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Sustainable Development Goals – Goal 16

Dear Sirs,

The Sustainable Development Goals

As you are aware, a key outcome of the Rio+20 Conference was the agreement by U.N. Member States to develop a set of Sustainable Development Goals ("**SDGs**") that will build upon the Millennium Development Goals and converge with the U.N.'s post-2015 development agenda. Numerous stakeholders are involved in the process of formulating the SDGs and, as representatives of one such stakeholder, Advocates for International Development ("**A4ID**"), we write in order to respectfully request



the inclusion of a goal focussed on promoting good governance and the Rule of Law, and the benefits these principles can bring to all societies: those developing as well as those that are comparatively developed.

We welcome the Outcome Document issued by the Open Working Group on Sustainable Development Goals, which includes proposed Goal 16 on peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable and inclusive institutions at all levels. In his Synthesis Report, which was issued on 4 December, the U.N. Secretary-General identified "six essential elements" to help frame the debate on the Post-2015 development agenda going forward. One of the six essential elements identified by the Secretary-General is "Justice: to promote safe and peaceful societies, and strong institutions." The Synthesis Report emphasises that "Effective governance for sustainable development demands that public institutions in all countries and at all levels be inclusive, participatory, and accountable to people." As such, we urge the international community in its upcoming negotiations to reflect the importance of good governance and the Rule of Law to sustainable development by ensuring their inclusion, as a stand-alone goal, in the Post-2015 Development Agenda.

Advocates for International Development

A4ID is a non-profit organisation that enables the law and lawyers to play their full part in the eradication of global poverty. A4ID brings together legal and development professionals to maximise progress towards the U.N. Millennium Development Goals; from 2015, we will frame our work around the SDGs.

A4ID partners with over 50,000 lawyers in more than 90 countries and almost 600 development organisations worldwide. We seek to ensure that all those working towards the eradication of poverty have access to free legal support, while also raising awareness and leading thinking about how the law and lawyers can play a role in eradicating global poverty. We have provided over US\$40 million of free legal advice since 2006, assisting important projects in over 114 countries.

Good Governance and the Rule of Law

It is critically important that the SDGs include a distinct goal to elevate and emphasise the concepts of good governance and the Rule of Law. By "Rule of Law", we mean the observance of norms that seek to guarantee all people even-handed treatment under the law, including by state institutions and the other organisations which affect them. Such a specific goal must be included in the SDGs because not only will the promotion of such a system empower individuals and enterprises within all societies, a valuable end in itself, but, moreover, it will ensure that the other SDGs are easier to attain.

Numerous studies by the U.N., the World Trade Organisation, and other public, private, and charitable organisations, have stressed the benefits of an open, accountable, and certain justice system that enjoys broad public legitimacy. Such a system is of obvious benefit in a development context. Where individuals have confidence in the reliable regulation of their relations with the state and the private sector, and with other citizens, they are more content, more certain to invest in themselves and their communities via education, financial capital, and long-term commitment to their communities of origin. Furthermore, the stability engendered by such systems has been shown consistently to stimulate foreign direct investment and encourage economic growth, both critical aspects of sustainable development. In these ways, the promotion of good governance and the Rule of Law directly promotes confidence and brings clear, standalone benefits.



Promoting good governance and the Rule of Law via a distinct SDG will also generate significant positive externalities; other SDGs will benefit in turn. Indeed, as the U.N.'s own General Assembly remarked in 2012:

*"The advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms."*¹

This can be demonstrated in a number of areas. An effective global response to climate change, for instance, is predicated upon a robust system of agreed rules, and ensuring that developing countries have the legal tools with which to implement them. Any global health initiative, or rapid response to an unforeseen crisis, requires a similar ability to agree, coordinate and implement effective measures. Women's rights are strengthened, with all the concomitant benefit this brings, by a system within which those rights are recognised, accepted and enforced by means of appropriate redress. This is to pick but a few examples; examining the list of proposed SDGs, it is clear that to promote good governance and the Rule of Law is to establish a foundation which supports all other SDGs, and to promote the U.N.'s SDG initiative overall.

