
UNDESA High Level Joint Expert Group Meeting on E-Participation: Empowering People through Information Communication Technologies (ICTs)

IDLO Draft Concept Paper

Sharing the benefits of Information Communication Technologies:

The role of justice and the rule of law in the post-2015 development framework

The Millennium Development Goals have reaped significant gains. Overall levels of poverty have fallen, girls' education levels have risen, malaria and HIV/AIDS have been reduced. The setting up of specific goals improved monitoring and accountability of long-term development targets and provided governments with the opportunity to confront and address important development concerns.

But persistent obstacles continue to undermine the realization of basic economic and social rights and many countries are lagging behind in the realization of the MDGs. Emerging and complex development challenges such as food and energy insecurity, global inequalities and entrenched discrimination have remained mostly unaddressed. Despite tremendous advances in science, technology and innovation, too often the benefits of such progresses are not shared fairly.

In a world increasingly characterized by inter-connected technologies, science and innovation can be powerful enablers and drivers of sustainable development. However, in order to be sustainable, the rapid economic shifts envisaged in the post-2015 agenda need to be supported by fair laws and regulations, and based on solid principles of justice, equality and non-discrimination. Recognizing more than ever the critical role of science, technology and innovation in poverty reduction and the achievement of sustainable development objectives, we must now focus on the regulatory environments needed to foster the equitable sharing of scientific benefits and innovation. A culture of justice based on the rule of law is integral to ensuring that the benefits of science, technology and innovation are shared fairly and contribute effectively to achieving the post-2015 agenda for sustainable development.

There is a natural partnership between the sciences, technologies and innovations critical to sustainable development and the rule of law. New sciences and technologies can be used to strategically leverage growth for socioeconomic development, encourage investment and are crucial to sustainable development. However, open innovation, science and technology need to produce more than growth – they need to produce *sustainable* economic growth and contribute effectively to the eradication of poverty and inequality. This 'quantum leap' cannot happen without uniform, predictable laws and fair, reliable political and social frameworks. And even this is not enough.

Fair legal and regulatory structures and strong and accountable institutions are essential for promoting a human-centered and equitable basis for the sustainable development of countries and communities. However, experience shows that legal and judicial reforms are necessary but insufficient measures to promote sustainable development and to ensure fair access to the resources, means and benefits of development, including those that accrue from science, technology and innovation. The struggle for equity, justice and development is deeply linked to the norms, values, beliefs, traditions and lifestyle that make up the distinct culture of each society and to broader issues of good governance, democracy and human rights.

Ambitious goals promoting rapid advancements promise profound improvements to the standards of living for millions of people. Advances in science and technology offer bold solutions for profound change. Entire communities have started to use technologies to leapfrog into new and sophisticated practices bringing about rapid economic development and often carrying tangible social benefits. Fast-paced improvements are a reality. Such changes present opportunities for advancing to more advanced technologies or environmental, educational, medical or other practices. A culture of justice, supported by effective institutions and good governance frameworks, can make the difference between socially blind scientific and technological advancements and sustainable, human-centered scientific and technological advancements, between indiscriminate access to resource and equitable benefit-sharing.

A culture of justice supports a society where solid principles of justice, equality and non-discrimination underpin scientific innovation, where citizens are empowered and aware of their rights, where local and indigenous knowledge and skills and assets are protected and vulnerable groups are not excluded.

The High Level Panel (HLP) on the post-2015 development agenda identified five big 'transformative shifts' that should guide the new sustainable development framework and called for a "quantum leap forward in economic opportunities and a profound economic transformation to end extreme poverty and improve livelihoods".¹ The "rapid shift to sustainable patterns of consumption and production - harnessing innovation, technology, and the potential of private business to create more value and drive sustainable and inclusive growth"² called for by the HLP requires fair laws and regulations, based on solid principles of justice, equality and non-discrimination.

A strong commitment to building a culture of justice, based on the recognition of "peace and good governance as core elements of well-being, not optional extras", is essential to ensure that "everyone has what they need to grow and prosper"; that cities, seen as "the world's engines for business and innovation",³ do not become quagmires of alienation, marginalization and misery for the extreme poor; that 'open innovation', science and technology produce sustainable economic growth and contribute effectively to the eradication of poverty and inequality.

¹ *A New Global Partnership: Eradicate Poverty And Transform Economies Through Sustainable Development*, Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, May 2013.

² *Ibid.*

³ All quotes are from the HLP report, *ibid.*

In this sense, building a culture of justice in which accountable, well-functioning and responsive legal institutions are supported by well-recognized principles of rule of law, citizens are empowered and aware of their rights, and legal systems function to enable fair and sustainable development outcomes, remains critical if we are to see more equitable sharing of the benefits of science and technology. Fair institutions and good governance frameworks, supported by local cultures and informal rules of social interaction, can play a key role in ensuring that “all people have equal rights and a fair chance at improving their lives, that they have access to justice when they are wronged”.⁴

Fair and effective rule of law frameworks are also essential to protect cultural diversity, as well as local and indigenous knowledge and skills. Laws and regulations attuned to cultural values, norms and perspectives can promote local ownership of development objectives and enable the creation of locally-driven, sustainable solutions to global challenges such as climate change, the prevention of biodiversity loss and environmental sustainability. In other words, good rule of law frameworks can effectively support sustainable and accessible advances in education, science, technology and economic growth, improve the prospects for peace and security and guarantee benefit sharing on a non-discriminatory basis.

