The Rule of Law and
the Post-2015 Development Agenda

26 March 2013

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Prepared for:
United Nations Development Programme (UNDP)
Rule of Law Team
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ACKNOWLEDGEMENTS

The views expressed in this paper are those of the author alone, and should not be attributed to UNDP or Harvard Kennedy School. I would like to thank Shelley Inglis and Aparna Basnyat at UNDP, and my Kennedy School faculty advisors, Ryan Sheely and Michael Woolcock, for their helpful guidance. I would also like to extend my gratitude to those who shared their experiences and provided useful insights in interviews to inform my findings (see page 85).

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ACRONYMS

ADB  Asian Development Bank  
ADR  Alternative dispute resolution  
GLTN  Global Land Tool Network  
HiiL  Hague Institute for the Internationalisation of Law  
IDLO  International Development Law Organization  
MDG  Millennium Development Goal  
NGO  Non-Government Organization  
OHCHR  Office of the United Nations High Commissioner for Human Rights  
UIS  Urban Inequalities Survey  
UN  United Nations  
UN-CTS  United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems  
UN DESA  United Nations Department of Economic and Social Affairs  
UNDP  United Nations Development Programme  
UN-HABITAT  UN Human Settlements Programme  
UNICEF  United Nations Children’s Fund  
UNODC  United Nations Office on Drugs and Crime  
WHO  World Health Organisation
EXECUTIVE SUMMARY

As the deadline for the Millennium Development Goals (MDGs) approaches, discussions are underway on a post-2015 development agenda. With experience showing that the ‘rule of law, justice and security – or their absence – have a major impact on the achievement of the MDGs,’ it is expected that the post-2015 agenda will include the rule of law. This paper explores four specific rule of law reform areas to assess the benefits of, and potential challenges to, their inclusion in such an agreement. While these are by no means the only rule of law issues that could feature in the post-2015 agenda, the reform areas selected for analysis here are:
- access to justice;
- legal identity via civil registration;
- land, property and business rights; and
- personal security and criminal justice.

[These reform areas were chosen based on both practical and analytical considerations, being areas of interest to the author as well as appearing to have potential for inclusion based on initial research].

Given its strong correlation with various development outcomes, including the rule of law in the post-2015 agenda could generate significant gains. Yet there are also challenges to including most rule of law issues, including: data limitations; political sensitivities; gaps in global knowledge about which reforms work and how; and the inherent difficulty of finding internationally-comparable indicators for complex and context-specific concepts such as “justice”. Including the rule of law in the post-2015 development agenda will, therefore, require detailed and thoughtful consideration.

This paper assesses the four rule of law areas identified above against the following criteria: their effectiveness and use as a development enabler by states; likely support among states and other development stakeholders for their inclusion in the post-2015 agenda; and their measurability, including current data availability. On the basis of their performance against these criteria, the potential for including each reform area in the post-2015 agenda is presented below (in order from strongest to weakest potential).

For many reform areas, however, the potential challenges to inclusion in the post-2015 agenda can be overcome, whether through a commitment to invest in reform initiatives or data collection, a willingness to experiment with low-cost, pro-poor approaches, or confidence-building efforts to minimize political sensitivities. As with the MDGs, the post-2015 agenda will require difficult choices among many worthy endeavors, and the content of the agreement will be determined by the willingness of states to tackle the challenges that various reforms present.

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Recommendations

Strong potential for inclusion

- **Personal security** is a core state function and a fundamental human right. While potentially raising some sensitivities, the connection between security and development is increasingly recognized. Homicide rates would be a relatively informative and comparable indicator, with good data availability and an existing international reporting mechanism. A crime rate indicator may need to be balanced with some measure of police accountability to minimize perverse incentives.

- **Birth registration** exists in virtually all countries and is a universally-acknowledged human right. It is the most widely-applicable and internationally-comparable indicator of legal identity. In addition, good data currently exists on birth registration via a relatively strong international reporting mechanism. Attempts to increase birth registration by making it mandatory, or a requirement to access services, should, however, be discouraged.

Valuable for inclusion, but with challenges

- **Access to justice** is increasingly embraced by countries as an enabler of development, and new pro-poor approaches are beginning to overcome cost and scale barriers to improving access. While its importance is uncontroversial, identifying informative and internationally-comparable indicators presents significant challenges, and data collection and international reporting mechanisms require considerable investment.

- **Land rights** have significant potential to promote development as countries increasingly adopt locally-appropriate, lower-cost and pro-poor methods to increase security of tenure. However, land can be politically sensitive and divisive, and the need for context-specific approaches makes it difficult to identify internationally-comparable indicators. Furthermore, data availability and international reporting mechanisms are currently limited.

  - In order for these reform areas to be included, stakeholders will need to: undertake further research on potential indicators; increase investments in local data collection capacity; build on existing knowledge about effective and low-cost service delivery approaches; and engage with developing countries to overcome political sensitivities.

Reasonable potential for inclusion

- **A criminal justice accountability** indicator (to complement a personal security indicator) has reasonable potential for inclusion. An informative indicator on pre-trial detention could probably be identified, and data is available. Data on police accountability would have less comparability, may be more politically sensitive, and would require a greater investment in data collection.

Limited potential for inclusion

- **Property and business regulation** may have limited potential for inclusion due to the context-specific nature of economic regulation, which makes it difficult to identify ideal conditions.
INTRODUCTION

The Millennium Development Goals and beyond

The eight Millennium Development Goals (MDGs), measured through 21 targets and 60 indicators, have dominated the agenda and discourse of international development since 2001. With a strong social policy focus, the MDGs include goals to eradicate poverty and hunger, achieve universal primary education, promote gender equality, reduce child mortality, improve maternal health, combat communicable disease and ensure environmental sustainability. The MDGs emerged from the Millennium Declaration, which was endorsed by 189 countries in September 2000, and also included commitments on peace and security, human rights, good governance and the rule of law.

As the MDG deadline of 2015 approaches, the United Nations (UN) is supporting efforts to conceptualize the post-2015 development agenda, including by convening a High-Level Panel to provide expert advice and holding over 50 national and thematic consultations. The findings of the High-Level Panel and these consultations will inform a report from the UN Secretary-General to member states at a special meeting in September 2013.

Several MDG targets have already been met or exceeded, including halving the proportions of people living on less than $1.25 a day and without access to improved water sources, and eliminating gender disparity in primary education. Good progress has also been made in other areas, such as primary school enrolment, child mortality and disease reduction. Progress towards other targets and indicators has, however, been slow, including on maternal mortality, vulnerable employment and child...
undernourishment. Progress has also been highly uneven across regions, and within countries ‘severe inequalities’ persist, particularly between rural and urban areas.

While there are numerous explanations for these shortfalls, experience has shown that the ‘rule of law, justice and security – or their absence – have a major impact on the achievement of the MDGs’. For example, in many countries, the pursuit of MDG 3 – to promote gender equality and empower women – has involved the revision of laws, ranging from inheritance to domestic violence, to protect women’s rights. In countries where HIV, conflict and poverty result in high numbers of female-headed households, inheritance laws and property rights are vital to accelerating progress toward MDG 3. Such law reforms must also be complemented by efforts to ensure women can enforce their rights, including by improving the accessibility of legal services and forums. Similarly, ‘modern land management, guaranteed by an effective legal system, is the keystone to achieving the first two targets of MDG 7 (reversing the loss of environmental resources and preserving biodiversity) and to resolving many of the resource-based conflicts that accelerate environmental degradation’. Furthermore, high crime levels can lead to ‘erosion of social and human capital, loss of domestic savings, reduction of foreign investment, white-collar exodus, increased instability, and faltering democracy’.

As a result, the rule of law has been identified as a potential development ‘enabler’ by the UN System Task Team on the Post-2015 UN Development Agenda (see figure 1). The Task Team’s framework comprises three fundamental principles and four ‘dimensions along which goals could be pursued’. Progress towards goals would be supported by 18 enablers, one of which is ‘Good governance practices based on the rule of law’. How “enablers” will be framed and progress against them measured has not yet been determined and is beyond the scope of this analysis. Therefore, this paper will not seek to recommend specific text, targets, indicators or structures for a rule of law “enabler”, but instead explore the benefits and feasibility of including four rule of law reform areas in the post-2015 agenda.

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13 UNDP, The Path to achieving the Millennium Development Goals, 59.  
14 UNDP, The Path to achieving the Millennium Development Goals, 27.  
15 UNDP, The Path to achieving the Millennium Development Goals, 26-27, 30, 55-56.  
16 UNDP, The Path to achieving the Millennium Development Goals, 44.  
18 UN System Task Team on the Post-2015 UN Development Agenda, Realizing the Future We Want for All: Report to the Secretary-General (2012) http://www.unpd.org/content/dam/unpd/library/Poverty%20Reduction/Realizing%20the%20future%20we%20want.pdf, 23.  
19 UN System Task Team, Realizing the Future We Want for All, 22.  
20 UN System Task Team, Realizing the Future We Want for All, 24.
What is the rule of law?

The rule of law is a highly contested concept with multiple – and sometimes conflicting – ends. The UN defines 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.

This broad definition may not be universally accepted. Yet at the High Level Meeting on the Rule of Law held in September 2012, member states recognized many elements of this definition, concluding that

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22 Report of the UN Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616, 23 August 2004)

Introduction

‘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’. Member states also endorsed the ‘independence of the judicial system’, and recognized that ‘human rights, the rule of law and democracy are interlinked and mutually reinforcing.’

Rule of law as enabler of sustainable development: the theory in brief

There are numerous ways in which the rule of law is thought to promote development. By inhibiting violence and conflict, the rule of law may provide a stable environment for economic activity and the delivery of services. The rule of law may help to hold governments to account, enabling citizens to enforce their rights, including social and economic claims against the government, and protect their interests from arbitrary decision making. Effective legal frameworks covering land, property and labor rights, as well as business regulation and contract enforcement, are also thought to promote investment and private sector activity. It is for these reasons that the Commission on Legal Empowerment of the Poor declared that ‘four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law’.

Does the evidence support these theories?

Despite the strong theoretical arguments for rule of law as an enabler of development, the empirical evidence is mixed. While the correlation between strong institutions and economic growth is clear, demonstrating causation is more challenging. Identifying the value of individual institutions, including rule of law institutions, is even more fraught. Indeed, ‘[t]he evidence suggests that the causal links

24 Declaration of the High-level Meeting of the General Assembly on the Rule of Law [13].
25 Declaration of the High-level Meeting of the General Assembly on the Rule of Law [5].
26 The rule of law can also be considered an end of development in itself, with intrinsic as well as instrumental value, see, for example, David Kennedy, ‘The “Rule of Law,” Political Choices, and Development Common Sense’ in David M Trubek and Alvaro Santos, eds., The New Law and Economic Development: A Critical Appraisal (New York: Cambridge University Press, 2006) 95-173. However, this analysis will focus on the instrumental value of the rule of law for the achievement of other development goals.
30 Commission on Legal Empowerment of the Poor, 1.
between justice and economic growth are bi-directional, complex, poorly understood and in all probability variable across different country contexts and stages of development’. 32

Furthermore, most economic studies have been conducted on the relationship between the rule of law and economic growth, rather than sustainable development or poverty reduction. 33 Growth in GDP per capita is not synonymous with sustainable development, which incorporates many other aspects of human well-being, as well as distributional concerns. Many studies also use proxies for the rule of law, such as expropriation risk, 34 which may not be correlated with other elements of the rule of law, 35 or lack relevance to the rule of law as experienced by the vast majority of the population in developing countries, where informal justice institutions are used to resolve the bulk of disputes. 36 Disentangling the causal effects of different rule of law reforms is, therefore, extremely difficult. 37

Yet while the precise causal chains between the rule of law and development remain unclear and likely vary between countries, there is considerable evidence that poverty reduction, and the achievement of the MDGs, becomes more difficult when the poor ‘lack the protections and rights afforded by the law’. 38 Therefore, despite the challenges involved, including the rule of law in the post-2015 agenda remains a goal worth pursuing.

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33 Davis and Trebilcock, 898-899; Haggard and Tiede.
35 Haggard and Tiede, 673.
38 Commission on Legal Empowerment of the Poor, 1.
POLICY ANALYSIS: OBJECTIVE AND METHODOLOGY

Objective

In light of the preceding discussion, this paper considers four rule of law “reform areas” that could feature in the post-2015 development agenda:

- access to justice
- legal identity via civil registration
- land, property and business rights
- personal security and criminal justice.\(^{39}\)

In order to assess the benefits and feasibility of including each of these reform areas in the post-2015 agenda, this analysis will consider:

- the demonstrated use and effectiveness of each reform area as an enabler of development;
- the likely support among states and other stakeholders for the inclusion of each reform area; and
- the measurability of progress in each reform area, including the availability of good indicators and relevant data.

The selection of rule of law reform areas

The rule of law reforms selected for analysis here reflect only a sub-set of topics that could comprise the rule of law. This selection is not intended to rule out the inclusion of other rule of law reforms in the post-2015 agenda, but has been made on the basis of a number of practical and analytical considerations, including: access to information; time constraints; the author’s interest and skills; and existing proposals on including the rule of law in the post-2015 agenda.

Given the contested and political nature of the rule of law, these reform areas also have been selected for their apparent potential to garner support among a wide range of countries with various models of government. Rule of law issues that most closely relate to political systems, such as the separation of powers, may be controversial and are not discussed in this paper. However, law is inherently political and involves distributional choices. The allocation of land rights to one person or group, for example, will likely reduce the ability of others to utilize that land for productive purposes.\(^{40}\) Therefore, the reform areas analyzed here may also raise sensitivities among some countries.

As well as generating political sensitivities, it may be more difficult to measure progress on aspects of the rule of law which concern political and governance structures. Indicators on these issues are likely to be highly subjective, or involve the prescription of institutional forms without regard for their

\(^{39}\) Other than personal security and criminal justice, the reform areas considered here fall within a subset of rule of law activities referred to as “legal empowerment”, meaning the ‘use of legal services and related development activities to increase disadvantaged populations’ control over their lives’; Stephen Golub, Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative (Carnegie Endowment for International Peace, Working Paper 41, 2003) http://www.carnegieendowment.org/files/wp41.pdf, 3; The Commission on Legal Empowerment of the Poor also provides extensive discussion of legal empowerment.

\(^{40}\) See, for example, Kennedy, 143, 162, 168.
functioning.\textsuperscript{41} While such indicators are regularly utilized by external non-government organizations (NGOs), reaching agreement among states on appropriate measures may be difficult. Furthermore, these issues are unlikely to be amenable to quantitative evaluation in the manner of the MDGs. The reform areas selected for analysis here may be more amenable to measurement and comparison at an international level (although again, given the nature of the rule of law, these reforms will also pose measurement challenges).

**Evaluation criteria**

**Use and effectiveness as a development enabler**

This criteria will consider the use and effectiveness of each rule of law reform area as an enabler of other development goals, including those that feature in the current MDGs, such as increased income, improved health and education, gender equality, and environmental sustainability. Given that the MDGs have been used to motivate and evaluate development efforts at a national level (and presuming the post-2015 agenda will adopt a similar approach), the focus will be on reform efforts pursued at a nation-wide level with significant government ownership. While it may be difficult to identify reforms funded solely by developing countries in all cases, evidence of government involvement may be indicative of a sustainable reform program with the potential for widespread impact.\textsuperscript{42} Therefore, for each reform area, this paper will consider:

- whether developing countries are actively pursuing reforms in these areas;
- the development outcomes that are being seen as a result; and
- the barriers that countries are encountering in implementing these reforms.

Isolating the development impacts of rule of law reforms is extremely challenging. Rule of law reform ‘typically takes place within a host of simultaneous political and social policy changes, making the link between project outcomes and program aims difficult to isolate and analyze.’\textsuperscript{43} Specific rule of law reforms do not work in isolation, and the interrelationships among even those selected for analysis here are apparent. For example, a strong framework for property rights will have little value if people are unable to access legal forums in order to enforce those rights. However, given the already crowded MDG agenda, difficult choices must be made. Therefore, despite these challenges, this paper will seek to analyze the evidence in support of each of these reforms as a discrete enabler of development.

**Level of support**

As discussed above, rule of law reforms are inherently political and even those selected for analysis here may generate opposition from states. Rule of law reforms, although often perceived as technocratic, inevitably create winners and losers.\textsuperscript{44} Even those that are not actively opposed will require the vigorous support of a sufficient number of states and other development stakeholders to be included.


\textsuperscript{43} Cohen, et al., 109.

\textsuperscript{44} Commission on Legal Empowerment of the Poor, 80; Kennedy, 143, 162, 168.
given the vast range of competing priorities. The recent High Level Meeting on the Rule of Law declared that the interrelationship between the rule of law and development ‘should be considered in the post-2015 international development agenda,’ and United Kingdom Prime Minister Cameron (who is a co-chair of the High-Level Panel on the Post-2015 Development Agenda) is advocating for its inclusion.

Given the already crowded post-2015 discussions, however, the inclusion of the rule of law is not guaranteed. Indeed, in a survey of 63 UN members (see figure 2), peace and security, and good governance (both closely related to the rule of law) were cited as priorities less frequently than 20 other issues.

Multilateral and regional treaties, declarations and resolutions may indicate the level of support for particular reforms among states, although the willingness of states to endorse a concept in a treaty does not necessarily ensure they will accept the kind of monitoring and evaluation that a MDG-style agreement entails. Indeed, few existing rule of law indices enjoy national ownership, with the vast majority produced by non-government and international organizations. Individual countries or regions may also lobby against a reform area in which they are likely to perform poorly.

Figure 2

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45 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, [7].
48 UN Secretary-General, Initial Input to the Open Working Group on Sustainable Development Goals (Advance unedited copy, 12 December 2012) [http://sustainabledevelopment.un.org/content/documents/1494sgreportsdgs.pdf](http://sustainabledevelopment.un.org/content/documents/1494sgreportsdgs.pdf), 6, 8.
50 Some rule of law indicators may paint an overly negative picture of some countries, see, for example, Juan Carlos Botero, Robert L Nelson and Christine Pratt, ‘Indices and Indicators of Justice, Governance, and the Rule of Law: An Overview,’ Hague Journal of the Rule of Law 3, no. 2 (2011), 158.
Policy statements and funding commitments of multilateral and bilateral donors may indicate the level of support for particular reform areas among other development stakeholders. A study by the International Development Law Organization found that US$2.6 billion of development assistance was devoted to legal and judicial activities in 2008. This represents a small, but significant, fraction of the almost US$122 billion in official development assistance provided in 2008. The bulk of development assistance on the rule of law is provided by bilateral donors.

The level of support for each rule of law reform area will also depend on how it is framed. Reforms that can be described in simple and clear language will be easier to rally support behind than reforms that are couched in technical or legalistic jargon. Furthermore, it is important that the connection between the reform area and other development goals is apparent to a lay audience. This will be important not only to secure the support of state representatives, who may not have specialized legal knowledge, but to ensure that inclusion promotes actual change, given that the success of an indicator in influencing behavior depends greatly on its ability to be communicated. Indeed, the ability of the MDGs to communicate ‘a compelling story of development’ is considered one of its key strengths.

