

STATEMENT OF THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION

CONFLICT PREVENTION, POST-CONFLICT PEACEBUILDING AND PROMOTION OF DURABLE PEACE, RULE OF LAW AND GOVERNANCE

Eighth Session of the Open Working Group on the Sustainable Development Goals

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Delivered by Irene Khan, Director-General

Distinguished co-chair Ambassador Körösi,
Distinguished panelists,
Distinguished members of the Open Working Group,
Ladies and gentlemen,

As the head of the only inter-governmental organization exclusively devoted to advancing the rule of law, I am honored to address you, and appreciate the transparent and inclusive way in which the consultations are being carried out.

Over the past year, IDLO has actively contributed to the reflections on the post-2015 Agenda, drawing on its experience from around the world. My remarks today will focus on the rule of law, while acknowledging, where relevant, the linkages with conflict prevention and peace-building.

I would like to highlight four points but before I do so, let me say that as the consultative phase draws to an end and the Open Working Group moves into its next phase, which will be to articulate a framework for the Sustainable Development Goals, I am mindful that your work will be much more than a technical drafting process. You will be engaged essentially in a political process of forging consensus around priorities and outcomes, building on the achievements and lessons from the MDGs, while striving to formulate a bolder, more ambitious agenda 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.

Why, where and how should the rule of law fit in that framework of Sustainable Development Goals? There have been proposals for a stand-alone goal on justice, for mainstreaming rule of law elements in the various Sustainable Development Goals, and also for considering the rule of law as an overarching driver or enabler of development.

These will be important political choices for you. I do not believe they are mutually exclusive. But it is not my intention today to promote one or other of those propositions. Instead, I would like to focus on clarifying some issues that I hope will help you to better appreciate why the rule of law is essential to sustainable development and what we can do to clarify the concerns and misperceptions that could hamper its inclusion in the post-2015 Agenda.

The Outcome Document of the High -Level Meeting on the Rule of Law in 2012 stated that "the rule of law and development are strongly interrelated and mutually reinforcing" and should therefore "be considered in the post-2015 international development agenda". The Outcome Document of the High -Level Meeting on MDGs last September called for the post-2015 Agenda to promote the rule of law alongside peace, security, democratic governance, gender equality and human rights. These and various other statements and reports underline that the rule of law is key to equitable, inclusive and sustainable development.

IDLO works in some of the poorest and most insecure parts of the world, as well as in emerging economies. No matter where in the development spectrum a particular country stands, whether establishing peace or protecting the planet, eradicating poverty or encouraging economic opportunity, it needs good laws and regulations that are fairly administered by transparent and accountable institutions and that, most importantly, produce fair outcomes for all.

Insecurity drives poverty, and we see insecurity and violence thrive in the absence of the rule of law: when the state does not have the capacity or the will to protect the people or their property, when women are discriminated and have no recourse against gender-based violence, or when institutions are not strong enough to resolve social or political conflict, or tackle organized crime. It is no mere coincidence that post-conflict countries are among the poorest, or that the poorest neighborhoods, even in wealthy countries, are often the ones most likely to suffer from crime and violence. Not surprisingly, some of IDLO's largest programs are on constitutional and legal reform and judicial capacity building in post-conflict countries. By building people's confidence in institutions, the rule of law promotes sustainable development as well as peace.

Inequality - a key concern in the post-2015 discussions - grows when the rule of law does not function properly, whether in developing or developed countries; when people are not able to participate freely and express their views without fear of reprisal; when the law does not protect against discrimination; when opportunities are only open to a few based on wealth and privilege; when poor neighborhoods face higher levels of crime, but are less likely to be policed as well as rich suburbs; when corruption, bribery and discrimination distort access to basic services; when corporate interests override public interests; when the law is selectively enforced in favor of the rich and powerful and against the poor, for instance when tax fraud is ignored but vagrancy laws are rigorously applied.

We know from our experience that the law and institutions by themselves are not enough to establish the rule of law. There may be situations where the law discriminates and institutions exclude and marginalize poor people: for example, when the law discriminates against women and minorities, or denies birth registration to children who are then deprived of legal identity; or does not recognize the existence of an urban slum, so that the people who live there are denied access to water, sanitation and other basic services by municipal authorities.

My first point therefore is that the rule of law, properly understood, provides not only certainty and predictability of the law but also substantive justice. Equality, accountability and respect for human rights - both economic, social and cultural rights as well as and civil and political rights - are integral parts of the rule of law in this sense.

When seen in that way, the rule of law is crucial and relevant to all three dimensions of development: economic, social and environmental. It provides for predictability and certainty through a stable, transparent legal regime, which is key to economic development. By ensuring the rights of communities as well as business, the rule of law engenders sustainability and social acceptance. By ensuring equal opportunity and equitable access to basic services, the rule of law promotes social development. and b By strengthening the legal framework to protect the environment, and it advances the environmental dimension of development.

The rule of law is not an abstract concept but a concrete basis on which to eradicate poverty, fight discrimination and exclusion, ensure equitable, affordable and meaningful access to basic services and set regulatory frameworks for natural resource management that provide fair and sustainable development outcomes.

