

REPOSE TO THE UN SECRETARY- GENERAL'S SYNTHESIS REPORT ON THE POST-2015 DEVELOPMENT AGENDA

This response focuses on the Justice element of the Synthesis Report. In doing so it makes comparisons with the Open Working Group's (OWG) Goal 16.

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Introduction

1. The advanced version of the Secretary General's (SG) synthesis report on the post-2015 development agenda released on 4 December 2014 proposes an integrated set of six essential elements: dignity, people, prosperity, planet, justice, and partnership.¹ The stated aim is to (i) facilitate the discussion ahead the UN special Summit in September 2015 and (ii) enable states to adopt a "concise and aspirational" sustainable development agenda through 2030.
2. **This response addresses the "justice" element (element 5) of that framework.**
3. In doing so, we make particular **comparisons with the Open Working Group's (OWG) Goal 16**, "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."
4. The synthesis report prompts three key questions regarding the justice element:
 - To what extent does the position taken in the synthesis report affect the structure and content of sustainable development goals and targets, especially in light of the proposals in the OWG's report?
 - What could be a focused and concise rearrangement of the goals and targets in relation to "justice"?
 - What place should the Rule of Law occupy in the post-2015 development agenda?

The Synthesis Report and the Open Working Group position

5. First, the SG recognizes that the OWG's document is central to the debates that lie ahead in 2015.
6. While the Post-2015 Sustainable Development Agenda will, in principle, include input from major global conferences and the voice of the civil society as conveyed in the post-2015 process, the synthesis report confirms the importance of the OWG's proposal as a starting point. The SG's core argument for such support is that sustainable development - in its two dimensions of human dignity and planetary sustainability - is a complex phenomenon affected by interdependent elements and thus necessitates a far-reaching set of goals and targets (para 58 of the SG's report).
7. In effect, the SG discards the criticisms that have been made concerning the length and complexity of the proposed SDGs consisting of 17 goals and 169 targets. Instead, the extensive coverage of the OWG proposal should be praised as the paradigm shift ("a remarkable step forward") in the efforts to address an increasingly complex global agenda.
8. The synthesis report suggests, therefore, that there should not be any substantial dilution or contraction of the goals proposed by the OWG. We welcome the SG's argument in this regard.

A focused and concise rearrangement of the goals

9. Secondly, the SG notes that the possibility of maintaining the 17 goals should be accompanied by efforts to rearrange them in a "focused and concise manner", in line with the mandate given to the GA at the Rio+20 Conference (para 63 of the SG's report). To that end, therefore, the six essential elements should not be taken as a reformulation of the goals but rather as a concise construction of clusters that absolutely need to be reflected in the development agenda and that should help streamline its implementation and delivery.

¹ Synthesis report of the Secretary-General on the post-2015 sustainable development agenda, A/69/700, 4 Dec 2014.

10. **Justice** is one such cluster, envisioned “to promote safe and peaceful societies and strong institutions” in the context of the development agenda. **This essential element covers many of the issues currently addressed in Goal 16** and related targets in the OWG document:

- access to fair justice systems,
- accountable institutions of democratic governance,
- combatting corruption, curbing illicit flows,
- protecting personal security,
- strengthening the rule of law at the national and international level,
- meaningful engagement of the civil society,
- press freedom,
- access to information and freedom of expression

Moreover, **the importance of the Rule of Law is acknowledged as central to achieving sustainable development.**

11. How can these issues be included in a concise and focused, yet coherent and meaningful goal?

12. Preliminarily, it should be noted that in the framework proposed by the SG in the synthesis report, elements 1-4 are different from 5 and 6. Each of the first four covers more goals listed in the OWGs proposed SDGs, while elements 5 and 6 cover almost exclusively goals 16 and 17 respectively. Therefore, with regard to justice, the rearrangement effort proposed by the SG should mainly take place within Goal 16 rather than across goals.

Justice, Goal 16, and the Rule of Law in the post-2015 development agenda

13. What concepts should appear in the text of Goal 16? How might the Rule of Law be most appropriately located within the development agenda? Two points need to be highlighted:

- Although the justice element essentially reshuffles the single concepts embodied in Goal 16, it cannot and should not be transposed into a Goal in that simple form and terminology. To do so would omit important elements that are integral to a meaningful goal. That is, “justice” is not suitable as Goal 16.
- On the other hand, Goal 16 embodies certain inconsistencies that need to be addressed and corrected. That is, Goal 16 as it stands, while better than “justice”, needs some reformulation.