**Measurability**

This criteria will assess the feasibility of measuring progress on each rule of law reform area in the context of the post-2015 agenda. The following questions will be particularly important:

- Are there good indicators with which to assess progress (with a preference for indicators that reveal the experiences of the poor with justice systems)?
- Is data available to or attainable by national governments at a reasonable cost?
- Can the data be compared across countries?
- Could the use of these indicators generate any perverse incentives?

There has been a proliferation of indices on national governance (including the rule of law) in recent years. Some prominent indices include the World Bank’s Worldwide Governance Indicators, the Organisation for Economic Co-operation and Development (OECD), and the World Bank’s Worldwide Governance Indicators. With the largest donors being the US, Australia, the Netherlands, Germany, Canada, Norway, the UK and Sweden; see IDLO, Legal and Judicial Development Assistance Global Report 2010, 4. Richard Manning, Using Indicators to Encourage Development: Lessons from the Millennium Development Goals (Danish Institute for International Studies, Report No. 1, 2009) and Developing Indicators to Measure the Rule of Law: A Global Approach – A Report to the World Justice Project (Vera Institute of Justice, 2008).
World Justice Project’s Rule of Law Index,\textsuperscript{59} and the World Bank’s Doing Business project.\textsuperscript{60} While this suggests a growing capacity to measure the rule of law, numerous challenges remain. These are outlined briefly here, given their relevance to all four rule of law reform areas to be assessed.

**Equity and informal institutions:** Identifying indicators of the rule of law as experienced by the poor may be challenging. Most existing measures assess the performance of formal institutions and rules, while the poor in many countries make much more extensive use of informal institutions.\textsuperscript{61} While the World Justice Project collects data on informal justice systems, it does not yet incorporate informal justice in its Rule of Law Index,\textsuperscript{62} as ‘the complexities of these systems and the difficulties of measuring their fairness and effectiveness in a manner that is both systematic and comparable across countries, make assessments extraordinarily challenging’.\textsuperscript{63} There ‘is currently no comprehensive system in place to describe the role of customary justice systems in empirical terms’.\textsuperscript{64} However, indicators on the performance of formal legal institutions may say little about the experiences of the poor,\textsuperscript{65} and incentivize improvements in formal systems that widen existing inequalities.\textsuperscript{66}

Disaggregation of data by demographic and socioeconomic characteristics can also help to determine whether rule of law gains are being experienced equally.\textsuperscript{67} While disaggregation poses challenges that are not unique to rule of law indicators, such as increased costs and privacy concerns,\textsuperscript{68} disaggregation by characteristics such as ethnicity may be particularly sensitive in relation to rule of law issues.\textsuperscript{69}

**Sensitivity to change:** In order to provide useful information to guide and assess development programming, indicators need to be sensitive to change in the short and medium term. However, ‘[g]overnment and judicial institutions tend to remain fairly stable over time; change takes years to
implement\textsuperscript{70}. As a result, indicators of institutional quality tend to be stable over time.\textsuperscript{71} Only one in three countries achieved a significant change in at least one dimension of governance as measured by the World Governance Indicators between 1996 and 2005.\textsuperscript{72} Public perceptions surveys may be particularly slow to register change due to the infrequency of interactions with the justice system.\textsuperscript{73} A single indicator will be more susceptible to change than an aggregated rating of institutional quality,\textsuperscript{74} and the post-2015 agenda will likely permit only a small number of indicators on each issue. However, the greater variability of single indicators raises doubt about their ability to measure change in such a complex phenomenon as the rule of law.\textsuperscript{75} Furthermore, actionable indicators may not necessarily be ‘action-worthy’,\textsuperscript{76} and reforms should not be prioritized purely on ease of implementation or evaluation.

**Data sources:** Administrative data are a vital tool for measuring performance due to their ‘simplicity, speed, frequency of updating and cost-effectiveness’\textsuperscript{77} (see figure 3). An over-reliance on ad hoc survey data discourages the improvement of official data systems,\textsuperscript{78} and governments are more likely to accept and act upon data they have generated themselves than on surveys conducted by external bodies (which will still be able to challenge official data where it is believed to be misleading).\textsuperscript{79} Ideally, targets and indicators should help to build accountability between citizens and the state.\textsuperscript{80}

Unfortunately, administrative data on the justice sector tend to be poor in developing countries.\textsuperscript{81} As a result, many externally-generated rule of law indices are based on surveys of the public or experts.\textsuperscript{82} Surveys can have a useful role in revealing the *de facto* experience of citizens with the rule of law, as

\textsuperscript{70}Botero, Nelson and Pratt, 162; see also Parsons, et al., *Developing Indicators to Measure the Rule of Law*, 5; Indeed, Acemoglu, Johnson and Robinson argue that institutional features resulting from settler mortality during colonization still persist; see Daron Acemoglu, Simon Johnson and James A Robinson, ‘The Colonial Origins of Comparative Development: An Empirical Investigation,’ *The American Economic Review* 91, no. 5 (2001), 1395.


\textsuperscript{74}Kaufmann, Kraay and Matruzzi, *Measuring Governance*, 8; Botero, Nelson and Pratt, 159.

\textsuperscript{76}Kaufmann, Kraay and Matruzzi, *Measuring Governance*, 22.

\textsuperscript{78}OHCHR, 59.

\textsuperscript{79}OHCHR, 58; UN System Task Team on the Post-2015 UN Development Agenda, *Review of the contributions of the MDG Agenda to foster development*, 12.

\textsuperscript{79}OHCHR, 59; Botero, Nelson and Pratt, 161; Juan Carlos Botero, World Justice Project, personal interview (20 February 2013).

\textsuperscript{80}Nicholas Menzies, World Bank, personal interview (13 February 2013).

\textsuperscript{81}Botero, Nelson and Pratt, 162; Botero, et al., ‘The Rule of Law Measurement Revolution,’; 9; Parsons, et al., *Developing Indicators to Measure the Rule of Law*, 25.

\textsuperscript{82}For example, the World Justice Project’s Rule of Law Index utilizes expert and public surveys (see World Justice Project, *Methodology*, http://worldjusticeproject.org/methodology) and the World Bank’s Doing Business project conducts surveys of corporate lawyers to complement assessments of *de jure* business regulations (see World Bank, *Doing Business: Common Misperceptions*, http://doingbusiness.org/methodology/common-misperceptions).
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Objective and Methodology

opposed to *de jure* law as it exists in legislation or official data.\textsuperscript{83} Surveys also provide a point of comparison against which to assess the credibility of official data, and may be the only way to gather data on informal justice systems, or to capture public perceptions and user experiences (see below).\textsuperscript{84}

However, surveys are costly to implement and require significant technical skills, particularly if they are to be unbiased and nationally representative. Security and infrastructure barriers may also impede access to certain areas.\textsuperscript{85} For example, ‘[m]any Asia-Pacific and African countries … are still not able to conduct household surveys without external financial and technical support and derive most of their MDG data from internationally sponsored household survey programmes’.\textsuperscript{86} The challenge of survey implementation is not unique to rule of law issues, but while there is an existing body of socio-economic surveys, few regular surveys are currently conducted by, or on behalf of, governments on rule of law issues.

New surveys can of course be implemented, or additional questions added to existing survey tools, although the cost and administrative burden must be considered (particularly given the range of potential new topics to be included in a post-2015 agenda).\textsuperscript{87} However, current data limitations should not be decisive in selecting indicators for a post-2015 agreement: such limitations must be overcome if our understanding of the state of global justice is to improve, and the post-2015 agreement provides an opportunity to begin to do so. Building local capacity to collect and use data must be central to the inclusion of rule of law in a post-2015 agreement.\textsuperscript{88}


\textsuperscript{84} OHCHR, 60; Parsons, ‘Developing Clusters of Indicators,’ 177.


\textsuperscript{86} UN System Task Team, *Review of the contributions of the MDG Agenda to foster development*, 12.


\textsuperscript{88} Juan Carlos Botero, World Justice Project, personal interview (20 February 2013); Todd Foglesong, Harvard Kennedy School, personal interview (25 January 2013).
Public perceptions: Rule of law indices often utilize perceptions data. Perceptions data (such as whether people trust particular institutions) are highly relevant to evaluating the rule of law, as the legitimacy of justice institutions is itself a feature of the rule of law, and justice institutions which are not trusted will not be used. They can also provide an important complement to administrative data, highlighting challenges which administrative data may conceal. Perceptions data can capture public concerns and opinions about the operation of justice systems. For example, by asking people which institutions they would use to address a hypothetical problem, surveys can indicate the relative accessibility and levels of trust in various justice institutions among different communities.

However, the use of perceptions data in an MDG-style framework poses challenges. The comparability of perceptions data across countries may be limited, as perceptions of institutional performance may not reflect actual experiences with the system (which are rare), and can be affected by numerous factors, including media portrayals and public expectations (which may increase as performance improves, leading to poorer perceptions). As a result, developing countries may perform no worse, or better than, developed countries on perceptions of justice. Perceptions data may also provide little guidance to governments about what reforms are required, and, therefore, be unlikely to motivate change. The selection of indicators should favor ‘those with the potential to empower stakeholders and translate into policy development’.

Expert opinion: Rule of law indices also often utilize opinions of experts or legal professionals. While expert surveys are suited to issues requiring specialized knowledge and are less resource-intensive than public surveys, the reliability and comparability of expert opinion is questionable. The selection of experts introduces significant potential for bias (which may be greater if such surveys are conducted or commissioned by governments). Experts may also not have an accurate impression of public experiences, and may be biased against certain types of government or influenced by other published opinions.

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89 For example, Agrast, et al., The World Justice Project Rule of Law Index 2012-2013, 186.
92 Booth, 126.
93 Booth, 123-126.
95 Eg, Gallup reports that 48% of Americans have confidence in the judicial system, compared to 54% of Pakistani respondents; Gallup World View, Confidence in Judicial System, https://worldview.gallup.com/default.aspx.
96 Hammergren, 310; Bertok, et al., 28.
98 Parsons, ‘Developing Clusters of Indicators,’ 176; OHCHR, 67-68.
Subjective indicators: The use of subjective indicators, such as perceptions data or qualitative evaluations of law, would be a departure from the MDG approach, which utilizes objective and quantitative measures to minimize ambiguity and bias, and maximize verifiability and comparability.\textsuperscript{100} However, ‘[t]ruly objective measures of institutional quality are difficult to construct’,\textsuperscript{101} and are likely to favor \textit{de jure} law.\textsuperscript{102} Objective measures risk evaluating legal institutions purely on form, rather than function, which is problematic given the variety of ways in which justice can be delivered effectively in different contexts.\textsuperscript{103} Subjective measures also enable justice systems to be assessed against the demands of system users, rather than according to supply-side considerations of governments.\textsuperscript{104} Furthermore, ‘individual components of the rule of law might not be absolute goods, but rather, goods for which we should think of in terms of optimal rather than absolute values’.\textsuperscript{105}

Research design

In conducting this analysis I utilized:

- secondary source literature on the rule of law broadly, each of the four reform areas analyzed, and rule of law measurement;
- international and regional treaties, declarations and resolutions relating to the rule of law;
- existing rule of law statistics, including from multilateral and NGO sources; and
- interviews with academics and practitioners on rule of law reform and measurement (see page 85). While it was not possible to obtain a representative sample of interviewees given time constraints, these interviews provided valuable additional insights to inform my analysis.


\textsuperscript{101} Ginsburg, 275.

\textsuperscript{102} The Global integrity Report calculates an ‘implementation gap’ by deducting a country’s implementation score from its legal framework score; Global Integrity Report, \textit{Implementation Gap: Walking the Walk}, \url{http://www.globalintegrity.org/report/findings}.

\textsuperscript{103} Parsons, et al., \textit{Developing Indicators to Measure the Rule of Law}, 6; Andrews.


\textsuperscript{105} Ginsburg, 272.
ACCESS TO JUSTICE (Legal Services, Forums and Remedies)

What is the theory of change?

Access to justice is a multi-faceted concept, encompassing ‘the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards,’ in institutions that are ‘independent and impartial’ and provide ‘outcomes [that] are just and equitable’. Given the difficulties of evaluating whether outcomes are substantively just, or quantitatively measuring improvements in procedural justice, these issues, while extremely important, will not be considered here. This paper will restrict its analysis of “access to justice” to access to information, services, and forums that can provide appropriate remedies.

Formal court systems are widely believed to promote economic growth by providing ‘an environment in which firms can predictably enforce contracts’. In addition, access to justice systems (both formal and informal) contribute to household-level development by providing avenues for people to:

- resolve disputes peacefully, preventing recourse to violence;
- protect and enforce their rights in disputes with other citizens, firms and state actors; and
- demand the fulfillment of positive rights by governments, including the provision of social services, and to challenge government decisions which adversely affect them.

Unresolved disputes undermine the welfare of those involved, by leaving loss and harm uncompensated, occupying productive time, causing stress and other health problems, and perpetuating fractious relationships. Disputes tend to come in clusters, with employment disputes, for example, likely to generate financial disputes.

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106 Jayasundere, 11.
109 See Gramatikov, Barendrecht and Verdonschot, 367. A possible proxy might be user satisfaction with outcomes, although in any dispute the ‘losing’ party may be dissatisfied even if the result is just, see, for example, Hague Institute for the Internationalisation of Law (HiiL), Trend Report: Towards Basic Justice Care for Everyone – Part 1: Challenges and Promising Approaches (HiiL, 2012) http://www.hiiil.org/data/sitemanagement/media/TrendReport_Part1_020412_DEF%20(2).pdf, 4-5,22. A lesser option may be whether outcomes are consistent with law, but this is still highly subjective.
110 Gramatikov, Barendrecht and Verdonschot, 367.
Furthermore:

For a poor person, an unresolved legal problem is likely to represent a personal poverty trap. Poor people have less, if any, resources to compensate failures in the justice system. At the same time, they are almost destined to experience the full range of barriers to access to justice. People with lower income and education levels are more likely to take no action to address perceived problems. In addition, disputes experienced in developing countries tend to have more serious implications, and involve property, land and housing, family and employment relationships, and access to government services. Access to justice is therefore likely to increase the ‘income, assets, health, physical security and … freedom’ of the poor.

The impact of unresolved disputes also extends beyond those involved. Damage to social trust and economic and social relationships increases the potential for conflict and diverts resources away from productive activities and into precautionary behavior, with substantial economic costs. Meanwhile, legal decisions requiring government to fulfill economic and social rights can change policies and programs to the benefit of large numbers of the poor.

The international ‘access to justice gap’ is significant. The Hague Institute for the Internationalisation of Law estimates that ‘[e]very year, one in every 8 people on earth runs into a serious conflict that is hard to avoid…. About half these people do not succeed in obtaining a fair, workable solution.’ While not all disputes can be resolved, if all justice systems could match the best performing countries (where 70 per cent of disputes are resolved, as opposed to only 30 to 40 per cent in some countries), an extra 200 million people per year could resolve problems that are negatively affecting their livelihoods.

The issues contributing to these barriers to justice are numerous. They include: the cost of legal information, advice and representation; physical distance to justice forums; language barriers; delays in court processes; court fees; and unreliable enforcement of decisions. Women face particular barriers, including as a result of family responsibilities or social norms which inhibit the discussion of personal issues.

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problems. Even where alternative dispute resolution (ADR), such as mediation, is utilized, these processes operate in the ‘shadow of the law,’ and the feasibility of obtaining a rapid and affordable decision from a third party adjudicator influences whether disputes are settled by the parties. Adjudication does not require a formal court, and informal justice forums are increasingly recognized as crucial to dispute resolution (although they are not suited to resolving disputes with the government or between different communities, and may not meet human rights standards). Disputes with government agencies may also be adjudicated by administrative tribunals and ombudsman offices.

Third party adjudication, and other services to facilitate justice, are often not accessible in developing countries. In India, more than 20 million legal cases are pending and a civil case can take over 20 years to reach court. Around a million cases are pending in Kenya, and the average Philippines judge has a backlog of 1,479 cases. Only 55 per cent of Bolivian municipalities are served by a judge. Given the significant justice deficits in the developing world, it holds great potential as a development enabler.

**Effectiveness as a development enabler**

*Are countries pursuing access to justice reforms as a development enabler?*

Much donor-funded work in the justice sector has focused on formal justice institutions. The development banks traditionally focused on creating business-friendly legal systems for growth facilitation, while other donors have also sought to strengthen formal justice systems for state-building and governance goals. Indeed, it has been estimated that 80 per cent of law-related development assistance is allocated to formal justice systems. Much funding for formal justice systems has gone towards building court infrastructure, judicial training, and improving case management.

However, in recent years, multilateral, bilateral and NGO donors have begun funding activities focused on improving access to justice among the poor, in recognition that without targeted support for the poor, formal institutions may reinforce rather than challenge existing distributions of power and resources. This has involved:

- expanding the number and variety of legal service providers, particularly by training community paralegals to provide low-cost advice (see box 1);

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127 Commission on Legal Empowerment of the Poor, 32.
the use of legal aid and other financing options for access to lawyers;
- education to increase awareness of rights, and production and dissemination of legal information which can be understood by a lay audience, including through the use of information technology platforms;
- providing support for group claims and enforcement of economic and social rights;
- reductions in court fees and the creation of ADR forums for low-cost dispute resolution;
- the use of mobile courts to facilitate access by remote communities;
- working with informal justice forums to improve their treatment of women and marginalized groups and support their functioning as an alternative to the state system.\(^\text{132}\)

**Box 1: Timap for Justice in Sierra Leone**

'Timap for Justice began work in five rural chiefdoms and the capital Freetown with 13 paralegals, all of whom had at least a secondary school education and were recruited from the communities they now serve. Experienced lawyers act as project directors and provide the paralegals with ongoing training and supervision. Oversight boards, appointed by community members, ensure that the program serves the needs of the chiefdom’s people. The paralegals use diverse methods to tackle individual and community problems. They provide clients with information on rights and procedures, assist the clients in dealing with government and chiefdom authorities, and often mediate settlements with all concerned parties present. Timap’s actual litigation capacity is small, and the organization chooses to litigate only as a last resort.’


New justice initiatives with a pro-poor focus have been predominantly donor and civil society driven.\(^\text{133}\)

While developed governments subsidize access to the legal system, ‘most of the government money for access to justice tends to go to courts and to legal aid, as well as police and prosecution. In essence, these are subsidies to keep the existing system going’.\(^\text{134}\) The bulk of legal aid is spent on criminal justice and ‘little is done to ensure that court procedures become more accessible and affordable’.\(^\text{135}\)

In developing countries, access to justice programs targeted at the poor have traditionally been funded by donors and often implemented by civil society partners rather than government agencies.\(^\text{136}\)

Developing country governments are, however, increasingly seeking to support and expand the use of paralegals and other non-traditional legal services, and revising legal aid legislation.\(^\text{137}\) Yet a recent

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compilation of 50 legal empowerment projects lists only two with government as well as donor funding, and only one with a government agency as a lead implementing organization (Indonesia’s Legal Empowerment and Assistance for the Disadvantaged program, see box 2). There are good reasons to improve access through NGOs and civil society groups, including their proximity to the poor and their concerns, and the fact that increasing access to justice may often involve challenging existing power structures. Indeed, civil society is playing a significantly role in improving access to justice: BRAC’s “barefoot lawyers” in Bangladesh have provided legal education to 3.4 million women.