Underpinning these development objectives, the rule of law ensures, very importantly, that there is accountability and that people have access to justice. That includes a mechanism for resolving disputes and a remedy when rights and entitlements have been denied. It empowers people to claim their rights, for instance through information, legal awareness and legal aid, and to hold institutions accountable.

In short, in relation to each pillar of development, the rule of law establishes an environment conducive to progress. By setting the standards and institutions for equitable development, and creating avenues of redress when rules and regulations are breached or rights are violated, it promotes equality, accountability and inclusive participation in the development process.

My second point is that national ownership and understanding of the national and local context are fundamental to a proper application of the rule of law to development.

In over 30 years of working in the rule of law sector, IDLO has learned that national ownership, supported by political will, is key to ensuring meaningful and lasting results in justice-making and legal reform. Legal pluralism is a basic principle of IDLO's work around the world.

Each country has a distinct legal system with its own jurisprudence. Just as the development challenges of each country is unique, the 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. Accountability may be shaped by social and political forces at the local and regional levels. As a consequence, the targets and indicators on the rule of law must be tailored to the specific circumstances of

each country, while respecting the broad, internationally recognized norms and standards that are fundamental to the notion of the rule of law.

We need to be sensitive to 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. In some cases, transitional justice will be an issues, in others, the equitable and sustainable management of natural resources.

My third point is that this diversity of approach in line with national and local needs does not in any way weaken the argument for time-bound, measureable and easy- to communicate targets. To give some examples:

Take gender equality. In countries where legal discrimination persist against women, a target could be set to abolish the discriminatory laws. In another country where discriminatory laws have been abolished but equality provisions are not being enforced, the approach may be to focus on legal empowerment of women. In both countries there could be indicators on laws and remedies available to women to measure the ease with which they can access justice.

Or to take another example: access to health care. The contribution of the rule of law in this context may mean encouraging governments to adopt good public health laws that promote equitable, affordable and acceptable health care. Or in the context of equality, it may mean abolishing laws that deter those living with HIV from accessing health care.

Inclusive growth that promotes jobs is seen as a priority for the post-2015 Agenda. The rule of law could be used to promote economic opportunity for poor people, with targets and indicators responsive to local market conditions, for instance on micro-credit regulation or simplification of licensing for small businesses or alternate, inexpensive and speedy forms of dispute resolution.

For natural resource management, integrating the rule of law might mean referencing the rights of indigenous communities and the principle of prior informed consent.

These are just some examples of ways in which countries may ensure that the rule of law underpins and strengthens the development process. Obviously much more thought and attention will be needed on the issue of measurement. Justice is not easy to measure and we might need both qualitative and quantitative indicators.

Clearly there are challenges and political and practical difficulties about data collection in such an area. On the other hand, the justice sector is not currently un-measured. Every country measures some aspect of it - whether it is the effectiveness of laws and regulations, or the speed of judicial decision-making or the capacity of institutions. What is not often measured, but should and could be, is whether the poor and marginalized – women, migrant workers, minorities– have access to justice. The focus on the rule of law in the context of the post-2015 Agenda may bring much -needed attention to the

paucity of data in this area, and could in the end be hugely beneficial, in the same way that the MDGs have encouraged data gathering on issues such as maternal mortality. Instead of overtaxing ourselves by the complexity of circumstances at the ground level, let us focus instead on clear, internationally recognized outcomes. Where the focus of goals and indicators are linked to internationally accepted standards of justice and human rights, we can be confident that the development agenda is moving in a positive direction.

My fourth fourth-and final point is that the rule of law is also relevant at the global level to the legal and institutional frameworks for trade, investment, intellectual property, technology transfer and addressing climate change - where fairer rules would create a more equitable, inclusive and sustainable model of development. Building the capacity of developing countries to deal with these issues would also be critical. To what extent these issues should be appropriately incorporated in the Sustainable Development Framework or energize and inspire discussion, debate and outcomes in other fora would be a matter of institutional mandates, political choice and international dynamics. Obviously there are many linkages between national and global development issues and between the rule of law at the national and international levels. Moving ahead it would be critical to avoid a policy paralysis through a false juxtaposition of the national and international dimensions of the rule of law.

To conclude, the rule of law is of intrinsic value, and as a principle of governance, goes way beyond development. It is a multi-faceted concept with several distinct roles in relation to development.

Firstly, it helps to create the conditions for development by establishing the appropriate legal framework and the institutions for development.

Secondly, it provides transparency and equity to the development process, accountability and recourse mechanisms that help to eradicate poverty and enhance inclusion. It is integral to the process of development and not just an enabler.

Thirdly, it is an outcome of development - a just legal order with laws and institutions based on internationally recognized and nationally owned values and principles.

While the achievements of the MDGs have been impressive, there are high expectations that the post-2015 Agenda will be more ambitious and transformative. If we are to meet that expectation, the Agenda will need to look at principles and values, fair outcomes as well as fair processes at the global and national levels, and promote the accountability of states as well as the empowerment of citizens. That is what the rule of law brings to sustainable development. That would indeed make the post-2015 Agenda truly transformative and a game-changer, rooting sustainable development in a culture of justice.

Thank you.

The International Development Law Organization (IDLO) enables governments and empowers people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.