measuring the Rule of Law

Arndt, C., & Oman, C. 2006. *Uses and abuses of governance indicators*. Paris: Organization for Economic Cooperation and Development.

Botero, J-C, Nelson, R. and Pratt, C. 2011. "Indices and Indicators of Justice Governance and the Rule of Law: An Overview" *The Hague Journal on the Rule of Law*, 3(2), pp. 153-169.

Foglesong, T. and Stone, C. 2007. "Measuring the Contribution of Criminal Justice Systems to the Control of Crime and Violence: Lessons from Jamaica and the Dominican Republic", *CID Working Paper* No. 144.

Parsons, J. 2011. "Developing Clusters of Indicators: An Alternative Approach to Measuring the provision of Justice," *The Hague Journal on the Rule of Law*, 3(1), pp 170-185.

UNDP Oslo Governance Center. 2007. "[Governance indicators: A user's guide](#)" (2nd ed.).

Lessons from the MDGs

Clemens, M., Kenny, C. and Moss, T. 2007. "The Trouble with the MDGs: Confronting Expectations of Aid and Development Success", *World Development*, 35(5), pp. 735-751.

Easterly, W. 2008. "How the Millennium Development Goals are Unfair to Africa," *World Development*, 73(1), pp. 26-35.

Evans, A. and Steven, D. 2012. "[Beyond the Millennium Development Goals: Agreeing a Post-2015 Development Framework](#)", *Managing Global Order Working Paper*.

Fukuda-Parr, S. 2012. "Should global goal setting continue, and how, in the post-2015 era?" *DESA Working Paper* 117, ST/ESA/2012/DWP/117.

Fukuda-Parr, S. and Greenstein, J. 2010. "[How Should MDG Implementation Be Measured: Faster Progress or Meeting Targets?](#)" *UNDP-IPC Working Paper* 63.

Kenny, C. and Sumner, A. 2011. "More Money or More Development: What Have the MDGs Achieved?" *Center for Global Development Working Paper* 278.

Manning, R. 2009. "Using Indicators to Encourage Development: Lessons from the Millennium Development Goals", *DIIS Report* 1, Danish Institute for International Studies.

Melamed, C. and Sumner, A. 2011. "[A Post-2015 Global Development Agreement: why, what, who?](#)" Paper for ODI/UNDP Cairo workshop on a post-2015 global Development Agreement.

Wild, L. and Bergh, G. 2012. "The relationship between democratic governance and MDG achievement", Overseas Development Institute.

International Commitments

Commission on Legal Empowerment of the Poor. 2008. [Making the Law Work For Everyone: Volume 1](#). New York: UNDP.

["Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels"](#), A/67/1. 2012.

["Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance"](#). 2008.

[Millennium Declaration](#) (General Assembly Resolution) A/Res/55/2. 2000.

["Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies"](#) S/2004/616. 2004.

["The Rio +20 Conference on Sustainable Development Outcome Document"](#) (General Assembly Resolution) A/RES/66/288. 2012.

Note: UNDP has produced this policy brief as a contribution to the post 2015 debate. As such it provides a sense of the links between the rule of law and development from a range of perspectives. It does not reflect an exclusively UNDP position. The brief intends to stimulate debate amongst member states, development practitioners and rule of law experts and should encourage further engagement on rule of law in the post-2015 development framework.