However, the role of donors and civil society in increasing access to justice among the poor raises concerns about sustainability and scale. While a few countries have recently created comprehensive access to justice strategies, most access to justice projects ‘tend to be small, serving 1000s of people rather than millions, and have difficulty scaling up. Many subsidized - free - legal services are offered, but it has been hard to find funding models that are more sustainable.” Donor and civil society dominance is also problematic in the context of an MDG-style agreement, which focuses on encouraging and evaluating government action at scale.


139 UNDP, Envisioning Empowerment, 17-18.


141 Maru, Access to Justice and Legal Empowerment, 18.

142 HiiL, Trend Report: Towards Basic Justice Care for Everyone, 75-76.


144 HiiL, Trend Report: Towards Basic Justice Care for Everyone, 15, see also 16, 78.
What development outcomes can be seen from increased access to justice?

Despite the many ways in which access to justice is thought to promote development, isolating its causal impact is difficult. Most evaluations of access to justice programs entail headcounts of numbers of people assisted, and evaluations of broader development impacts are rare. In general, there has been disappointment with the results of programs seeking to strengthen formal court systems, where returns have been limited, especially for the poor. Judicial training and improvements in court infrastructure have not altered basic incentives which result in expensive and prolonged dispute resolution.

There are, however, many examples of access to justice programs that have demonstrated positive development impacts. Agrarian reform in the Philippines was found to have better impacts on productivity, incomes, investment and housing in areas where paralegal support was provided. A program to increase case disposals in Pakistan led to improved property rights, increased entrepreneurship and increased loan applications in the treatment districts. Female clients with legal aid support in Ecuador had a greater likelihood of receiving child support and a reduced likelihood of suffering domestic violence. Judicial enforcement of social and economic rights has had pro-poor impacts in some countries. Furthermore, evidence from the United States indicates that effective divorce resolution increases home ownership, reduces domestic violence and is correlated with fewer extra-marital births and higher educational attainment. Expanding on the evidence base on the link between access to justice programming and other development impacts would be useful.

What are the barriers to improving access to justice?

Scale is a particular challenge to increasing access to justice. Hammergren argues that the ‘tendency to “let a hundred flowers bloom”—to support a plethora of small-scale access to justice experiments without a coherent strategy—has allowed access to justice programs to escape the fundamental constraints of policy making: decisions about allocating limited resources’. However, a lack of

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151 In a five-country study, pro-poor outcomes were achieved in two (India, South Africa), neutral outcomes in two (Indonesia, Brazil) and anti-poor outcomes in one (Nigeria); Brinks and Gauri, The Law’s Majestic Equality?; see also Mennen, ‘Access to a Legal Remedy: Alternative Pathways to MDG Implementation,’ 59-61.
153 The need to expand the empirical basis for reform efforts is recognized by many donors; see, for example, World Bank, New Directions in Justice Reform, 8-9.
155 Quoted in Maru, Access to Justice and Legal Empowerment, 16.
evidence about the relative effectiveness of programs makes these choices difficult. Individualized legal advice is inherently expensive, making it difficult to scale-up legal aid projects. As a result, ‘[c]ountries are increasingly moving away from comprehensive legal aid programs and most of the recent access to justice strategies do not mention it as a core policy to follow anymore’. Using paralegals and other non-lawyer sources of advice and representation can help to reduce these costs. Yet to achieve sustainable outcomes, paralegal programs must also feature quality control mechanisms and ‘translate service provision to wider systemic change through empowerment and policy reform’.

While ADR can be faster and less costly than adjudication, this may not always be the case. It is also difficult to secure widespread use of ADR when it is voluntary. For example, in the United States, ‘only 800 mediations per million people take place each year, compared to perhaps 150,000 new conflicts and disputes... The idea of ADR may have spread across the world, but because of the submission problem it only attracts a relatively small portion of clients’. Comparing the cost of ADR and adjudication is difficult because accessible adjudication also helps motivate parties to negotiate settlements among themselves. For every €1000 in legal aid provided for a court case in the Netherlands, a further 3 to 10 disputes are solved ‘in the shadow of the court’s intervention’. Therefore, adjudication needs to be accessible, but not so accessible that all disputes are referred to adjudication, which could not be afforded by even the richest countries. These contradictions are difficult to resolve.

In addition, access to justice reforms create losers who may resist progress, including well organized legal professionals who benefit from current regulations which set restrictions on legal services. Furthermore, ‘[t]he potential for legal services to challenge governments and hold them accountable may make the prospect of state funding for legal aid comparatively more tenuous’. Finally, specialized forums and legal services tend to more effective than those that deal with a variety of disputes. Therefore, incorporating justice considerations explicitly in non-law development programs may be more effective than generalized ‘access to justice’ programs. For example, providing legal information and training in conjunction with a water management program in Bangladesh increased community members’ knowledge of their rights and avenues for redress under the program.

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156 Maru, Access to Justice and Legal Empowerment, 16.
161 HiiL, Trend Report: Towards Basic Justice Care for Everyone, 79, see also 5.
162 HiiL, Trend Report: Towards Basic Justice Care for Everyone, 99, see also 4, 72.
163 Barendrecht, Kamminga and Verdonschot, 39.
164 HiiL, Trend Report: Towards Basic Justice Care for Everyone, 5, 16.
165 Commission on Legal Empowerment of the Poor, 32, 80; HiiL, Trend Report: Towards Basic Justice Care for Everyone, 17.
166 Maru, Access to Justice and Legal Empowerment, 9.
167 HiiL, Trend Report: Towards Basic Justice Care for Everyone, 6, 8.
169 ADB, Legal Empowerment for Women and Disadvantaged Groups, 13-17.
Likely level of support for including access to justice in the post-2015 agenda

The inclusion of access to justice, as defined in this paper, is unlikely to raise political or sovereignty concerns, as it does not include evaluations of substantive rules or impose procedural requirements. The Universal Declaration of Human Rights provides that ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’. Furthermore, the recent High Level Meeting on the Rule of Law declared:

We emphasize the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard we commit to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.

The inclusion of access to justice is also likely to receive support from civil society and donors given their prominence in this area. George Soros (from Open Society Foundations) and Fazle Hasan Abed (from BRAC) released an op-ed in September 2012 stating that the post-2015 agenda should feature ‘regulations to ensure that everybody, regardless of background or circumstances, has full access to the formal justice system’. “Access to justice” is likely to appeal to a broad audience and, although vague and open to interpretation, its connection to development outcomes is also apparent.

Measurability of access to justice

Are there good indicators for access to justice?

Identifying one or two indicators to measure a complex phenomenon such as access to justice is challenging. Potential indicators include measures of justice system size and reach, system costs, and system efficiency. These could be calculated from either administrative data or surveys of users. Public perceptions of the accessibility of justice services and forums, obtained through surveys, are another potential set of indicators. However, there are limits to the ability of both types of indicator to accurately measure access to justice in a given country.

For most indicators of system reach, cost or efficiency, ideal levels are unknown. Take, for example, the number of courts or judges per 100,000 people, or number of people more than a certain distance from a court. The ideal numbers of courts, judges and lawyers per head of population are not known and vary across countries. In addition, more courts and lawyers are not necessarily better if they are not utilized by people because they are too expensive or do not align with dispute resolution preferences.

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170 The Universal Declaration of Human Rights (GA Assembly Resolution 217A(III) 1948) 


Such measures also tell us little about user experiences with these forums. These indicators may, however, be useful for equity purposes when disaggregated, by highlighting discrepancies in system reach between rich and poor, or urban and rural, areas.

If administrative data are used, indicators of system reach are also unlikely to capture the informal legal forums, adjudicators and service providers utilized by the poor. While governments have varying levels of interactions with informal justice systems, information about their reach and performance could usefully inform justice policy given their extensive role in many developing countries. Aggregating data on these systems would likely require partnerships with civil society. With increasing government recognition of, and engagement with, informal forums and providers (such as through certification systems for paralegals), administrative data can be improved over time.

Indicators of system costs also present challenges. While reductions in costs are generally desirable for improving access, reductions beyond a certain level may undermine sustainability. Reductions in formal system costs may also disproportionately benefit those who already have the best access. Measures of efficiency, such as case disposition times, are difficult to obtain in most justice systems, including many developed countries. Furthermore, while reduced case disposition times may help those with access to existing systems, they may not increase access by disadvantaged groups, although they may remove one disincentive to access the system. Achievable resolution rates and speeds may also depend on the types of disputes most commonly experienced.

Public perceptions data on the accessibility of justice systems may be necessary to capture the full range of justice forums, including those relevant to the poor, as well as information about populations who are not utilizing justice services and forums. However, as discussed above, perceptions of accessibility may be influenced by factors such as media coverage and expectations. Since interactions with the formal justice system are rare for most people, perceptions may not be accurate. Governments may also have limited ability to change perceptions of justice sector accessibility over the short term.

Is data available or attainable at reasonable cost?

Administrative data on the reach and functioning of the formal justice sector tends to be poor in developing countries. Furthermore, data on the functioning of informal justice systems, which may

175 Parsons, et al., Developing Indicators to Measure the Rule of Law, 9.
176 Parsons, et al., Developing Indicators to Measure the Rule of Law, 6.
177 Fernando Fernandez-Monge, World Bank, personal interview (7 February 2013).
178 Abigail Moy and Laura Goodwin, Namati, personal interview (8 February 2013).
179 Abigail Moy, Namati, personal communication (19 March 2013); UNDP, Programming for Justice, 76.
180 Juan Carlos Botero, World Justice Project, personal interview (20 February 2013).
be more relevant to the poor, is rarely collected.\textsuperscript{184} Surveying the public and justice system users to gather data about their experiences (such as costs incurred, distances travelled and time involved) may help to fill gaps in administrative data, and could also capture information about the operation of informal systems.\textsuperscript{185} However, the collection of survey data is more expensive, and large samples may be required to reach sufficient numbers of justice system users.\textsuperscript{186}

Gallup currently collects survey data on whether people ‘have confidence in the judicial system and courts’, which may capture perceptions of system accessibility but would also extend to other issues such as satisfaction with outcomes. For its assessments of civil justice systems, the World Justice Project relies mostly on experts, although some data is collected on user experiences and public perceptions.\textsuperscript{188}

\textbf{Can the data be compared across countries?}

The comparability of administrative data on the justice sector is poor because, for most possible measures of system reach, cost and efficiency, ideal achievement levels will vary across countries. Even among developed countries, the use of courts to resolve disputes varies greatly. For example, in Finland, only 20 per cent of low- and high-income people file a lawsuit when facing a civil dispute, whereas in the United States, 42 per cent of low-income and 62 per cent of high-income people take the matter to court.\textsuperscript{189} The ideal number of courts per person may therefore be different in each country.

In addition, administrative data on justice systems may capture very different phenomena. The types of forums and officials included in aggregated numbers of “courts” or “judges” may vary considerably across countries.\textsuperscript{190} This will also affect the comparability of user-reported data on the justice system, as respondents may interpret these terms differently. Perceptions data also present challenges in terms of comparability. As expectations can increase as performance increases, developing countries may perform no worse, or even better than, developed countries on some perceptions measures.\textsuperscript{191}

\textbf{Would the inclusion of access to justice generate any perverse incentives?}

The inclusion of access to justice, conceived as improved access to information, services and forums, could lead to a focus on the reach and efficiency of justice systems rather than their quality.\textsuperscript{192} Furthermore, if indicators incentivize improvements in formal systems, such as continued investment in

\textsuperscript{184} Parsons and Thornton, 23; Agrast, et al., \textit{The World Justice Project Rule of Law Index 2012-2013}, 17.
\textsuperscript{185} Gramatikov, et al., \textit{A Handbook for Measuring the Costs and Quality of Access to Justice}, 27; Gramatikov, Barendrecht and Verdonschot, 367.
\textsuperscript{186} Gramatikov, et al., \textit{A Handbook for Measuring the Costs and Quality of Access to Justice}, 44.
\textsuperscript{187} Gallup World View, \textit{Confidence in Judicial System}, \url{https://worldview.gallup.com/default.aspx}.
\textsuperscript{189} Agrast, et al., \textit{The World Justice Project Rule of Law Index 2012-2013}, 27.
\textsuperscript{191} For example, according to the Gallup, 48% of Americans have confidence in the judicial system, compared to 54% of Pakistanis, see Gallup World View, \textit{Confidence in Judicial System}, \url{https://worldview.gallup.com/default.aspx}.
\textsuperscript{192} Maru, \textit{Access to Justice and Legal Empowerment}, 16.
court construction, at the expense of systems utilized by the poor, this may serve to widen existing inequalities in access to justice.\textsuperscript{193}

**Overall assessment of access to justice**

<table>
<thead>
<tr>
<th>Effectiveness as a development enabler</th>
<th>Levels of support</th>
<th>Measurability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some access to justice programs have had enabling effects, although most evaluations are limited to headcounts of people assisted.</td>
<td>Unlikely to be controversial if limited to access to legal information, services and forums.</td>
<td>Identifying informative and pro-poor indicators challenging.</td>
</tr>
<tr>
<td>Disappointment with results of formal institutional strengthening; informal approaches are more affordable and suited to the needs of the poor.</td>
<td></td>
<td>Limited comparability due to diversity of legal systems.</td>
</tr>
<tr>
<td>Support is donor and civil society driven, although there is increasing government support for paralegals.</td>
<td></td>
<td>Lack of administrative or national survey data.</td>
</tr>
<tr>
<td>Sustainability and scaling up is a challenge.</td>
<td></td>
<td>Difficult to evaluate informal systems.</td>
</tr>
</tbody>
</table>

LEGAL IDENTITY/CIVIL REGISTRATION

What is the theory of change?

According to the Commission on Legal Empowerment of the Poor, ‘[l]egal identity is a cornerstone for access to justice’. Legal identity ‘verifies the legal existence of a person vis-à-vis the state’, and is thought to promote development at the household level by assisting a person to:

- access services, such as education and health services;
- access social security benefits, such as cash transfers;
- access opportunities and protections in the formal economy, such as employment, property ownership, inheritance and business operation;
- exercise civil and political rights, such as the right to vote;
- prove their age to protect rights as a child, such as rights against child labor, child marriage, or prosecution as an adult, and to access entitlements restricted to the elderly; and
- enforce their rights through formal justice institutions.

The provision of legal identity through a comprehensive civil registration system may also support national-level development by:

- providing demographic statistics to support government planning and the allocation of government resources (with cause of death statistics particularly useful for public health policy);
- providing demographic statistics to monitor government performance, including progress toward development goals; and
- reducing corruption and waste by helping government benefits reach the intended recipients.

While the first two of these national-level benefits are not related to legal identity, the statistical benefits of civil registration may be equally important.

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194 Commission on Legal Empowerment of the Poor, 32.
198 ADB, Legal Identity for Inclusive Development, viii, 26; UNICEF, The ‘Rights’ Start to Life, 1; World Bank, World Development Indicators 2011, 32; Setel et al., 1569; Mennen ‘Legal Identity and MDG Implementation,’ 195.
A civil registration system involves ‘the continuous, permanent, compulsory, and universal recording of the occurrence and characteristics of vital events (livebirths, deaths, fetal deaths, marriages, and divorces)’¹⁹⁹ and – ideally – the provision of ‘legal documentation of such events’.²⁰⁰ Of these documents, a birth certificate is the most powerful rule of law tool to promote development at the household level, ‘a gateway to other rights and benefits that are, or may be, contingent on proof of identity, age, familial relationships, or place of birth’,²⁰¹ and ‘a fundamental human right’.²⁰² Yet 50 million births went unrecorded in 2009,²⁰³ and ‘[i]t is estimated that more than seven in ten children in the world’s least-developed countries do not have birth certificates or other registration documents.’²⁰⁴

**Figure 4**

**Percentage of children under-five years who are registered, by region**

![Percentage of children under-five years who are registered, by region](http://www.childinfo.org/birth_registration_progress.html)

Estimates based on data obtained from 111 countries between 2000 and 2010 covering 92% of the under-five population in the developing world (excluding China, for which data are not available). Regional estimates represent data from countries covering at least 50% of the regional population. Source: UNICEF, *Childinfo: Statistics by area/Child Protection/Birth registration/Progress* (updated Jan 2012) [http://www.childinfo.org/birth_registration_progress.html](http://www.childinfo.org/birth_registration_progress.html).

Children who are not registered before the age of five ‘tend to be poor, live in rural areas, have limited access to health care, [not be attending] early childhood education, have higher levels of malnutrition and have higher mortality rates. They are likely to have been born without the support of a health professional or midwife, and their mothers have low levels of formal education and are less likely to

¹⁹⁹ Setel, et al., 1570.
²⁰⁰ Setel, et al., 1570.
²⁰² UNICEF, *The ‘Rights’ Start to Life*, 1; see also Mennen ‘Legal Identity and MDG Implementation,’ 185.
²⁰³ World Bank, *World Development Indicators*, 32.
²⁰⁴ Commission on Legal Empowerment of the Poor, 32.
have adequate knowledge of signs of some child illnesses and of HIV/AIDS transmission. In some countries, indigenous population, migrants, minority groups and women face discriminatory registration practices. The correlation between non-registration of birth and other forms of disadvantage indicates that the poor suffer from an identity deficit, which further reduces opportunities later in life. A lack of legal identity can vary in degrees: a person’s birth may not be registered at all, or the birth registered but no certificate issued, or the document issued may have errors undermining its utility.

Figure 5
Percentage of children under-five years who are registered in the poorest 20% and richest 20% of households, by region

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A comprehensive civil registration system is also recognized as the best source of vital statistics (which can also be drawn from surveys and medical records when civil registration systems are incomplete). Birth and death registration, along with cause of death information, are most valuable here, providing countries with reliable data on population trends, fertility levels and the incidence of disease, to inform

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206 Mennen ‘Legal identity and MDG implementation,’ 187, 190.

207 Mennen ‘Legal identity and MDG implementation,’ 185.


public health programming and the provision of social services and infrastructure. Civil registration systems are also useful for monitoring progress toward MDGs, many of which are currently assessed using predicted statistics. Registered deaths can be used to assess progress on child mortality, maternal health and disease, and accurate population numbers are relevant to all MDG indicators measured relative to total or specific populations.

However, as with births, registration of deaths and their cause is limited in many developing countries (see figure 6). In 2009, 40 million deaths went unrecorded, with only one third of developing countries able to generate usable mortality statistics, and half of the countries in Africa and Southeast Asia recording no cause of death data. In Africa, only Mauritius and the Seychelles have complete registration of deaths and cause of death. Therefore, there is significant room to improve the capacity of civil registration systems to provide statistics to support government planning.