14. Four observations may be made that illustrate these points.

15. First, element 5 (justice) only includes aspirational language and is thus exclusively focused on promotion rather than also on achievement. The current formulation of Goal 16 is better in this regard.

16. Secondly, the SG’s concise formulation of the element of justice seems to suggest that this will help deliver the SDGs (only) through the promotion of safe and peaceful societies, and strong institutions. However, the concept of justice goes beyond that: it includes laws that reject discrimination and help accord people the same opportunities; it includes the protection of human rights and fundamental freedoms; and it includes access to fair justice systems. These factors are correctly recognized in the synthesis report but are not immediately detectable in the SG’s description of element 5.

17. At the same time, other factors that are mentioned in the report in relation to justice - such as engagement of civil society in decision-making, access to information or freedom of association - are not straightforwardly connected to justice as such, but to the promotion and establishment of the Rule of Law more properly as an enabling environment for sustainable development. **The centrality of the Rule of Law in achieving sustainable development is broadly recognised in the**

report and its inclusion in the main text of the Goal would contribute to the Goal covering important development triggering factors that are only partially covered by the concept of justice. These triggering factors include the principle of legality, transparent and accountable laws and procedures, fair trials, legal certainty, respect for human rights, non-discrimination, independence of the judiciary and equality before the law. **These are of profound importance to sustainable development, inclusive economic growth, eradication of poverty and the full realization of human rights.**

18. Thirdly, it should be noted that the text of Goal 16 consists of three different yet partly overlapping and interconnected sub-goals: promoting peaceful and inclusive societies; providing access to justice for all; and building effective, accountable and inclusive institutions at all levels. The latter two are core components of the Rule of Law, and the Rule of Law is in turn essential to the realization of the first sub-goal.
19. Fourthly, when the OWG removed the Rule of Law from the main text of Goal 16 to reach a compromise position, and placed it into the targets, it created a contradiction. As we have argued elsewhere,² the OWG document places the rule of law and access to justice the wrong way around. The promotion of the rule of law (i.e., the broader concept) should be a goal that is achieved by, among other things, providing and ensuring access to justice for all (i.e., the narrower concept) and building effective, accountable and inclusive institutions at all levels. This problem is compounded by the ambiguity and inconsistency in the textual formulations of the Goal which is to “*provide access to justice for all*”, with the target being to “*ensure access to justice for all*” (italics added).
20. Therefore, while neither the OWG’s Goal 16 nor the SG’s element 5 represent the perfect solution, the goal to be included in the development agenda that will be adopted in September 2015 should build on the strengths of each of them: the comprehensive content of the OWG’s Goal 16 on the one hand, and the call for the SDGs to be clear, coherent and concise that informs the definition of the SG’s six essential elements on the other.
21. Accordingly a **reformulated Goal 16** could aim to “**Promote justice and the Rule of Law at the national and international level**” through **four main targets**, some of which could be given more detailed content through **sub-targets**, as the OWG’s proposal presently does for several other goals. It could then read:

Goal 16: Promote justice and the Rule of Law at the national and international level”

16.1 promote safe and peaceful societies;

- a. significantly reduce all forms of violence and related death rates everywhere
- b. end abuse, exploitation, trafficking and all forms of violence and torture against children
- c. by 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime
- d. strengthen relevant national institutions, including through international cooperation, for building capacities at all levels, in particular in developing countries, for preventing violence and combating terrorism and crime

16.2 protect fundamental freedoms, in accordance with national legislation and international agreements

16.3 provide equal access to justice for all

² J Beqiraj & L McNamara, *The Rule of Law and Access to Justice in the Post-2015 Development Agenda: Moving Forward but Stepping Back* (Bingham Centre Working Paper 2014/04), Bingham Centre for the Rule of Law, BIICL, London, August 2014, http://www.biicl.org/documents/289_post-2015_bingham_centre_paper_2014-04.pdf.

a. by 2030 provide legal identity for all including birth registration;

16.4 build effective accountable and inclusive institutions at all levels

- a. substantially reduce corruption and bribery in all its forms
- b. ensure responsive, inclusive, participatory and representative decision-making at all levels
- c. broaden and strengthen the participation of developing countries in the institutions of global governance
- d. ensure public access to information and promote and enforce non-discriminatory laws and policies for sustainable development

22. All four main targets in the above have a direct impact on the achievement of justice and the Rule of Law. They cover all the factors mentioned in the SGs report as well as all the 10 targets in the OWG's Goal 16. The goal would thus be both universal and context specific; action oriented and aspirational, comprehensive and easy to communicate.

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