In his report *Delivering Justice*, the UN Secretary-General calls for robust rule of law frameworks to “underpin the management of our future” and to meet major challenges to human development and security, such as environmental degradation, rapid urbanization, conflict, fragility, severe income inequalities and exclusion of vulnerable groups to civil society participation.⁵ These challenges are interlocking and intertwined. As the global community moves towards a new post-2015 development framework and discusses the contribution of innovative business models, knowledge-based societies, science and technology to global development, it is essential to maintain clear focus on the legal and governance frameworks needed to support the equal distribution of benefits and ultimately, fair development outcomes.

Last year in New York, the UNGA adopted an important resolution recognizing that “the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms”.

This year, ECOSOC’s Annual Ministerial Review has been devoted to the role of science, technology and innovation, and the potential of culture in promoting sustainable development and achieving the Millennium Development Goals. The review provided a platform to discuss ways in which different countries, especially the least developed ones, can benefit from national and international approaches related to the management of technology and innovations, including intellectual property frameworks. Following up on the Rio +20 outcome, participants discussed important development challenges such as the impact of green technologies on sustainable development, industrialization and economic growth and the promotion of renewable energy technologies, among others.

⁴ Report of the Secretary-General on ‘Science, technology and innovation, and the potential of culture, for promoting sustainable development and achieving the Millennium Development Goals’ for the 2013 Annual Ministerial Review, ECOSOC, April 2013.

⁵ *Delivering justice: Programme of action to strengthen the rule of law at the national and international levels*, Report of the Secretary-General, UN doc. A/66/749, 16 March 2012

With the post-2015 debates, the international community has a unique opportunity to have a serious and concrete reflection on how adequate rule of law frameworks and rights-based approaches can support sustainable development in practice and why it is essential that the rule of law becomes part of the planned framework.

In renewing our commitment to the General Assembly's call for "the promotion of an economically, socially and environmentally sustainable future",⁶ our challenge remains to ensure that rapid economic shifts are sustainable and that science, innovation and technological advances are supported by a culture of justice, based on fair laws and regulations and anchored on solid principles of justice, equality and non-discrimination.

In our enthusiasm to seek change, we must be mindful of the different local capacities to manage innovation, including human, financial and institutional capabilities. Initiatives must adapt to the contexts of the countries they seek to serve. In creating a new development framework, the international community must focus on minimizing unintended social costs, keeping in mind that 'Accountability, mutual responsibilities and a clear understanding of different capabilities in responding to this new framework will be essential to its successful implementation.'⁷

Against this background, a number of questions come to mind:

- What is the role of the rule of law and justice in this new paradigm?
- How can the building of cultures of justice stimulate sustainable innovation, scientific and technological advancements and enable their benefits to be shared?
- How can we maintain clear focus on the legal and governance frameworks needed to support the equal distribution of benefits and ultimately, fair development outcomes? And how will we ensure a fair balance between public interest and private rights in the post-2015 Development Agenda, with the proper checks and balances and safeguards in place under the rule of law?

And also:

What are the main legal and strategic challenges that developing countries face in their attempt to create a viable technological base?

- Insufficient investment on R&D to develop their own technologies
- Lack of IP and patent culture
- Insufficient funds to protect IPRs around the world
- Insufficient substantive knowledge on technical topics involved in technology transfer
- Insufficient skills to negotiate technology transfer contracts (and eventually solve disputes)
- Difficulties in drafting complex legal contracts to license-out or in technologies

⁶ UN General Assembly resolution 66/288.

⁷ *The contribution of the Economic and Social Council to the elaboration of the post-2015 development agenda as a principal body for policy review, policy dialogue and recommendations on issues of economic and social development and for the follow-up to the Millennium Development Goals*, Report of the Secretary-General, UN doc E/2013/72, 10 May 2013.

- Difficulties to establish value of a given technology
- Acquisition of obsolete technologies
- Limited / lack of acquisition of green technologies

How can the rule of law help developing countries gain fair access to science and technology?

- The rule of law is essential to building the institutional and regulatory frameworks necessary to stimulate in-country innovation, enforce public and private rights and provide just and expeditious resolution of disputes.
- Investment laws, technology transfer laws, laws on import/export, banking law, plant varieties and seed laws, general commercial and company law should enhance innovation and promote access to new technologies.
- Developing countries should be supported in establishing adequate legal frameworks in line with their development objectives and in building their capacity to implement existing legislation and negotiate fair agreements to acquire the right technologies.

How can Least Developed Countries (LDCs) ensure fair IP protection and regulations?

- LDCs have experienced great difficulties in trying to align to international standards to ensure IP protection and regulations, especially as regards the protection of pharmaceutical patents.
- The TRIPS agreement seeks to balance the corporate incentive for profit with the public interest in access to drugs. In November 2001, the Doha Declaration further clarified the conditions for compulsory drug licensing, giving states greater leeway to produce generics. In August 2003, a Decision by the WTO General Council set out ways for the poorest nations, with no pharmaceutical industry of their own, to have their generics manufactured elsewhere.
- Yet all too often, developing countries fail to take advantage of the exceptions and flexibilities contained within TRIPS. They lack the knowledge, resources, institutions or political will to make intellectual property laws work for their people. Many have failed to adopt the domestic legislation that would unlock TRIPS' benefits. Some are unwittingly, or under pressure, entering into regional or bilateral trade deals with extremely restrictive provisions. Their courts are too weak or subservient or corrupt to litigate health rights. Their civil society is gagged and shut out of national debates of vital consequence.
- To this end, the recent decision of the WTO TRIPS Council to extend the waiver on compliance with IP obligations in favor of LDCs from July, 2013 to July, 2021, must be welcomed. This is an important demonstration of appreciation of the struggle of least developed countries as they attempt to develop sound and viable technological frameworks, minimize social costs and bring about sustainable development.