### Effectiveness as a development enabler

**Are countries pursuing civil registration as a development enabler?**

Most countries are currently taking steps to improve their birth registration systems, with 81 United Nations Children’s Fund (UNICEF) offices highlighting progress on birth registration in their latest annual reports (and many other offices also undertaking work on this issue). Some countries have recently undertaken extensive birth registration campaigns. Cambodia, for example, has implemented a nationwide birth registration program, with donor support, which is estimated to have distributed birth certificates to 90 per cent of the population within three years (see box 3). Ghana has made efforts over the last decade to increase the coverage of its civil registration system to about two-thirds of births. In Bangladesh, where estimates suggest birth registration is as low as 10 per cent, a new Birth

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**Figure 6**

<table>
<thead>
<tr>
<th>Quality</th>
<th>Countries</th>
<th>% global population</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>31</td>
<td>13</td>
</tr>
<tr>
<td>Medium</td>
<td>50</td>
<td>15</td>
</tr>
<tr>
<td>Low</td>
<td>26</td>
<td>7</td>
</tr>
<tr>
<td>Limited use</td>
<td>17</td>
<td>41</td>
</tr>
<tr>
<td>No report</td>
<td>68</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>192</td>
<td>100</td>
</tr>
</tbody>
</table>


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213 Setel, et al., 1569.
214 World Bank, *World Development Indicators*, 32.
218 World Bank, *World Development Indicators*, 32.
The Rule of Law and the Post-2015 Development Agenda

and Death Registration Act became effective in July 2006.\textsuperscript{220} Civil registration systems exist in virtually every country.\textsuperscript{221}

NGO Plan International claims to have facilitated the registration of over 40.6 million births between the launch of its ‘Universal Birth Registration’ campaign in 2005 and 2009 (figure 7). It reports its programs have helped to achieve ‘dramatic changes over short periods of time’,\textsuperscript{222} such as increasing birth registration in Uganda from 45 to 69 per cent in eight months to June 2007.\textsuperscript{223}

Box 3: Cambodia’s birth registration scheme

‘Following on from the national government’s commitment to rebuilding the registration system, Plan piloted a mobile registration scheme in 2004. The scheme was supported by the Ministry of Interior and the Asian Development Bank and was so successful that the initiative was rolled out across the country. Plan provided technical assistance including training volunteers to assist with local planning, undertaking public information campaigns and supporting the government to alter civil registration law accordingly. Throughout the campaign, birth and death certificates were provided free of charge. The Ministry of Interior assembled 1,621 commune registration teams comprising over 13,000 people and trained them in registration procedures. These teams were mobilised to register Cambodians and create awareness on birth registration. After 10 months of Plan’s mobile birth registration programme, more than 7,000,000 Cambodians, close to 50 per cent of the population, had received their birth certificates.’


\begin{table}[h]
\centering
\begin{tabular}{|l|c|}
\hline
\textbf{Country} & \textbf{Births Registered} \\
\hline
Bangladesh & 5,900,000 \\
Benin & 18,500 \\
Bolivia & 1,036,112 \\
Brazil & 6,852 \\
Burkina Faso & 474,568 \\
Cambodia & 12,140,000 \\
Cameroon & 1,822 \\
Colombia & 3,415,428 \\
Dominican Republic & 5,500 \\
Ecuador & 903,970 \\
Ghana & 3,000 \\
Guinea & 13,673 \\
Guinea-Bissau & 4,080 \\
Honduras & 38,056 \\
India & 3,200,000 \\
Liberia & 5,000 \\
Malawi & 12,059 \\
Mozambique & 34,944 \\
Nepal & 427,524 \\
Nicaragua & 38,879 \\
Pakistan & 1,500,000 \\
Paraguay & 300,000 \\
Perú & 5,794,000 \\
Philippines & 1,863,232 \\
Senegal & 49,775 \\
Sierra Leone & 110,068 \\
Tanzania & 1,211,598 \\
Timor-Leste & 90,000 \\
Togo & 13,131 \\
Uganda & 2,991 \\
Vietnam & 2,000,000 \\
Zambia & 600 \\
Total & 40,615,362 \\
\hline
\end{tabular}
\caption{Increase in registration attributable to Plan since start of ‘Universal Birth Registration’ campaign in 2005}
\end{table}


\textsuperscript{220} ADB, \textit{Legal Identity for Inclusive Development}, 1, 9; UNICEF, \textit{Bangladesh: Statistics}
\footnote{http://www.unicef.org/infobycountry/bangladesh_bangladesh_statistics.html.}

\textsuperscript{221} See UN Statistics Division, \textit{Coverage of Birth and Death Registration},
\footnote{http://unstats.un.org/unsd/demographic/CRVS/CR_coverage.htm, which indicates that only Ethiopia, Eritrea and Somalia do not have civil registration, although birth registration rates are available for Ethiopia and Somalia. Ethiopia, which currently relies on censuses and surveys for vital statistics, is also seeking to establish a civil registration system; see UN DESA, \textit{Final Report of the Expert Group Meeting}, 11.}

\textsuperscript{222} Plan, \textit{Count Every Child}, 17.

\textsuperscript{223} Plan, \textit{Count Every Child}, 33.
Despite these efforts, it is claimed that at a global level, ‘civil registration systems have largely stagnated, during the past five decades, in terms of their vital statistics potential,’ and have not been made a priority by donors or countries themselves. Figure 8 shows little change since 1965 in regional populations covered by complete birth and death registration, although this may disguise significant improvements in countries which have not yet achieved complete coverage.

The number of countries reporting births has changed little from the 1960s to 2000, although the ability of countries to report disaggregated data on births has improved (figure 9). While the number of countries reporting deaths has increased since the 1960s, the ability of countries to report disaggregated data on deaths has not improved greatly. Furthermore, ‘around 60 countries, more than half of them in Africa,’

have never reported deaths by age and sex since 1961’. Greater progress has been made on cause of death data, with the number of countries reporting causes of death to the World Health Organisation (WHO) tripling from 36 in 1950 to 115 in 2000, although large countries such as India and China have rarely provided cause of death data.

224 Prasanta Mahapatra, et al., ‘Civil Registration systems and vital statistics: successes and missed opportunities,’ The Lancet 370 (2011) 1653; see also Setel, et al., 1569.
225 Mahapatra, et al.,1656.
226 Mahapatra, et al.,1656.
227 Mahapatra, et al.,1656, 1658.
What development outcomes can be seen from increased civil registration?

Increasing civil registration is not a goal in itself, but is only useful to the extent that it increases opportunities for individuals, or improves national planning and policy evaluation. While the correlation between development and complete civil registration is strong, demonstrating a causal relationship between registration and individual empowerment or national planning is challenging. Szreter argues that the identity registration system which operated in England from 1538 was critical to Britain’s early economic growth, by enabling the enforcement of property rights and the establishment of a social security system which promoted labor mobility. A recent study on the introduction of mandatory registration laws in the United States in the early 1900s also found that ‘minimum working age legislation was twice as effective in reducing under-aged employment if children were born with a birth registration law, with positive implications for school attendance’.

The scale of development impacts from birth registration will, of course, depend on the context. An Asian Development Bank (ADB) study of birth registration in Cambodia, Nepal and Bangladesh (where coverage is around 90 per cent, 35 per cent and 10 per cent respectively) concluded that:

legal identity often fails to deliver all that it promises. The emerging picture is far more complex and challenging than a conceptual approach suggests. Fundamental obstacles, such as weak institutions and widespread poverty and corruption, limit the concrete value of legal identity.

In terms of benefits at the household level, the study found that the services and opportunities for which it would be useful to have legal identity were simply not accessible to the majority of these populations. The utility of birth certificates in enforcing child rights was also considered to be limited by institutional and social norms. However, given that a post-2015 development agenda will be seeking to expand access to such services and opportunities, and enhance human rights protections, the value of birth registration as an enabler should simultaneously increase.

In addition, the ADB study acknowledged that ‘as birth registration or citizenship certificates are often required for more sophisticated benefits and opportunities such as the capacity to register and transfer land, set up a business, or open a bank account, birth registration is linked to economic growth and development’ and ‘supports regional economic integration and aids countries such as Bangladesh and Nepal, which to some degree rely on remittances from overseas contract workers, as it provides

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228 Commission on Legal Empowerment of the Poor, 61; ADB, Legal Identity for Inclusive Development, xiv, 73.
232 ADB, Legal Identity for Inclusive Development, 1.
233 ADB, Legal Identity for Inclusive Development, xiv.
234 ADB, Legal Identity for Inclusive Development, viii-ix, 5-6, 10, 12, 15, 17.
235 ADB, Legal Identity for Inclusive Development, x, 6, 26-32.
236 ADB, Legal Identity for Inclusive Development, 6.
passports that enable workers to travel to their place of employment’. The benefits of legal identity are likely to grow as public services become more accessible and sophisticated and formal sector opportunities expand. This is consistent with a study in the Dominican Republic, which found that while children without birth documentation were no less likely to enter primary school, the lack of a birth certificate ‘translates into fewer years of overall educational attainment’, as formal proof of name was required for national testing and completion certificates.

The benefits of statistics for planning and policy purposes seem self-evident, but again it is difficult to isolate causal links. Furthermore, unless systems provide almost total coverage, planning based on civil registration data will be skewed, and may further disadvantage unregistered populations. Planning and policy evaluation based on civil registration systems requires that those systems are not only complete, but that government agencies have sufficient technical and policy capacity and interagency cooperation to make effective use of the data these systems can provide.

What are the barriers to strengthening civil registration systems?

The sustainability of civil registration campaigns in developing countries has been questioned. Cambodia’s rapid increase in registration rates was achieved through a resource-intensive mobile registration campaign. Donors provided a total of US$5.1 million over 4 years to fund the project, with a cost per birth certificate issued of US$0.46. It is hoped that ‘a culture of registration’ and improved official capacity at the local level will sustain these rates. Fees to register, or penalties for late registration, may increase financial sustainability but deter registration, particularly among poor and remote populations. However, there are less costly options for increasing registration, such as a system trialed in Bangladesh that provided health workers with incentives for each birth registered in their areas. Information and communication technologies can also reduce the cost of registration, with text messaging used to deliver birth notifications in Kenya.

The correlation between a lack of birth registration and a lack of access to government services may complicate efforts to expand coverage by using existing government service providers, such health and

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238 ADB, Legal Identity for Inclusive Development, 6, 16.
239 Corbacho, Brito and Rivas, 1.
240 Corbacho, Brito and Rivas, 4.
241 ADB, Legal Identity for Inclusive Development, x, 33.
243 ADB, Legal Identity for Inclusive Development, xv, 78; Mennen ‘Legal Identity and MDG Implementation,’ 201.
244 Plan, Impact of the universal birth registration campaign, http://plan-international.org/birthregistration/resources/country-case-studies/cambodia; US$2.4 million was provided by ADB and US$2.7 million by Plan.
245 ADB, Legal Identity for Inclusive Development, 77, see also 54-55.
246 UNICEF, The ‘Rights’ Start to Life, 2, 4; ADB, Legal Identity for Inclusive Development, 77; Mennen ‘Legal Identity and MDG Implementation,’ 188.
247 ADB, Legal Identity for Inclusive Development, 80.
248 Plan, Count Every Child, 16; see also AbouZahr, et al., 1796.
education officials, to promote birth registration.\textsuperscript{250} People’s utilization of civil registration systems may increase where they perceive a tangible benefit from registration.\textsuperscript{251}

The development of civil registration systems may also have been hindered by the growing use of household surveys, sample registration and estimation techniques to produce statistics, including by donor agencies, which has reduced incentives to invest in civil registration (see figure 10).\textsuperscript{252} Unlike ad hoc surveys, the budgets of civil registration systems have to be met every year, which may decrease their attractiveness.\textsuperscript{253} Those international agencies with an interest in civil registration, such as the WHO and UN Statistics Division, are primarily technical agencies and lack financial resources to support national systems.\textsuperscript{254} The growing interest in population registers and identification number/card programs may also divert attention from the need to strengthen complementary civil registration systems.\textsuperscript{255} Yet survey data is expensive to produce, and is not available on demand in the same way as data from up-to-date civil registration systems.\textsuperscript{256} While a study in Tanzania estimated that annualized per capita costs of civil registration and surveys were very similar (US$0.02),\textsuperscript{257} unlike civil registration, surveys rarely offer direct benefits to individual participants.

\textsuperscript{250} As suggested in UNICEF, The ‘Rights’ Start to Life, 24; and ADB, Legal Identity for Inclusive Development, 80.
\textsuperscript{251} Plan, Count Every Child, 31, 39; ADB, Legal Identity for Inclusive Development, xi-xii, 47, 74, 78; Bediako (Ghana Statistical Service), 4; Kendra Gregson and Kerry Neal, UNICEF, personal interview (15 February 2013).
\textsuperscript{253} AbouZahr, et al., 1795.
\textsuperscript{254} Mahapatra, et al., 1661.
\textsuperscript{255} UN Statistics Division, Conclusions and Recommendations (UN DESA, UN Expert Group Meeting on International Standards for Civil Registration & Vital Statistics Systems, 27-30 June 2011, New York, ESA/STAT.AC.233/L.5, 2011) http://unstats.un.org/unsd/demographic/meetings/egm/CRVS2011/EGM%20Papers/EGM%20CRVS%20Conclusions%20Final.pdf, 5; Szreter and Breckenridge, 2. A prominent example is India’s Universal ID program; see, for example, Frances Zelazny, The Evolution of India’s UID Program: Lessons Learned and Implications for Other Developing Countries (Center for Global Development, Policy Paper 8, 2012) http://www.cgdev.org/files/1426371_file_Zelazny_India_Case_Study_FINAL.pdf, which states at page 3 that ‘industry analysts expect that within 5 years, most countries will have some form of a national ID system in place’.
\textsuperscript{256} World Bank, World Development Indicators 2011, 32, 34.
Likely level of support for including civil registration in the post-2015 agenda

Birth registration is recognized as a fundamental human right. Article 7 of the Convention on the Rights of the Child, which has been ratified by 193 state parties, provides the right to immediate registration after birth.\(^{258}\) The right to registration is also guaranteed in Article 24(2) of the International Covenant on Civil and Political Rights, which has been ratified by 167 states.\(^{259}\) In 2002, the UN General Assembly resolution on 'A World Fit for Children' reaffirmed state commitments to ensure the birth registration of every child,\(^ {260}\) and a Human Rights Council resolution in 2012 called upon states to provide ‘universal, accessible, simple, expeditious and effective registration procedures’.\(^ {261}\) Birth registration also features in the African Charter on the Rights and Welfare of the Child,\(^ {262}\) and in 2008 the Organization for American States established a Program for Universal Civil Registry and the 'Right to Identity'.\(^ {263}\)

As noted above, major institutional donors have shown limited interest in supporting the development of civil registration systems, suggesting they may be unlikely to support the inclusion of civil registration in the post-2015 agenda. Birth registration does have donor support, however, including from multilateral donors and prominent NGOs. George Soros (from Open Society Foundations) and Fazle Hasan Abed (from BRAC) released an op-ed in September 2012 stating that 'One of the first MDG 2.0 targets... should be reducing statelessness and providing universal legal identity: the enactment and enforcement of legislation ensuring every citizen has universal access to a documented legal identity and is registered at birth.'\(^ {264}\)

In terms of framing to policy-makers and the public, “birth registration” is a commonly used and widely understood term.\(^ {265}\) A target on birth registration may, therefore, command support and be easily communicated to both audiences. “Legal identity” is a more technical term, but does convey the rule of law benefits of birth registration for individuals. “Civil registration” is also a more technical term, and

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259 **International Covenant on Civil and Political Rights** (1966, entered into force 23 March 1976)


263 The program aims to achieve universal birth registration by 2015, see Organization of American States, *Inter-American Program for Universal Civil Registry and the ‘Right to Identity’* (General Assembly Resolution, AG/Res. 2362, 3 June 2008)

264 George Soros and Fazle Hasan Abed, ‘Rule of law can rid the world of poverty,’ *Financial Times*, 26 September 2012,
http://www.ft.com/intl/cms/s/0/f78f8e0a-07cc-11e2-8354-00144faba9dc.html#axzz2HnxyRAvg.

could probably only feature in indicator language rather than goals or targets (if a goal, target, indicator structure was used for “enablers” in the post-2015 agenda).

Measurability of legal identity (via civil registration)

Are rates of civil registration a good indicator for legal identity?

Rates of birth registration are a good indicator of the number of people with legal identity in countries where a birth certificate is the primary way to prove identity to state institutions. Civil registration rates are also sensitive to change, as shown in Cambodia where registration rates were increased from 5 per cent to over 90 per cent in only three years.266

There are countries where a birth certificate is not currently the primary form of legal identity. In Nepal, for example, the most useful identity document is the citizenship certificate, and while a birth certificate may assist in obtaining a citizenship certificate, it is not essential.267 In Cambodia, people can use a range of documents from different agencies to access services and enforce rights, including village lodging books which account for 91 per cent of the population.268 In these circumstances, birth registration would be less useful as an indicator of legal identity. An alternative would be to measure the coverage of the primary identity document in each country, although this would reduce comparability across countries. Public surveys could also ask whether people possess the necessary documentation to access services and enforce rights.269

In terms of indicators for government statistical capacity, while the completeness of civil registration systems may indicate the possession of necessary data for planning and evaluation purposes, it will not reveal whether data is actually used for these purposes.

Is data available or attainable at reasonable cost?

The UN Statistics Division publishes data on the coverage of birth and death registration obtained from country responses to its Vital Statistics Questionnaire for the UN Demographic Yearbook.270 The UN Statistics Division also collects information on coverage levels from officials attending their workshops. Coverage rates are currently provided for 215 countries and territories for deaths and 210 countries for births, but many of these figures date back to the 1990s, and even the 1980s in some cases.271 In addition, the quality of these responses has been questioned, as in many cases it is not known how countries are evaluating coverage.272

266 http://plan-international.org/birthregistration/resources/country-case-studies/cambodia.
267 ADB, Legal Identity for Inclusive Development, 11.
268 ADB, Legal Identity for Inclusive Development, 10, 21, 76.
269 Langford, 33.
271 With most earlier coverage rates provided by the International Institute for Vital Registration and Statistics, which no longer operates.
272 Mahapatra, et al., 1656.
When recent coverage rates are not available from these sources, data on birth registration rates for children under five years of age are available from household surveys funded mostly by UNICEF (the Multiple Indicators Cluster Survey) and the United States Agency for International Development (the Demographic and Health Survey).\textsuperscript{273} Survey data is currently available for 112 countries, although survey dates vary from 2000 to 2010. Most countries with survey data on birth registration rates disaggregate this data by gender and urban/rural location, and some also disaggregate by income. The WHO also estimates coverage of death and cause of death registration for 102 countries and territories between 2005 and 2010.\textsuperscript{274}

International reporting systems on alternative measures, such as the coverage of primary identity documents, or people’s perceptions of whether they possess sufficient identity documentation, do not currently exist and these indicators would require new data collection and reporting mechanisms.

**Can the data be compared across countries?**

As noted above, the benefits that derive from civil registration vary across countries. Therefore, the relative coverage of civil registration systems may not indicate the relative enjoyment of the benefits of legal identity (or the relative statistical and planning capacity of governments) in every country. The coverage of the primary identity document, or the proportion of people who believe that they possess sufficient identity documentation, may provide greater comparability of outcomes in these circumstances.\textsuperscript{275}

**Would using civil registration rates as an indicator generate any perverse incentives?**

Including birth registration rates as an indicator in a post-2015 development agenda could potentially generate two negative consequences. First, if countries seek to increase registration rates by making access to services contingent on possession of a birth certificate, or by imposing fees for late registration, this could further marginalize those populations with the lowest registration rates.\textsuperscript{276} Second, if proper privacy and information security protections are not in place, there are risks that registration could be used to identify and infringe on the rights of particular groups.\textsuperscript{277} In some cases ‘avoidance is rational and based on disincentives towards registration’.\textsuperscript{278} To mitigate this risk, birth registration should be free and universal, but not mandatory, and information on birth certificates other than date, place of birth and sex should be kept to a minimum where possible.\textsuperscript{279}

\textsuperscript{273} Surveys report children under five ‘whose birth certificate was seen by the interviewer or whose mother or caretaker says that the birth has been registered’, see UNICEF, Childinfo, Statistics by Area: Child Protection: Birth Registration, http://www.childinfo.org/birth_registration_tables.php; see, for example, UN DESA, Status of Civil Registration and Vital Statistics in the SADC Region, 8.


\textsuperscript{275} Langford, 33

\textsuperscript{276} ADB, Legal Identity for Inclusive Development, viii-ix, xiv. 10, 48; UNICEF, The ‘Rights’ Start to Life, 2; Mennen ‘Legal Identity and MDG Implementation,’ 200.

\textsuperscript{277} OHCHR, 48; Szreter, 80-81; Szreter and Breckenridge, 28-29; Plan, Count Every Child, 62-3; Setel, et al., 1573; David Lyon, ‘National IDs in a Global World: Surveillance, Security, and Citizenship,’ Case Western Reserve Journal of International Law 42 (2010).

\textsuperscript{278} Mennen ‘Legal Identity and MDG Implementation,’ 197.

\textsuperscript{279} Kendra Gregson and Kerry Neal, UNICEF, personal interview (15 February 2013).
Overall assessment of legal identity/civil registration

**Effectiveness as a development enabler**
- Strong correlation to development outcomes, although causation difficult to establish.
- Coverage varies widely.
- Benefits depend on complementary improvements in services and institutions.
- Important for access to formal economy.

**Levels of support**
- Not controversial, existing human right.
- Civil registration may be perceived as a formality in some contexts.

**Measurability**
- International data collection and reporting systems currently exist for civil registration.
- Birth registration a widely applicable indicator of legal identity.
- Need to avoid further marginalizing disadvantaged groups by making birth registration mandatory to access services.
LAND, PROPERTY AND BUSINESS RIGHTS

What is the theory of change?

The importance to economic growth of secure land and property rights, and an effective legal framework for business, is a fundamental tenet of much modern economics. Indeed, ‘[a]mong economists, the core theoretical mechanism linking law to economic development runs through property rights and contract enforcement’, and much analysis of the relationship between institutions and development has been focused on the strength of property rights.

The role of legal frameworks for land, property and business in reducing poverty and achieving a range of other social, environmental and human rights goals is also increasingly recognized. According to the Commission on Legal Empowerment of the Poor:

Overwhelming evidence, from all over the world, shows that functional property relationships are associated with stable growth and social contracts, whereas dysfunctional property relationships are associated with poor, unequal, and unstable societies. When property rights are out of peoples’ reach, or rights are subject to competing claims, their assets are often not secure and their economic potential remains severely inhibited.

The mechanisms through which secure land, property and business rights are thought to facilitate development are numerous, and include:

- creating incentives for investment and the sustainable use of land and resources;
- facilitating economic exchange and employment beyond immediate networks;
- providing collateral for finance and access to business protections such as limited liability;
- reducing risks of dispossession as well as costs to defend property or to operate informally; and
- increasing opportunities for taxation to fund social services.

De Soto, one of the strongest proponents of formalization (whose approach has also been criticized, see below), argues that burdensome and costly regulations exclude the poor from property protections and the formal economy, meaning that their assets remain ‘dead capital’. This belief informs the World

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280 Haggard and Tiede, 674.
281 Haggard and Tiede, 681; for example, Acemoglu, Johnson and Robinson use expropriation risk as a proxy for institutional quality, at 1370.
282 Commission on Legal Empowerment of the Poor, 34.
Bank’s Doing Business project, which produces an annual ranking of countries according to the efficiency of their business regulations.  

The relevance of land, property and business rights to the MDGs is multi-faceted. It is argued that ‘[t]hree of the eight MDGs – reduction of poverty and hunger, gender equality and environmental sustainability – critically hinge on access to land and tenure security, which may also impact the achievement of two others – universal primary education and combating HIV and other diseases.’ Legal frameworks for property and business can generate higher incomes from employment and business activity, increased food security from greater land productivity, improved gender equality from the recognition of women’s rights to land and property, and more sustainable management of land and natural resources due to clear ownership. Increased incomes, particularly among women, can support greater educational attainment, and tenure security for women can also reduce their dependence on male partners and enhance their ability to protect themselves from HIV. Given that the livelihoods of around 75 per cent of the world’s poor depend on land and agriculture, and land disputes are a major source of conflict, secure land tenure could make a significant contribution to the achievement of existing MDGs and other potential post-2015 goals.

A lack of land, property and business rights affects vast numbers of people, and the UN Special Rapporteur on adequate housing has declared that ‘[w]e are in the grip of a global tenure insecurity crisis’. Around 1.25 billion people could be considered land-insecure, cultivating land owned by someone else or the government, or land with unclear ownership. NGOs report that more than 9.9 million people were forcibly evicted between 2003 and 2008. Only 30 per cent of land in the developing world is covered by a formal registration system. Large-scale land acquisitions for private agricultural investment are increasing, with deals accounting for 56.6 million hectares concluded or under negotiation globally in 2009, compared to an annual average of 4.1 million hectares from 1961 to 2007. Business regulations are also onerous in many countries, and a study in 12 Latin American

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287 Rashid, 2-4, 10, Commission on Legal Empowerment of the Poor, 33, 36, 51; UNDP, The Path to achieving the Millennium Development Goals, 27, 44; Deininger and Enemark, 2, 10.


290 Prosterman, 42.


countries found that only eight per cent of all enterprises were legally registered.\textsuperscript{294} There is significant potential, therefore, to improve legal frameworks for land, property and business.

The MDGs already feature tenure security in a minor way: MDG 7 includes a target of achieving ‘a significant improvement in the lives of at least 100 million slum dwellers’\textsuperscript{295} by 2020. Its indicator is ‘the proportion of the urban population that live in households lacking one or more of the following basic services: improved water, improved sanitation, durable housing, sufficient living area or security of tenure.’\textsuperscript{296} However, due to a lack of data on security of tenure (see below at page 54), slum populations are only being assessed on the first four criteria.

**Effectiveness as a development enabler**

**Are countries seeking to extend land, property and business rights as a development enabler?**

Traditionally, interventions to extend land rights have involved expanding the coverage of formal registration and titling schemes, which were often partially introduced in developing countries by colonial authorities. A number of countries have undertaken significant reform programs to systematically map and register land.\textsuperscript{297} Peru, influenced by de Soto’s work, has titled almost 70 per cent of its land since 1996 (see box 4).\textsuperscript{298} In 2008, India initiated an ambitious project to implement a comprehensive land title system over 2.16 million square kilometers.\textsuperscript{299} Ethiopia distributed preliminary land use certificates to about 3 million households between 2000 and 2005.\textsuperscript{300} Land registration and titling has been strongly pursued in Latin America,\textsuperscript{301} and there is increasing interest and program activity in Africa, with the African Union agreeing a land policy framework in 2009.\textsuperscript{302} There is also significant donor support for land reform, with the World Bank’s portfolio alone worth US$1.5 billion.\textsuperscript{303}

\begin{footnotesize}
\begin{enumerate}
\item Commission on Legal Empowerment of the Poor, 15.
\item United Nations, *Official List of MDG Indicators*.
\item UN-HABITAT, University of Twente and GLTN, 7, 15.
\end{enumerate}
\end{footnotesize}
However, ‘[e]stimates based on the current pace at which land titles are issued suggest that it will take decades, if not centuries, for many countries to complete land registration of the whole country’.  

The significant barriers to comprehensive land registration (discussed below) have prompted new thinking on alternative approaches to increase tenure security.  There is increasing interest in methods to ‘deliver security of tenure ... through a continuum of land rights that allows people to get onto the tenure rights ladder’ (see figure 11). These include the issuing of preliminary land documents requiring a lower evidentiary basis, participatory or co-management
approaches under which communities undertake land recording activities,\(^{307}\) and the recognition of community rights to land.\(^{308}\) For example, ‘[a] number of jurisdictions have recently made provisions for registering communal land … and provide opportunities for delimiting community boundaries while leaving registration and management of individual plots to community institutions with the possibility of making the transition to more formal or individualized systems as the need arises’.\(^{309}\) While the “continuum” model may seem to present registered freehold as an ideal, it is more appropriate to see it as presenting a range of possible options, as ‘[t]he degree of tenure security provided by each of the tenure categories does not always correspond to formalistic or legalistic readings of existing arrangements; rather, it can vary depending on the socioeconomic and political context’\(^{310}\)

Turning to reforms to property and business regulation, according to the World Bank, the variance across countries in regulatory processes to start a business has decreased by 49 per cent since 2005. In addition, the cross-country variance in processes to register a property has declined by 19 per cent since 2005 (see figure 12). Worldwide, 180 countries have implemented almost 2,000 reforms to business regulations in the last decade. In terms of the scale of reforms, one third of the 50 biggest improvers since 2005 are in Sub-Saharan Africa.\(^{311}\) There has been greater convergence in the complexity and cost of business regulation (such as property registration or construction permits) than in practices which relate to the strength of legal institutions (such as contract enforcement, insolvency regimes and financial rights).\(^{312}\)

\(^{306}\) UN-HABITAT, University of Twente and GLTN, 12,16, 27; Commission on Legal Empowerment of the Poor, 65; Alain Durand-Lasserve, ‘Informal Settlements and the Millennium Development Goals: Global Policy Debates on Property Ownership and Security of Tenure,’ Global Urban Development 2, no. 1, (2006)

\(^{307}\) UN-HABITAT, University of Twente and GLTN, 23; UN-HABITAT, Count me in, 4.


\(^{309}\) Deininger and Feder, 242.

\(^{310}\) UN Special Rapporteur on the right to adequate housing (Raquel Rolnik), 10.

\(^{311}\) World Bank, Doing Business 2013, 1, 10, 14.

\(^{312}\) World Bank, Doing Business 2013, 1.
What development outcomes can be seen from land, property and business rights?

Of the rule of law reforms considered in this paper, the relationship between property rights and economic growth has been subject to the most empirical analysis, and ‘[i]n the new literature on institutions and long-run growth, either the conception of institutions or the proxy for them is the extent of property rights protection; similarly, these institutions are found significant for long-run economic performance’. However, the development impacts of specific interventions are less clear.

Traditional land titling and registration programs have produced varying outcomes in different contexts, with mixed effects on income, land values, investment, productivity and credit access. For example:

Rural land in Brazil, Indonesia, the Philippines, and Thailand shot up in value by between 43 percent and 81 percent after it was titled. Rising land values reflect increased investment and feed into higher productivity, output, and incomes. ... Thai farmers who receive title to their land produce a quarter more than those who do not. The value of urban land dramatically increased after it was titled – by 14 percent in Manila, by 25 percent in Guayaquil and Lima, and by 58 percent in Davao. ... A study of a shantytown in Argentina found that when squatters received legal title to their homes the number of houses with good quality walls rose by 40 percent, while those with good roofs increased by 47 percent.

Yet studies in Ghana, Kenya and Rwanda found no evidence of increased access to credit, investment or productivity as a result of titling.

There are numerous reasons why land titling has not always produced the benefits expected under economic theory, which assumes perfect markets with equal information and bargaining power. Given the importance of land to economic, social, political and cultural life, titling can generate disputes within and between communities. If individual land ownership is not consistent with customary approaches to land, take-up and registration of subsequent transactions may be limited. Titling may also undermine sustainable land management when externalities are generated by private users.

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313 Haggard and Tiede, 674 (although the authors question these results, see 679-682)
315 Commission on Legal Empowerment of the Poor, 50. See also Ostrom, ‘How Types of Goods and Property Rights Jointly Affect Collective Action,’ 259; Prosterman, 43.
317 Rashid, 14; Deininger and Feder, 238.
319 Platteau, 48, 55; De Soto, 159.
Land registration or titling may also exacerbate social and gender inequalities, by abolishing secondary land use rights under customary systems (particularly those held by women), encouraging distress sales by the poor, and eliminating communal lands as a social safety net.\textsuperscript{321} Elites may be able to deploy power and influence to gain titles,\textsuperscript{322} and titling may cement inequalities in customary systems, particularly for women, that may have otherwise have evolved over time.\textsuperscript{323} For example, initial evaluations of an urban titling project in Laos found women’s names were being recorded on only 23 per cent of titles, and concerted efforts were required to reverse these trends in later years.\textsuperscript{324}

The evolution of private land ownership in developed countries was accompanied by the emergence of sophisticated financial markets, infrastructure and technology. When not present, the productivity benefits from land registration may be lower than expected. For example, credit market imperfections may see loans reserved for elites, and the poor may not wish to risk their land by offering it as collateral. Titled land may not be accepted as collateral if community opposition would prevent a new owner taking possession, and household income may be more important than title in lending decisions.\textsuperscript{325}

There is a smaller body of evidence on the benefits of newer approaches to tenure security, such as non-title documentation and community title. Yet research indicates that successful reforms ‘recognize the complexity and uniqueness of existing property environments and recommend discrete and context-specific interventions. Successful reforms have also focused on creating flexible and resilient land rights systems that can adapt to changes in costs, technologies and social circumstances, rather than a static configuration of laws and social contracts’.\textsuperscript{326} Many communities are able to sustainably manage common pool resources,\textsuperscript{327} and a study of 10 countries in Asia, Africa and Latin America found that ‘[w]hen communities had secure ownership, they chose to conserve’,\textsuperscript{328} with community-owned forests more likely than state-owned forests to be managed sustainably.\textsuperscript{329} A participatory process for establishing community tenure has also been shown to improve intra-community governance, downward accountability and women’s rights in Liberia and Uganda.\textsuperscript{330} However, formal recognition of

\begin{itemize}
\item \textsuperscript{321} Ostrom, ‘How Types of Goods and Property Rights Jointly Affect Collective Action,’ 255; Platteau, 37, 40, 42, 51; Deininger and Feder, 241; UN-HABITAT, University of Twente and GLTN, 7, 12.
\item \textsuperscript{322} UN-HABITAT, University of Twente and GLTN, 7-8, 11; Rashid, 8.
\item \textsuperscript{323} Deininger and Feder, 238, 242; Platteau, 30-33, 42; Elizabeth Fortin, ‘Reforming Land Rights: The World Bank and the Globalization of Agriculture,’ Social & Legal Studies 14, no. 2 (2005), 157; UN-HABITAT, University of Twente and GLTN, 12; Commission on Legal Empowerment of the Poor, 78.
\item \textsuperscript{325} Platteau, 45, 52-53, 60-63; Deininger and Feder, 238, 241, 246; Fortin, 161; UN-HABITAT, University of Twente and GLTN, 8; Commission on Legal Empowerment of the Poor, 67.
\item \textsuperscript{326} Rashid, 9.
\item \textsuperscript{327} Ostrom, 262; Gauri, Woolcock and Desai, 20-21.
\end{itemize}
customary tenure systems may also allow traditional elites to reinterpret their roles to enhance their own wealth.\footnote{331}

In terms of property and business regulation, there is a strong negative correlation between the complexity and cost of property registration and income per capita.\footnote{332} Furthermore, studies in Colombia, India, Mexico and Portugal have found increases in the number of new business registrations of between 5 and 17 per cent following reforms of registration processes.\footnote{333} However, the impact of these new firm registrations on development outcomes is not specified, and a study of the Mexican case concluded that the increase was temporary and possibly only represented the clearing of a back-log of applications.\footnote{334} Due to the range of contributing factors, ‘the direction of causality between regulation and economic outcomes is very difficult to isolate’.\footnote{335}

\textbf{What are the barriers to expanding land, property and business rights?}

Establishing a comprehensive land registration system is time consuming and requires significant financial resources as well as bureaucratic capacity and integrity.\footnote{336} Land registries in developed countries were built up gradually (around 43 years in France, for example) and are themselves not equipped to manage rapid registration on a national scale or the frequent changes in tenure associated with urbanization in the developing world.\footnote{337} An under-resourced register will increase tenure uncertainty and opportunities for fraud, especially if disputes can no longer be settled quickly through informal systems but must navigate a weak and remote official infrastructure.\footnote{338} Titling may also exacerbate corruption, with land administration bodies among the most corrupt bodies globally.\footnote{339}

A pro-poor register will require heavy subsidization, as:

The poor cannot afford land documents delivered by conventional systems. Adjudication of a parcel of land in Latin America, for example, can cost between USD 27 and USD 603 (even USD 2,800). A pro-poor system has to be far cheaper, around USD 1 a parcel, as it is in Amhara, Ethiopia.\footnote{340}

\footnotesize{\begin{itemize}
\item \footnote{332} Rashid, 6; Timothy Besley and Maitreesh Ghatak, ‘Property Rights and Economic Development’ in Dani Rodrik and Mark Rosenzweig, eds., Handbook of Development Economics (Elsevier, Vol 5, 2010) 4554-4555.
\item \footnote{333} World Bank, Doing Business 2013, 11.
\item \footnote{335} World Bank Independent Evaluation Group, xiii, xvi.
\item \footnote{336} Deininger and Feder, 235-240, 244; Platteau, 47; UN-HABITAT, University of Twente and GLTN, 15.
\item \footnote{337} UN-HABITAT, University of Twente and GLTN, 9, 21.
\item \footnote{338} Platteau, 48; World Bank, xxviii; Deininger and Feder, 238-240; Alain Durand-Lasserve, 6.
\item \footnote{339} Deininger and Enemark, 1; Commission on Legal Empowerment of the Poor, 80.
\item \footnote{340} UN-HABITAT, University of Twente and GLTN, 11.
\end{itemize}}
High costs, along with delays and unfamiliarity, discourage the registration of subsequent transactions after an initial titling campaign. The poor often also struggle to provide the necessary evidentiary documents to obtain title in the first place.

Newer tenure security approaches may be more affordable and easier to implement. For example, Ethiopia was able to register 20 million land parcels in under three years at a cost of less than US$1 per parcel using community participation and less technical mapping techniques. Rwanda has assessed that titling using participatory approaches and low-technology surveying can be achieved for between US$9 to US$11 per parcel (with recurrent costs of US$1 per parcel), and that a one per cent increase in urban land values would justify the costs of a nation-wide titling program undertaken in this manner. Group tenure, by reducing the number of registration units, would further reduce costs of increasing tenure security. Community titling was found to cost no more than US$3,968 in Mozambique and around US$7,700 in Liberia for communities of between 100 and 1000 families.

Reforms to property and business regulation may also be resisted by entrenched interests, as reduced regulation may reduce opportunities for rent-seeking.

Likely support for including land, property and business rights in the post-2015 agenda

The inclusion of land, property and business rights in the post-2015 agenda may raise political sensitivities. Rights to land, in particular, are a highly contested political matter and source of conflict in many countries. There are no references to land in the Universal Declaration of Human Rights, or in the International Covenants on Civil and Political, or Economic, Social and Cultural Rights. The High Level Meeting on the Rule of Law in September 2012 also did not reference land. However, the Committee on Economic, Social and Cultural Rights has determined that ‘instances of forced eviction are prima facie incompatible with the requirements of the Covenant’, which guarantees adequate housing, and declared that ‘all persons should possess a degree of security of tenure which

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341 Deininger and Feder, 244-245; UN-HABITAT, University of Twente and GLTN, 7.
342 Deininger and Feder, 245.
343 Deininger and Feder, 244-245; UN-HABITAT, University of Twente and GLTN, 7.
346 Knight, et al., 22.
347 Deininger and Enemark, 1; Commission on Legal Empowerment of the Poor, 80.
guarantees legal protection against forced eviction, harassment and other threats’. As noted above, security of tenure features as an indicator for the MDG target on slums (albeit currently unmonitored). Therefore, the term “security of tenure” may be a more acceptable way to frame this reform area than “land rights”, although security of tenure may be less popular if applied to rural or resource-rich land.

The broader notion of property rights may have wider appeal, and the Universal Declaration of Human Rights guarantees the right of everyone to own, and not be arbitrarily deprived of, property. Prime Minister Cameron of the United Kingdom has cited property rights as an important determinant of prosperity in his role as co-chair of the High-Level Panel on the Post-2015 Development Agenda. Property and business regulation may, however, also raise sensitivities when specific indicators need to be identified, given the wide diversity in approaches to government-business relations, and may be perceived as an attempt to impose a narrow governance model. The World Bank’s Doing Business project has, for example, been strongly criticized for its policy preference for less regulation.

Measurability of land, property and business rights

Are there good indicators for land, property and business rights?

For rights to land and tenure security, possible indicators could include the proportion of people with registered title to land, determined either from administrative data or surveys. However, this measure may not capture the full continuum of land rights discussed above, such as preliminary documents or community title, which may be more relevant to the poor in the short term. The proportion of land under individual or community title may be an administratively easier figure to obtain, although this alone will not indicate the proportion of people benefiting from secure title, the characteristics of those people or whether the process by which that title was obtained was fair and inclusive (which may be particularly relevant for community title). It is important to consider who is benefiting from increased security of tenure as a result of land reforms.

Surveys could employ a more flexible approach to determine the extent of tenure security. Population censuses already ask whether people own or rent their dwelling, but given the tendency of people to exaggerate or inaccurately claim ownership, it may be preferable to ask about the possession of a range of documents or arrangements that may amount to secure tenure. However, this will still require judgments to be made about which documents provide security of tenure in each country context (see figure 13). Furthermore, people in informal settlements may be reluctant to reveal their tenure...
status to surveyors due to fear of possible repercussions.\textsuperscript{359} Surveys would also need to be designed to capture the extent to which these documents or arrangements protect the rights of women and marginalized groups.\textsuperscript{360}

Another possible measure of tenure security is the incidence, or perceived likelihood of, eviction. The number of evictions is a factual indicator, but it may be difficult to distinguish between lawful and unlawful evictions, and the lack of an eviction does not mean that a household enjoys the other presumed benefits of secure tenure. While perceptions of the likelihood of eviction may not reflect the actual risk and be difficult to influence, perceptions of tenure insecurity could have the same consequences as actual insecurity in deterring investment or work outside the home.\textsuperscript{361} As shown in figure 14, tenure security is a phenomenon in which past experience, current status, and expectations of the future are all relevant.

Identifying single indicators that can incorporate diverse approaches to land management, and capture the interaction between land documents and different legal and administrative frameworks, is extremely challenging. Current assessment tools for land incorporate multiple indicators (such as the World Bank’s Land Governance Assessment Framework, with 21 indicators and 80 sub-indicators).\textsuperscript{362}

Attempts to construct indicators of the quality of property and business regulation face similar challenges. Measures of \textit{de jure} regulation usually assess consistency with regulatory forms rather than outcomes such as increased entrepreneurship or employment among the poor. An evaluation of the World Bank’s Doing Business indicators found that, ‘because most of the indicators presume that less regulation is better, it is difficult to tell whether the top-ranked countries have good and efficient regulations or simply inadequate regulation’.\textsuperscript{363} Effective regulatory approaches may differ

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
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\textbf{DOCUMENTATION} & \textbf{SECURE} & \textbf{INSECURE} \\
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Purchase agreement for land
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Lease agreement for land
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Certificate of occupation (without being registered another name adjudication certificate)
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Property tax certificate
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Utility bills
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\textbf{TENANTS}
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\begin{tabular}{l}
Registered lease agreement
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\begin{tabular}{l}
Not registered lease agreement
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Informal agreement (written)
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\begin{tabular}{l}
Verbal agreement (no document)
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\begin{tabular}{l}
Occupied rent-free with knowledge of owner
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\begin{tabular}{l}
Occupied rent-free without the knowledge of owner
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\end{tabular}
\caption{DOCUMENTATION AND SECURITY OF LAND TENURE}
\label{table:documentation}
\end{table}


\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure14.png}
\caption{INDICATORS TELL PEOPLE’S EXPERIENCE OVER TIME}
\label{figure:indicators}
\end{figure}


\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure13.png}
\caption{TABLE 4.3. DOCUMENTATION AND SECURITY OF LAND TENURE}
\label{table:security}
\end{figure}


\textsuperscript{359} UN-HABITAT, \textit{Count me in}, 2.
\textsuperscript{360} UN-HABITAT and GLTN, 15.
\textsuperscript{361} UN-HABITAT and Global Urban Observatory, 11; UN-HABITAT and GLTN, 6-7, 37-38.
\textsuperscript{362} Deininger, Selod and Burns, \textit{The Land Governance Assessment Framework}, 39-45.
vastly across different countries and stages of development, and there may be significant variation between _de jure_ regulation and _de facto_ experience, including among different users within the same country. A study of the Doing Business indicators found that favored firms in the worst-rated countries actually received better treatment than many firms in countries with higher ratings. Surveying firms to assess their perceptions of property and business regulations is also problematic, as regulations that benefit individual firms may not produce optimal development outcomes, and perceptions of existing firms may differ from those of potential entrepreneurs.

**Is data available or attainable at reasonable cost?**

While tenure security was initially included as an indicator for the MDG 7 target on slum populations, it is not currently being monitored under the MDG framework. Administrative data on land tenure systems is often weak, and due to the lack of a credible monitoring system for security of tenure, the UN Interagency Advisory and Expert Group on MDG indicators advised that the proportion of people living in slums would be measured solely through the assessment of physical conditions, such as overcrowding and lack of sanitation.

UN-HABITAT and other agencies have nevertheless continued to develop possible methodologies for measuring tenure security. In addition to the World Bank’s Land Governance Assessment Framework noted above, UN-HABITAT has developed and piloted the Urban Inequalities Survey (UIS) to measure tenure security (as well as physical conditions and access to services) in urban areas. UN-HABITAT estimates that conducting a stand-alone UIS of 4,000 urban households would cost around US$200,000, while adding a partial UIS to existing international survey instruments (such as the Demographic and Health Survey or Multiple Indicators Cluster Survey) would cost between US$30,000 and US$60,000 per city. Given its focus on urban areas, the UIS does not collect data on tenure security in rural areas.

Data on the incidence of evictions is generally only collected in an unsystematic fashion by NGOs. Records of courts and national human rights institutions may be another potential source of data, but mechanisms to aggregate this (likely unrepresentative) data do not currently exist. The World Justice Project’s Rule of Law Index, does, however, include three hypothetical questions about evictions and the likelihood of compensation in its public surveys.

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363 World Bank Independent Evaluation Group, xvi.
367 Ginsburg, 275; World Bank Independent Evaluation Group, xv; Kurtz and Schrank, 542-543.
368 UN-HABITAT and GLTN, 13; United Nations, _Indicators for Monitoring the Millennium Development Goals_.
369 UN-HABITAT and GLTN, 31.
370 UN-HABITAT and GLTN, 11, 18, 21.
371 UN-HABITAT and GLTN, 11; OHCHR, 160.
372 Botero and Ponce, 49.
For property and business regulation, the World Bank’s Doing Business project is the most prominent source of data, and in 2013 it collected more than 57,000 data points on 11 indicators for 185 economies. However, the bulk of its measures are based on *de jure* regulations, rather than the experiences of firms. Those surveyed to obtain information are not firms themselves, but lawyers with varying experience with corporate law. Some data points are generated based on responses from only one or two law firms in a country. Furthermore, data is provided on specific case studies (usually a small to medium-sized limited liability company based in the largest business city) and may have little applicability to other scenarios. Therefore, this data set may not be considered sufficiently reliable to inform assessment of property and business regulation in the context of a post-2015 agreement.

Other rule of law indices make assessments of property and business regulations, including the World Justice Project’s Rule of Law Index and Freedom House’s Freedom in the World, but these are also based on expert opinions. In addition, evaluations of property rights for investment purposes are conducted by private entities such as Political Risk Services, but are based on subjective in-house analysis.

**Can the data be compared across countries?**

Indicators measuring the possession of particular land-tenure documents may lack international comparability due to the varying importance of different documents for tenure security. Measures of property and business regulation based on *de jure* rules will also lack comparability, as the appropriate level and type of regulation for development will vary in different contexts. Perceptions of the business environment or the likelihood of eviction may be influenced by bias, media portrayals and expectations.

**Would the inclusion of land, property and business rights generate any perverse incentives?**

The potential adverse consequences from ill-conceived land titling programs have been discussed above. In addition, measures of property and business regulation based on *de jure* rules may encourage countries to make superficial amendments rather than substantive changes that improve the business environment. Reforms which appear to facilitate business may also have negative long-term social and economic impacts, due to a failure to prevent risky or harmful business practices. For example, reductions in business regulations in India eroded a ‘number of checks and balances on investment … undermining overall efficiency in the medium to long-run, for those concerns that are not heard before the project begins will bubble to the surface at a later date once costs have already been sunk’.

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377 Although an evaluation of the World Bank’s Doing Business project did not find evidence that its indicators had distorted reform programs; see World Bank Independent Evaluation Group, xvi-xvii.
378 Cohen, et al., 120.
Overall assessment of land, property and business rights

Effectiveness as a development enabler
- Intensive land titling undertaken in some countries; limited progress in others.
- Formal titling schemes are resource-intensive and have produced mixed development outcomes.
- Alternative models recognizing a continuum of tenure security may be more cost-effective and limit adverse consequences of titling for the poor.
- Limited evidence of development outcomes from reform to property and business regulations.

Levels of support
- Land rights likely to be politically sensitive. Property and business regulation may also raise concerns about the imposition of specific models of governance.

Measurability
- Identification of indicators that can be applied across different contexts challenging.
- Lack of existing data on tenure security.
- Existing data on property and business rights based on surveys of a small number of experts.
PERSONAL SECURITY AND CRIMINAL JUSTICE

What is the theory of change?

The Global Thematic Consultation on Violence, Citizen Security and the Post-2015 Development Agenda in 2013 declared that ‘[m]any forms of violence are holding back states and societies from fulfilling their development potential including achieving the MDGs’ 379 According to the 2011 World Development Report, insecurity ‘has become a primary development challenge of our time’. 380 The fact that no low-income country experiencing fragility or conflict has yet achieved a single MDG is evidence of the strong connection between conflict and other development goals (see figure 15). 381 In addition:

High levels of interpersonal violence – a category that includes harmful acts perpetrated by an individual or small group (such as a gang) against a family member (as in domestic violence), community member, or stranger – pose devastating costs to development. Chronic, high rates of such violence deter investment, erode social cohesion, limit access to employment and educational opportunities, drain state resources, and threaten governance at various levels. 382

As different types of violence are connected and perpetuate one another, the consequences for development are exacerbated, with civil wars often recurring, and civil war and political violence associated with violent and organized crime. The motivations for and distinctions between different types of violence and crime are often blurred. 383

Figure 15 shows that ‘[p]eople in fragile and conflict-affected states are more likely to be impoverished, to miss out on schooling, and to lack access to basic health services’ 384 and because conflict-affected states are also making slower progress, the gaps are widening. Almost one million more children in conflict-affected countries would survive their first year if these countries had made the same progress as other developing countries. 385 Direct and indirect costs of violence can be significant:

In Brazil in 2004, the direct medical costs of all interpersonal violence were estimated at US$235 million and the indirect medical costs at US$9.2 billion. ... Emerging findings from Kenya estimate total costs of violence at 1.2 percent of GDP; .... In Guatemala, criminal violence cost an estimated US$2.4 billion, or 7.3 percent of GDP, in 2005. 386

Experience in Ethiopia, Mozambique and Rwanda has indicated that significant development progress can be made when security is reestablished. 387 Protection of women from domestic violence is also connected to improving gender equality and combating HIV. 388

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383 World Bank, World Development Report 2011, 2-4; Willman and Makisaka, 3-5, 16-19
388 UNDP, The Path to achieving the Millennium Development Goals, 30.
The scale of the global insecurity challenge is vast. It is estimated that ‘one-and-a-half billion people live in areas affected by fragility, conflict, or large-scale, organized criminal violence’. \(^{389}\) Violence also extends well beyond conflict zones, with murders far outnumbering combat deaths, and some of the highest homicide rates in countries without a legacy of formal conflict. \(^{390}\) Vulnerable groups are often

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\(^{390}\) Willman and Makisaka, 3.
worst affected by violence, lacking the resources to move to safer areas or take precautionary measures. Therefore, reducing violence could have enormous development benefits.

Reducing violence requires a broad range of interventions, many of which are unrelated to criminal justice reform. Indeed, violence and crime result from a complex interaction of numerous factors, including economic shocks, inequality of income or between religious or ethnic groups, youth unemployment, political exclusion, natural resource wealth, and rapid urbanization. As a result, criminal justice institutions cannot reduce violence in isolation, and it is increasingly recognized that ‘[m]ultisector partnerships between ministries such as those responsible for housing, health, education and employment, recreation, social services and the environment, as well as the police and justice sector, can all make a significant difference to crime levels’.

However, the 2011 World Development Report argues that while many countries experience many of the risk factors for insecurity, they are able to contain violence because of the strength and legitimacy of their institutions, including criminal justice institutions such as police and courts. Studies indicate that weak institutions increase the risk of violence, and increasing incomes alone is an insufficient strategy to address insecurity. The report therefore recommends the transformation of institutions to provide sustained security and justice (as well as jobs), and deter and effectively punish violence and crime.

**Effectiveness as a development enabler**

**Are countries pursuing criminal justice reform as a development enabler?**

Most criminal justice reform work has focused on formal institutions, particularly police and the courts, with corrections largely neglected. While police receive a much greater share of government expenditures on criminal justice than court systems, prosecutors and defenders, this largely reflects global trends and inherent costs of these services. Indeed, despite the preference for police funding, a study of three countries facing or recovering from security challenges – Cambodia, Guatemala and Nigeria – found they remained ‘underpoliced’. Traditional criminal justice reform programs have focused on revising laws, training police and judges, improving case management process and building

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infrastructure. Extending criminal justice institutions beyond urban centers, including through the use of mobile courts, is also a common feature of reform programs. In Central America, 24-hour courts have also been used to reduce pre-trial detention and expedite the hearing of simple criminal matters.  

It is, however, increasingly recognized that criminal justice reforms should be responsive to needs identified by the public, and engage directly with communities. Community oriented policing models are becoming more common, although this may require major attitudinal shifts on the part of both police forces and the public (in Brazil, only new recruits with training in community policing were installed after the military expelled drug networks from certain regions). However, many potentially valuable reform areas – such as legal drafting and administration capacity, community-based crime prevention, oversight bodies, and personnel diversity – continue to receive insufficient attention. Aspects of criminal justice reform which challenge entrenched interests, such as police professionalization, are often met with ‘apathy or covert resistance’ from governments.

Criminal justice reform is also not a mainstream donor activity, with a relatively small number of donors (mainly bilateral donors as well as the UN and European Commission) undertaking significant work in the field. The World Bank has also begun to increase its activity in this sector in response to country demand. Much donor assistance is now focused on strengthening state capacity to address transnational crime and security threats, which may be of varying relevance to development outcomes depending on the context. Furthermore, donor activities in the security field tend to be concentrated in a relatively small number of countries, often following a crisis or as part of an international intervention. Therefore, while the scale of the global insecurity problem is large, the necessary knowledge and commitment from government and donors to tackle it effectively may be lacking.

What development outcomes can be seen from criminal justice reform?

While a recent study by Haggard and Tiede found that ‘the sublimation of violence is a crucial determinant of economic performance,’ quantitative evaluations of criminal justice reform programs tend to focus on reductions in violence and crime (which is, of course, a development outcome in itself), with the benefits for other aspects of development assumed. Qualitative assessments of the effect of criminal justice reforms on violence and crime indicate disappointment with the results of programs focused solely on the functioning of formal criminal justice institutions rather than their interaction with the community and non-security institutions. These reform programs, with their formal sector and

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405 Haggard and Tiede, 681.
urban focus, may also have limited benefits for rural poor and disadvantaged groups. In some contexts, simply extending state services ‘may not be a good way to improve safety, especially where governments are vulnerable to political convulsion and law enforcement agencies use intimidation and violence to achieve security’.

In contrast, ‘efforts to facilitate local access to justice, particularly “locally appropriate” justice, and to promote responsive, accountable policing have demonstrated effective and sustainable results in many contexts across Latin America, Africa, and Asia’. In Nigeria, for example, a program to recognize and provide training and support to existing community-based informal policing groups has helped to improve their capacity, relationships with national police, and respect for human rights principles. Yet even comprehensive programs which are associated with short-term security gains may face setbacks and struggle to produce sustainable change (see box 5).

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**Box 5: Colombia**

As a country significantly affected by criminal violence, local and national governments in Colombia have undertaken major initiatives to improve security. A multifaceted program involving arms control, policing, justice, education, housing, and recreation activities in Cali was followed by a similar program in Bogotá, which saw the city’s homicide rate fall from 80 to 28 per 100,000 people between 1993 and 2004, and arrest rates increase fourfold. The Bogotá program involved data collection, alcohol and firearms control, investment in police infrastructure and management, collaboration with local residents, family police stations with legal and social services, community mediation centers, urban infrastructure renewal, civic employment programs, and public education (the relative effectiveness of each component of this program was not assessed). In 2002, the national government began a major ‘democratic security’ program, which included institutional strengthening, increases in military numbers, and a military and police initiative to restore security to the nation’s roads called ‘Live Colombia, travel across it’. From 2002 to 2008, national homicide rates fell by half, forced displacements by 60 per cent and kidnapping by 83 per cent. Over the same period, economic growth averaged 4.9 per cent a year, almost three times the growth rate from the previous seven years.

However, some security gains are now unraveling, with homicide rates rising in some areas and new organized crime groups emerging. While confidence in the government and security situation has increased, this has not been matched by sustainable institutional change. The justice system has struggled to keep place with increased caseloads, and a culture of impunity persists.


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409 Sherman, S.
What are the barriers to strengthening criminal justice institutions?

The reform of criminal justice institutions, as with all institutional reform, takes considerable time. Even if a country was to gain capacity at the pace of the fastest performers, it may still take a generation to raise institutional performance from that of a fragile country to that of a functional, yet still developing, country. In some cases, particularly post-conflict settings, police forces and courts may be so weak, compromised, or limited in reach that rebuilding, rather than reform, is necessary. Sustained commitment, both political and financial, is therefore required to achieve success. Yet international assistance for criminal justice reform is less readily available than support for economic and social programs, and is rarely sustained for a sufficient period of time to generate lasting results. Furthermore, the types of institutions donors seek to develop are often unsustainable, leaving countries with significant salary and equipment maintenance costs. In Sierra Leone, for example, the government is struggling to cover recurrent costs, even with half of its budget funded by donors.

Criminal justice reform efforts must involve police, courts, and corrections simultaneously, as these agencies ‘are so interrelated that any effective program of assistance must include each component’. Experience in Haiti has shown that improved police capacity may overwhelm poorly-resourced courts and correctional facilities, and the resulting lack of judicial oversight can reverse improvements in police accountability and professionalism. Such comprehensive reform, however, requires simultaneous commitment from and resourcing for multiple criminal justice agencies.

Furthermore, ‘fighting crime engages a much larger and more complex legal, political, social and economic matrix’ and strategies which do not engage social service agencies and civil society may produce limited, or even adverse, results. Mexico’s experience with drug violence has shown that an ‘overly security-oriented approach can actually escalate violence, with negative short-term consequences for public safety’. Although investments in crime prevention may take longer to show results, and may be difficult to scale up to a national level, they can be more cost-effective than crime control measures. For example, a study in Brazil found that prevention programs targeting high-risk groups and previous offenders were more cost-effective than reactive policing programs.

Programs to reform police forces may also face significant internal barriers. For example, democratic transitions in Latin America have failed to produce expected reductions in human rights abuses by

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415 Sherman, 11; Stromsem and Joseph Trincellito, 4; World Bank, World Development Report 2011, 18-19.  
416 Prado, Trebilcock and Hartford, 256; Sherman, 1.  
417 Sherman, 7.  
418 Hammergren, Balanced Justice and Donor Programs, 25.  
420 Sherman, 7.
police. Rather than being accountable to the public, police forces can be an instrument for political, economic or criminal elites to maintain power, or for discrimination against marginalized groups. Efforts to strengthen police forces must therefore be accompanied by improved accountability.

**Likely level of support for including security and criminal justice in the post-2015 agenda**

Personal security is a fundamental human right. The Universal Declaration of Human Rights states that ‘[e]veryone has the right to life, liberty and security of person’. The Declaration, along with the International Covenant on Civil and Political Rights, also sets out a range of obligations for the treatment of persons accused and convicted of crimes. The UN has produced an extensive range of standards for crime prevention and criminal justice: most recently the ‘Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems’, endorsed by the General Assembly in 2012. However:

> [p]ersonal security is, by definition, a highly political issue touching on essential functions of the state, the nature of the social contract, and the effectiveness of service delivery, particularly security organs. Discussions of homicidal violence, conflict-related deaths, extra-judicial killings, sexual violence, physical assault, property theft and population displacement are, unfortunately, still taboo in many countries.

While there is increasing attention to the connection between security and development, including as a result of the 2011 World Development Report and initiatives such as the g7+ grouping of fragile and conflict-affected countries, there are states that do not yet respond to the UN Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS) despite having necessary data. Although this mainly reflects coordination, communication and resource challenges, at times there is also a lack of interest on the part of some countries to respond. Countries with high levels of violence, particularly Latin America and Caribbean countries where homicide rates are high and in some cases increasing, may resist the inclusion of an indicator of personal security that derives from data on police-recorded crime (although measuring the extent of recent improvements, rather than the incidence of lethal violence at one point in time, may reduce such concerns, as might an appraisal of the

421 Prado, Trebilcock and Hartford, 255.
422 Sherman, 1-3, 6; Prado, Trebilcock and Hartford, 262; UNDP, Programming for Justice, 124.
423 Universal Declaration of Human Rights, Article 3.
424 See Universal Declaration of Human Rights, Articles 5, 10, 11 and International Covenant on Civil and Political Rights, Articles 6-7, 9-10, 14-15.
428 Muggah.
429 See http://www.g7plus.org/.
431 Enrico Bisogno, UNODC, personal interview (12 February 2013).
distribution of violence and safety across urban centers).\textsuperscript{432} Indicators of the accountability of criminal justice institutions will likely be more sensitive than those which address resourcing levels.\textsuperscript{433}

In terms of framing, “personal security” is easy to communicate and its connection to development apparent. There may be less support for references to criminal justice, as those interacting with the criminal justice system may not be sympathetic figures around which to rally development funds, even though ‘the overwhelming majority of people who are detained and sentenced to prison are poor and vulnerable’.\textsuperscript{434}

**Measurability of personal security and criminal justice**

**Are there good indicators for personal security and criminal justice?**

Potential indicators of personal security and criminal justice could be outcome measures, such as rates of violence and crime, or public perceptions of safety.\textsuperscript{435} Measures of the reach and functioning of criminal justice institutions, particularly police, criminal courts and correctional facilities, or public perceptions of those institutions, could also be considered. While these indicators provide only limited information on whether criminal justice institutions are complying with international human rights standards, such indicators, although extremely important, are largely beyond the scope of this analysis.

Rates of violence and crime as recorded by the police are a useful indicator of personal security, although they have limitations. Not all crimes are reported, and those reported may not be recorded by police, including as a result of discretionary decisions about evidentiary standards.\textsuperscript{436} Rates of crime reporting also vary over time within countries, and evidence from England suggests that reporting rates can be influenced by location, crime levels, perceptions of police effectiveness, presence of insurance, income, type of crime, and the time of day when the incident occurred.\textsuperscript{437}

Official crime rates can be supplemented by victimization surveys. Public surveys asking people whether they have been victims of crime can be used to supplement and verify official crime rates to determine true crime levels. Discrepancies between the two may also be a useful indicator of levels of access to or confidence in the police, although other factors discussed above also affect reporting levels.\textsuperscript{438}

\textsuperscript{432} Todd Foglesong, Harvard Kennedy School, personal interview (25 January 2013).
\textsuperscript{433} Jim Parsons, Vera Institute of Justice, personal interview (20 February 2013).
\textsuperscript{435} Muggah.
\textsuperscript{437} MacDonald, F91, F96, F101.
\textsuperscript{438} OHCHR, 153-54; Heiskanen, 34.
Different types of crime may be more or less relevant to experiences of security in different countries, and in different parts of the same country, with crime varying between urban and rural areas, violence less frequent in parts of Asia, property crime more common in developed countries, and kidnapping varying widely across regions. The homicide rate is considered the ‘most reliable indicator to compare violence across countries’. While security challenges may vary across different contexts, high levels of lethal violence are strongly suggestive of low levels of security. It is also a sensitive indicator that can change rapidly. As reporting rates for homicides are high, and reported homicides usually recorded by police, official rates of homicide are likely to more closely approximate true levels than for other crimes.

Rates of gender-based violence, including sexual and domestic violence, are also an important indicator of insecurity among women, although would require survey data due to severe underreporting in official statistics (which also means it would be desirable in many contexts for reported rates of violence against women to increase, rather than decrease). The proportion of violent crimes against women (along with other serious crimes) handled by informal justice systems may also be indicative of human rights violations. However, formal justice systems may not necessarily provide better protections for women, suggesting indicators of the treatment of women in both systems would also be useful.

As with access to civil justice, measures of the size, reach and efficiency of criminal justice institutions pose problems as ideal levels are unknown. Appropriate numbers of police, for example, will vary greatly by context. Most efficiency measures are only meaningful in the context of the operation of the entire criminal justice system. The proportion of prisoners in pretrial detention – a commonly cited indicator for human rights reasons – could indicate excessive delays in criminal courts, but will also depend on detainment practices as well as sentencing practices (as increased custodial sentences will reduce the proportion of pre-trial detainees). The number of people held in pre-trial detention for more than 12 months may be more informative as an indicator of problems across the spectrum of criminal justice institutions with serious consequences for human rights. Similarly, rates of convictions per prosecutor or suspects identified per police officer are not informative without greater

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441 Muggah; Parsons, ‘Developing Clusters of Indicators,’ 180; Prado, Trebilcock and Hartford, 254; Malby, 7.

442 Heiskanen, 34; Willman and Makisaka, 49; Enrico Bisogno, UNODC, personal interview (12 February 2013).

443 Jim Parsons, Vera Institute of Justice, personal interview (15 February 2013).

444 Jim Parsons, Vera Institute of Justice, personal interview (15 February 2013); see also UNDP, Programming for Justice, 102.


446 Hammergren, 306.


448 Jim Parsons, Vera Institute of Justice, personal interview (15 February 2013).
context.\textsuperscript{449} Such measures are probably most useful for equity purposes, in highlighting discrepancies in system reach across rich and poor, or urban and rural, areas.\textsuperscript{450}

Perceptions data on safety are volatile and strongly influenced by media reporting. For example, in Sierra Leone the proportion of residents reporting that they felt very safe went from 15, to 30, to 8 per cent over only three years.\textsuperscript{451} Perceptions of the accessibility and responsiveness of the police (eg. ability to report a crime within a certain timeframe) may be a more informative indicator of criminal justice performance,\textsuperscript{452} although institutional reputations are also vulnerable to media reporting. Although institutional reputations are difficult to change, they may still be more actionable than perceptions of general safety or crime rates which have complex social and economic drivers beyond the control of criminal justice institutions.\textsuperscript{453} Perceptions of specific issues, or hypothetical scenarios, may be more informative than general notions of trust or corruption, and people may be better able to assess police than other criminal justice institutions where interactions are more rare.\textsuperscript{454}

**Is data available or attainable at reasonable cost?**

International mechanisms already exist to collect official crime data and administrative data on criminal justice institutions. The primary source is the UN Survey on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS), which the UN Office on Drugs and Crime (UNODC) conducts on an annual basis.\textsuperscript{455} This data is supplemented by data from Interpol, Eurostat, the Organization of American States, UNICEF, and the WHO.\textsuperscript{456} The best data is available on homicides. UNODC reports administrative data on homicides for every country for at least one year since 2000, with the most data from 2008 (covering 187 countries).\textsuperscript{457} In many developing regions, and particularly Africa and Southeast Asia, public health agencies report much higher rates of homicide than criminal justice agencies, underlining the importance of improving police data (see figure 16).\textsuperscript{458}

\begin{flushright}
\footnotesize

\textsuperscript{450} Parsons, et al., *Developing Indicators to Measure the Rule of Law*, 9.


\textsuperscript{452} Parsons, et al., *Developing Indicators to Measure the Rule of Law*, 12.

\textsuperscript{453} Jim Parsons, Vera Institute of Justice, personal interview (15 February 2013); HKS, Program in Criminal Justice Policy and Management, *Sense of Safety*.

\textsuperscript{454} Jim Parsons, Vera Institute of Justice, personal interview (15 February 2013).


\textsuperscript{458} Malby, 7-12; See also Willman and Makisaka, 16.
\end{flushright}
UNODC also provides statistics on a range of other crimes, including assaults and robbery, which are available for 122 countries for at least one year between 2003 and 2010. Data is also available on the number of persons convicted of rape (from 78 countries for at least one year between 2003 and 2010). In addition to crime rates, the UN-CTS also asks questions about the size and functioning of criminal justice institutions, including budgets and personnel numbers, suspects identified, arrests made, persons prosecuted and convicted, and prison populations. Extensive data on prison populations are also collected by the International Centre for Prison Studies.

However, many developing countries still lack sufficient data to complete the UN-CTS survey. Generally less than 50 per cent of countries return each survey, and only 80 per cent of responding countries were able to answer more than half of the questions in the Tenth UN-CTS (2005-06). More countries can provide data on police than on courts and prisons, with 21 out of 93 respondents to the Tenth UN-CTS not returning either the prosecution or courts section, and 15 not returning prison statistics. Furthermore, figure 17 shows that the provision of data has generally declined since the

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463 Alvazzi del Frate, 171-3.
464 Alvazzi del Frate, 168, 174; Paul Smit and Stefan Harrendorf, ‘Responses of the criminal justice system,’ in Stefan Harrendorf, Markku Heiskanen and Steven Malby, eds., International Statistics on Crime and Justice (UNODC and European Institute for
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Fifth UN-CTS in 1996.\textsuperscript{465} UNODC is seeking to improve data collection and quality through a system of national focal points (which have currently been established in around 100 countries) as well as by exploring options for internet-based data collection methods, and there is increasing interest in collecting and utilizing data among national criminal justice institutions.\textsuperscript{466}

**Figure 17**

![Figure 2. Number of member states responding to the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (UN-CTS), by main regions (1978-2010)](image)


Victimization surveys, which would be a useful complement to administrative data on criminal justice, are currently rare in the developing world,\textsuperscript{467} although ‘[s]ome countries that include Cambodia, Colombia, Dominican Republic, Haiti, Peru and Zambia have included a module on violence against women in their national health surveys’.\textsuperscript{468} There is often limited coordination among development agencies on the conduct of surveys.\textsuperscript{469} Surveys that are conducted tend to be ad hoc, uncoordinated and limited in scope, and their limited sustainability over time makes them not well suited for ongoing monitoring.\textsuperscript{470} Gallup currently includes questions on experiences of assaults, mugging and theft in the previous year in its surveys.\textsuperscript{471} The World Justice Project also conducts surveys on experiences of murder and break-ins.\textsuperscript{472}

Public perceptions data on safety and the performance of criminal justice institutions is also largely collected by NGOs and private polling entities. Gallup conducts surveys on perceptions of safety walking alone at night and confidence in the local police force.\textsuperscript{473} The World Justice Project also includes questions on the likelihood of interpersonal disputes leading to violence, and the likelihood of

\begin{itemize}
  \item Alvazzi del Frate, 171.
  \item Enrico Bisogno, UNODC, personal interview (12 February 2013).
  \item Heiskanen, 34.
  \item Willman and Makisaka, 49.
  \item Jim Parsons, Vera Institute of Justice, personal interview (15 February 2013).
  \item Enrico Bisogno, UNODC, personal interview (12 February 2013).
  \item Gallup World View, \textit{Assaulted in Past Year}, \url{https://worldview.gallup.com/default.aspx}; Gallup World View, \textit{Money/Property Stolen}, \url{https://worldview.gallup.com/default.aspx}.
  \item Botero and Ponce, 43.
\end{itemize}
murderers being prosecuted and convicted in its public surveys.\textsuperscript{474} Regional survey organisations, such as Afrobarometer, also currently collect data on crime and criminal justice.\textsuperscript{475}

Can the data be compared across countries?

The comparability of crime rates across countries is affected by several factors (different reporting rates, operational and statistical capacity, procedural and legal frameworks), as well as because of the use of different definitions of crimes, and UNODC is currently working with countries to improve the consistency of definitions across jurisdictions by developing an International Classification of Crime for Statistical Purposes.\textsuperscript{476} As the proportion of crime recorded is influenced by police capability (which can lead to higher detection and reporting), official crime rates may appear comparatively higher in developed countries.\textsuperscript{477} Victimization surveys may, therefore, produce statistics that are more comparable across countries.

Even for homicide, where reporting and recording are high, definitions of intention vary, and distinctions between conflict deaths and crimes may affect data from conflict-affected countries.\textsuperscript{478} Some countries include deaths involving police action, or deaths from terrorist incidents, in homicide statistics, while others do not.\textsuperscript{479} Homicide rates will also be affected by access to emergency medical services, making poorer countries appear more violent.\textsuperscript{480}

As noted previously, perceptions of safety or criminal justice institutions pose significant comparability challenges, due to the influence of the media and expectations of security. As a result, developing countries may perform no worse, or better than, developed countries. For example, 85 per cent of Indonesian respondents to a Gallup poll report being confident in local police, compared to 74 per cent of Japanese respondents, despite Japan having a much lower homicide rate.\textsuperscript{481}

\textsuperscript{474} Botero and Ponce, 43, 52.
\textsuperscript{476} Enrico Bisogno, UNODC, personal interview (12 February 2013); see also MacDonald, F90-91, F94.
\textsuperscript{477} Heiskanen, 34.
\textsuperscript{478} Malby, 7.
\textsuperscript{479} Enrico Bisogno, UNODC, personal interview (12 February 2013).
\textsuperscript{480} Parsons, ‘Developing Clusters of Indicators,’ 180; Botero, Nelson and Pratt, 158.
For measures of system reach and functioning, criminal justice systems present similar challenges to civil justice systems. As well as capturing different types of courts and court personnel fulfilling different duties across a range of common, civil and other legal systems, administrative data on criminal justice systems will capture different types of police forces conducting different ranges of tasks, and may or may not include traffic, border, military, secret service, taxation, customs and court police. Whether administrative staff are included or excluded is often also unclear. Furthermore, ideal levels of system reach are unknown and context-specific. Where crime rates are low, fewer police and judges may be required. Figure 18 shows that numbers of police and judges per 100,000 population vary considerably across regions. Data on prison systems present similar challenges, with staff/inmate ratios depending on corrections approaches and technology, and prison populations per 100,000 residents depending on whether pre-trial detainees and those with drug or mental health issues are included.

Would the inclusion of personal security and criminal justice generate any perverse incentives?

The inclusion of indicators on crime rates, if not balanced by indicators on police professionalism and respect for human rights, could be perceived to encourage a coercive or heavy-handed approach to policing. Such policing approaches may also be counter-productive to longer-term security and rule of law goals, as they may alienate communities and perpetuate a culture of impunity.

Overall assessment of personal security and criminal justice

Effectiveness as a development enabler

Disappointment with reform programs focused solely on formal institutional strengthening.

Drivers of crime are complex and often beyond the control of criminal justice institutions.

Better security gains from multi-faceted, community-based models.

Institutional reform a generational challenge.

Levels of support

May raise political sensitivities.

Institutional accountability more sensitive than crime rates.

Measurability

Crime data more informative than institutional data which lacks comparability.

Good international reporting systems for administrative data.

Homicide data most accurate and available.

Victimization surveys currently limited.

Complementary data on criminal justice accountability would be valuable.

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482 Harrendorf and Smit, 114; see also 116, 118.
483 Harrendorf and Smit, 114.
484 Hammergren, 306.
485 Harrendorf and Smit, 119-120.
486 Parson, ‘Developing Clusters of Indicators,’ 174.
RECOMMENDATIONS

The theories of change underlying each of the rule of law reform areas considered in this paper are strong. The post-2015 development agenda will require difficult choices to be made among many worthy goals, both within and beyond the rule of law realm. Based on the evaluation criteria used in this paper – effectiveness and use as an enabler by states; likely support from states and other stakeholders; and measurability – the prospects for including each reform area are summarized below. Many of the challenges to inclusion discussed here could, however, be overcome with the necessary commitment and investment from states. Indeed, the post-2015 development agenda presents a rare and important opportunity to address these challenges and begin to improve global use and understanding of the rule of law as an enabler of sustainable development.

Strong potential for inclusion

- **Personal security** is a core state function and police services tend to be recipients of both state resources and donor support. While potentially raising sensitivities, it is a fundamental human right and the connection between security and development is increasingly recognized. Homicide rates would be a relatively informative and comparable indicator, with good data availability and an existing international reporting mechanism. Given the complex drivers of crime and insecurity, however, a crime rate indicator may be difficult to translate into actionable policy responses.
  - A crime rate indicator should be balanced with an indicator on criminal justice accountability (see below) to limit perverse incentives.

- **Birth registration** exists in virtually all countries, and most countries are seeking to increase coverage, although at varying speeds. Birth registration is a universally acknowledged human right and is complementary to the expansion of services and opportunities envisioned in the post-2015 agenda. It is the most widely applicable and comparable indicator of legal identity, and good data and an international reporting mechanism exist.
  - Attempts to increase birth registration by making it mandatory, or a requirement to access services, should, however, be discouraged.
  - While birth registration ideally operates within a full civil registration system, the non-birth aspects of civil registration have less connection to human rights and legal empowerment, which may reduce the prospects of including an indicator on civil registration more broadly.

Valuable for inclusion, but with challenges

- **Access to justice** is increasingly embraced by countries as a development enabler, and new pro-poor approaches are beginning to overcome cost and scale barriers to improving access. Its importance is uncontroversial: indeed, including the rule of law without some measure of people’s ability to access justice services and forums is likely to appear inadequate to most observers. However, identifying informative and internationally-comparable indicators presents significant challenges – perceptions data may capture the broadest range of experiences, but also lacks comparability. Data availability and international reporting mechanisms are currently inadequate.
Building on existing knowledge about delivering pro-poor justice services at scale will be important.
Investments in local data collection capacity should be increased to enable inclusion.
Further research on potential indicators should be undertaken in consultation with developing countries.

- **Land rights** have significant potential to promote development as countries increasingly adopt locally-appropriate, lower-cost and pro-poor methods to increase security of tenure. However, land can be politically sensitive and divisive, and tends not to feature in international human rights documents. Furthermore, the need for context-specific approaches makes it difficult to identify internationally-comparable indicators. Data availability and international reporting mechanisms are currently weak, and have inhibited efforts to measure urban tenure security in the MDG framework.
  - Further research on potential indicators should be undertaken.
  - Investments in local data collection capacity should be increased to enable inclusion.
  - Engagement with developing countries on appropriate indicators may help to overcome political sensitivities.

### Reasonable potential for inclusion

- **A criminal justice accountability** indicator to complement a personal security indicator would have value and reasonable potential for inclusion. An informative indicator on pre-trial detention could probably be identified, and data is available. Data on police accountability may have less comparability, may be more sensitive, and would require investment in data collection.

### Limited potential for inclusion

- **Property and business regulation** may have limited potential for inclusion due to the context-specific nature of economic regulation, which makes ideal types difficult to identify. While the World Bank’s Doing Business project collects a significant amount of data, the type of data (expert opinion, small samples, highly specific scenarios) is probably unsuited to a post-2015 agreement.
### Official list of MDG indicators

All indicators should be disaggregated by sex and urban/rural as far as possible.

*Effective 15 January 2008*

<table>
<thead>
<tr>
<th>Millennium Development Goals (MDGs)</th>
<th>Indicators for monitoring progress</th>
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<tbody>
<tr>
<td><strong>Goal 1: Eradicate extreme poverty and hunger</strong></td>
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| Target 1.A: Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day | Proportion of population below $1 (PPP) per day
Poverty gap ratio
Share of poorest quintile in national consumption |
| Target 1.B: Achieve full and productive employment and decent work for all, including women and young people | Growth rate of GDP per person employed
Employment-to-population ratio
Proportion of employed people living below $1 (PPP) per day
Proportion of own-account and contributing family workers in total employment |
| Target 1.C: Halve, between 1990 and 2015, the proportion of people who suffer from hunger | Prevalence of underweight children under-five years of age
Proportion of population below minimum level of dietary energy consumption |
| **Goal 2: Achieve universal primary education** | |
| Target 2.A: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling | Net enrolment ratio in primary education
Proportion of pupils starting grade 1 who reach last grade of primary
Literacy rate of 15-24 year-olds, women and men |
| **Goal 3: Promote gender equality and empower women** | |
| Target 3.A: Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015 | Ratios of girls to boys in primary, secondary and tertiary education
Share of women in wage employment in the non-agricultural sector
Proportion of seats held by women in national parliament |
| **Goal 4: Reduce child mortality** | |
| Target 4.A: Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate | Under-five mortality rate
Infant mortality rate
Proportion of 1 year-old children immunised against measles |
| **Goal 5: Improve maternal health** | |
| Target 5.A: Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio | Maternal mortality ratio
Proportion of births attended by skilled health personnel |

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### Target 5.B: Achieve, by 2015, universal access to reproductive health

- Contraceptive prevalence rate
- Adolescent birth rate
- Antenatal care coverage (at least one visit and at least four visits)
- Unmet need for family planning

### Goal 6: Combat HIV/AIDS, malaria and other diseases

#### Target 6.A: Have halted by 2015 and begun to reverse the spread of HIV/AIDS

- HIV prevalence among population aged 15-24 years
- Condom use at last high-risk sex
- Proportion of population aged 15-24 years with comprehensive correct knowledge of HIV/AIDS
- Ratio of school attendance of orphans to school attendance of non-orphans aged 10-14 years

#### Target 6.B: Achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it

- Proportion of population with advanced HIV infection with access to antiretroviral drugs

#### Target 6.C: Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases

- Incidence and death rates associated with malaria
- Proportion of children under 5 sleeping under insecticide-treated bednets
- Proportion of children under 5 with fever who are treated with appropriate anti-malarial drugs
- Incidence, prevalence and death rates associated with tuberculosis
- Proportion of tuberculosis cases detected and cured under directly observed treatment short course

### Goal 7: Ensure environmental sustainability

#### Target 7.A: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources

- Proportion of land area covered by forest
- CO2 emissions, total, per capita and per $1 GDP (PPP)
- Consumption of ozone-depleting substances
- Proportion of fish stocks within safe biological limits
- Proportion of total water resources used
- Proportion of terrestrial and marine areas protected
- Proportion of species threatened with extinction

#### Target 7.B: Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss

- Proportion of population using an improved drinking water source
- Proportion of population using an improved sanitation facility

#### Target 7.C: Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation

- Proportion of urban population living in slums

#### Target 7.D: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers

- Proportion of urban population living in slums

### Goal 8: Develop a global partnership for development

#### Target 8.A: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system

- Includes a commitment to good governance, development and poverty reduction – both nationally and internationally

#### Target 8.B: Address the special needs of the least developed countries

- Some of the indicators listed below are monitored separately for the least developed countries (LDCs), Africa, landlocked developing countries and small island developing States.
- Official development assistance (ODA)
- Net ODA, total and to the least developed countries, as percentage of OECD/DAC donors’ gross national income
- Proportion of total bilateral, sector-allocable ODA of OECD/DAC donors to basic social services (basic education, primary health care, nutrition, safe water and sanitation)
- Proportion of bilateral official development assistance of OECD/DAC donors that is untied
- ODA received in landlocked developing countries as a proportion of their
The Millennium Development Goals and targets come from the Millennium Declaration, signed by 189 countries, including 147 heads of State and Government, in September 2000 (http://www.un.org/millennium/declaration/ares552e.htm) and from further agreement by member states at the 2005 World Summit (Resolution adopted by the General Assembly - A/RES/60/1, http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/60/1). The goals and targets are interrelated and should be seen as a whole. They represent a partnership between the developed countries and the developing countries “to create an environment – at the national and global levels alike – which is conducive to development and the elimination of poverty”.

a For monitoring country poverty trends, indicators based on national poverty lines should be used, where available.

b The actual proportion of people living in slums is measured by a proxy, represented by the urban population living in households with at least one of the four characteristics: (a) lack of access to improved water supply; (b) lack of access to improved sanitation; (c) overcrowding (3 or more persons per room); and (d) dwellings made of non-durable material.
APPENDIX B

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/55/L.2)]

55/2. United Nations Millennium Declaration ⁴⁸⁹

The General Assembly

Adopts

the following Declaration:

United Nations Millennium Declaration

I. Values and principles

1. We, heads of State and Government, have gathered at United Nations Headquarters in New York from 6 to 8 September 2000, at the dawn of a new millennium, to reaffirm our faith in the Organization and its Charter as indispensable foundations of a more peaceful, prosperous and just world.

2. We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world’s people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.

3. We reaffirm our commitment to the purposes and principles of the Charter of the United Nations, which have proved timeless and universal. Indeed, their relevance and capacity to inspire have increased, as nations and peoples have become increasingly interconnected and interdependent.

4. We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect for their territorial integrity and political independence, resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without

distinction as to race, sex, language or religion and international cooperation in solving international problems of an economic, social, cultural or humanitarian character.

5. We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world’s people. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognize that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable. These efforts must include policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with their effective participation.

6. We consider certain fundamental values to be essential to international relations in the twenty-first century. These include:

- **Freedom.** Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.

- **Equality.** No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.

- **Solidarity.** Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.

- **Tolerance.** Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.

- **Respect for nature.** Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.

- **Shared responsibility.**

Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.

7. In order to translate these shared values into actions, we have identified key objectives to which we assign special significance.
II. Peace, security and disarmament

8. We will spare no effort to free our peoples from the scourge of war, whether within or between States, which has claimed more than 5 million lives in the past decade. We will also seek to eliminate the dangers posed by weapons of mass destruction.

9. We resolve therefore:

• To strengthen respect for the rule of law in international as in national affairs and, in particular, to ensure compliance by Member States with the decisions of the International Court of Justice, in compliance with the Charter of the United Nations, in cases to which they are parties.

• To make the United Nations more effective in maintaining peace and security by giving it the resources and tools it needs for conflict prevention, peaceful resolution of disputes, peacekeeping, post-conflict peace-building and reconstruction. In this context, we take note of the report of the Panel on United Nations Peace Operations and request the General Assembly to consider its recommendations expeditiously.

• To strengthen cooperation between the United Nations and regional organizations, in accordance with the provisions of Chapter VIII of the Charter.

• To ensure the implementation, by States Parties, of treaties in areas such as arms control and disarmament and of international humanitarian law and human rights law, and call upon all States to consider signing and ratifying the Rome Statute of the International Criminal Court.

• To take concerted action against international terrorism, and to accede as soon as possible to all the relevant international conventions.

• To redouble our efforts to implement our commitment to counter the world drug problem.

• To intensify our efforts to fight transnational crime in all its dimensions, including trafficking as well as smuggling in human beings and money laundering.

• To minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties.

• To strive for the elimination of weapons of mass destruction, particularly nuclear weapons, and to keep all options open for achieving this aim, including the possibility of convening an international conference to identify ways of eliminating nuclear dangers.

• To take concerted action to end illicit traffic in small arms and light weapons, especially by making arms transfers more transparent and supporting regional disarmament measures, taking account of all the recommendations of the forthcoming United Nations Conference on Illicit Trade in Small Arms and Light Weapons.
• To call on all States to consider acceding to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, as well as the amended mines protocol to the Convention on conventional weapons.

10. We urge Member States to observe the Olympic Truce, individually and collectively, now and in the future, and to support the International Olympic Committee in its efforts to promote peace and human understanding through sport and the Olympic Ideal.

III. Development and poverty eradication

11. We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.

12. We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty.

13. Success in meeting these objectives depends, inter alia, on good governance within each country. It also depends on good governance at the international level and on transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system.

14. We are concerned about the obstacles developing countries face in mobilizing the resources needed to finance their sustained development. We will therefore make every effort to ensure the success of the High-level International and Intergovernmental Event on Financing for Development, to be held in 2001.

15. We also undertake to address the special needs of the least developed countries. In this context, we welcome the Third United Nations Conference on the Least Developed Countries to be held in May 2001 and will endeavour to ensure its success. We call on the industrialized countries:

• To adopt, preferably by the time of that Conference, a policy of duty- and quota-free access for essentially all exports from the least developed countries;

• To implement the enhanced programme of debt relief for the heavily indebted poor countries without further delay and to agree to cancel all official bilateral debts of those countries in return for their making demonstrable commitments to poverty reduction; and

• To grant more generous development assistance, especially to countries that are genuinely making an effort to apply their resources to poverty reduction.

16. We are also determined to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term.
17. We also resolve to address the special needs of small island developing States, by implementing the Barbados Programme of Action and the outcome of the twenty-second special session of the General Assembly rapidly and in full. We urge the international community to ensure that, in the development of a vulnerability index, the special needs of small island developing States are taken into account.

18. We recognize the special needs and problems of the landlocked developing countries, and urge both bilateral and multilateral donors to increase financial and technical assistance to this group of countries to meet their special development needs and to help them overcome the impediments of geography by improving their transit transport systems.

19. We resolve further:

• To halve, by the year 2015, the proportion of the world’s people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.

• To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.

• By the same date, to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.

• To have, by then, halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.

• To provide special assistance to children orphaned by HIV/AIDS.

• By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the “Cities Without Slums” initiative.

20. We also resolve:

• To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

• To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.

• To encourage the pharmaceutical industry to make essential drugs more widely available and affordable by all who need them in developing countries.

• To develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.
• To ensure that the benefits of new technologies, especially information and communication technologies, in conformity with recommendations contained in the ECOSOC 2000 Ministerial Declaration, are available to all.

IV. Protecting our common environment

21. We must spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs.

22. We reaffirm our support for the principles of sustainable development, including those set out in Agenda 21, agreed upon at the United Nations Conference on Environment and Development.

23. We resolve therefore to adopt in all our environmental actions a new ethic of conservation and stewardship and, as first steps, we resolve:

• To make every effort to ensure the entry into force of the Kyoto Protocol, preferably by the tenth anniversary of the United Nations Conference on Environment and Development in 2002, and to embark on the required reduction in emissions of greenhouse gases.

• To intensify our collective efforts for the management, conservation and sustainable development of all types of forests.

• To press for the full implementation of the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.

• To stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies.

• To intensify cooperation to reduce the number and effects of natural and man-made disasters.

• To ensure free access to information on the human genome sequence.

V. Human rights, democracy and good governance

24. We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.

25. We resolve therefore:

• To respect fully and uphold the Universal Declaration of Human Rights.
• To strive for the full protection and promotion in all our countries of civil, political, economic, social and cultural rights for all.

• To strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, including minority rights.

• To combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women.

• To take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.

• To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries.

• To ensure the freedom of the media to perform their essential role and the right of the public to have access to information.

VI. Protecting the vulnerable

26. We will spare no effort to ensure that children and all civilian populations that suffer disproportionately the consequences of natural disasters, genocide, armed conflicts and other humanitarian emergencies are given every assistance and protection so that they can resume normal life as soon as possible.

We resolve therefore:

• To expand and strengthen the protection of civilians in complex emergencies, in conformity with international humanitarian law.

• To strengthen international cooperation, including burden sharing in, and the coordination of humanitarian assistance to, countries hosting refugees and to help all refugees and displaced persons to return voluntarily to their homes, in safety and dignity and to be smoothly reintegrated into their societies.

• To encourage the ratification and full implementation of the Convention on the Rights of the Child and its optional protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

VII. Meeting the special needs of Africa

27. We will support the consolidation of democracy in Africa and assist Africans in their struggle for lasting peace, poverty eradication and sustainable development, thereby bringing Africa into the mainstream of the world economy.

28. We resolve therefore:
• To give full support to the political and institutional structures of emerging democracies in Africa.

• To encourage and sustain regional and subregional mechanisms for preventing conflict and promoting political stability, and to ensure a reliable flow of resources for peacekeeping operations on the continent.

• To take special measures to address the challenges of poverty eradication and sustainable development in Africa, including debt cancellation, improved market access, enhanced Official Development Assistance and increased flows of Foreign Direct Investment, as well as transfers of technology.

• To help Africa build up its capacity to tackle the spread of the HIV/AIDS pandemic and other infectious diseases.

VIII. Strengthening the United Nations

29. We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home.

30. We resolve therefore:

• To reaffirm the central position of the General Assembly as the chief deliberative, policy-making and representative organ of the United Nations, and to enable it to play that role effectively.

• To intensify our efforts to achieve a comprehensive reform of the Security Council in all its aspects.

• To strengthen further the Economic and Social Council, building on its recent achievements, to help it fulfil the role ascribed to it in the Charter.

• To strengthen the International Court of Justice, in order to ensure justice and the rule of law in international affairs.

• To encourage regular consultations and coordination among the principal organs of the United Nations in pursuit of their functions.

• To ensure that the Organization is provided on a timely and predictable basis with the resources it needs to carry out its mandates.

• To urge the Secretariat to make the best use of those resources, in accordance with clear rules and procedures agreed by the General Assembly, in the interests of all Member States, by adopting the best management practices and technologies available and by concentrating on those tasks that reflect the agreed priorities of Member States.
• To promote adherence to the Convention on the Safety of United Nations and Associated Personnel.

• To ensure greater policy coherence and better cooperation between the United Nations, its agencies, the Bretton Woods Institutions and the World Trade Organization, as well as other multilateral bodies, with a view to achieving a fully coordinated approach to the problems of peace and development.

• To strengthen further cooperation between the United Nations and national parliaments through their world organization, the Inter-Parliamentary Union, in various fields, including peace and security, economic and social development, international law and human rights and democracy and gender issues.

• To give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization’s goals and programmes.

31. We request the General Assembly to review on a regular basis the progress made in implementing the provisions of this Declaration, and ask the Secretary-General to issue periodic reports for consideration by the General Assembly and as a basis for further action.

32. We solemnly reaffirm, on this historic occasion, that the United Nations is the indispensable common house of the entire human family, through which we will seek to realize our universal aspirations for peace, cooperation and development. We therefore pledge our unstinting support for these common objectives and our determination to achieve them.

8th plenary meeting
8 September 2000
**INTERVIEWEES**

I would like to thank the following people for sharing their experience and valuable insights to inform my analysis.

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