Finally, we note that an SDG addressing good governance and the Rule of Law would also encourage and assist Member States' implementation of the U.N. Guiding Principles on Business and Human Rights, which were unanimously adopted by the U.N. Human Rights Council in 2011. All three "pillars" under the Guiding Principles – the state's duty to protect human rights, the corporate responsibility to respect human rights, and the responsibility of each to facilitate remedy where necessary – would plainly be furthered by an SDG of this nature.

Our Recommendation

It is our recommendation and request that those drafting the SDGs take due note of the above and include a specific goal that promotes the principles associated with good governance and the Rule of Law. Whilst the wording may of course vary, to ensure it is comprehended by and promoted amongst the greatest number of Member States, we respectfully suggest the following amendments to the wording proposed in the Open Working Group draft published in June 2014. Our reasons follow in brief.

SDG 16

We recommend re-wording Goal 16 as follows:

"Ensure institutions and organisations at all levels are transparent, accountable, inclusive, principles-based and fair."

Reasons:

- Institutions and organisations - These principles should apply to all bodies, public and private, that impact people's lives.
- At all levels – These principles are universal expectations, applicable at the local, national, and international level.

¹ A/RES/66/102 of 13 January 2012.



- **Transparent** – Where citizens can observe and understand how the bodies that affect them function, this will build confidence in those institutions and organisations and the decision-makers which affect their lives. In addition, citizens must be able to easily find out what decisions and requirements apply to them.
- **Accountable** – For people to have faith in the institutions and organisations that affect them, there must be a belief that those bodies abide by predictable standards, and that there are ways of ensuring those standards are upheld.
- **Inclusive** – In order for institutions and organisations to maintain legitimacy, all stakeholders must know that they have an opportunity to participate. People must be able to engage with the public and private bodies that impact their lives.
- **Principles-based** – Institutions and organisations must make it clear that they operate not by whim, but according to fixed principles which determine their actions. Stakeholders must have confidence that the institutions and organisations that affect them will do so in a consistent, logical way.
- **Fair** – The treatment of individuals must reflect their community's view of what is appropriate in a given circumstance.

Sub-Goal 16.1

We recommend including a new Sub-Goal 16.1 as follows:

"Sub-Goal 16.1: Promote equal, fair, transparent and predictable treatment for all under the law."

Reasons:

- **Equal** – All citizens, regardless of wealth, power, status, or individual characteristics, must be of the same standing in the eyes of the law and must be treated in the same way.
- **Fair** – The treatment of individuals under the law will reflect a state's view of what is appropriate in a given circumstance, and will not be unduly light or onerous in a given context.
- **Transparent** – Where citizens can observe and understand how the justice system that affects them functions, this will build confidence in the institutions and figures that administer justice. In addition, citizens must be able to easily find out what laws apply to them.
- **Predictable** – In order for people to be able to plan their lives and anticipate the consequences of their actions, laws and sanctions must be prospective in nature and consistent in their application.
- **Under the law** – Justice must be administered according to rules which have been adopted as part of a country's legal system following due process and promulgated accordingly.

Sub-Goal 16.3



We recommend re-wording the current Sub-Goal 16.3 as follows, and retaining as a new Sub-Goal 16.2:

"Provide an accessible, independent and effective justice system."

Reasons:

- Accessible – To ensure a stable society in which disputes are consistently resolved in a peaceful manner, all citizens must be able to have disputes formally adjudicated and to seek redress for wrongs done to them.
- Independent – For citizens to have confidence in a justice system, they must know that the individuals who adjudicate disputes are independent and impartial, and not prejudiced by external influences.
- Effective – For citizens to put their faith in a system, they must believe that it will deliver results. If a system processes cases inefficiently, or if judgments are not enforced, then confidence will be lost.
- Justice System – The principles set out here must apply not only in courts or tribunals, but in all instances where the law is applied, including by police, public administrators, or other decision-makers.

Measuring Progress

The ability to quantify governance and the rule of law using targets and indicators is crucial for building consensus and ensuring that states are held accountable to their commitments. Many global and regional agreements involve commitments to improve governance and the rule of law, such as the African Peer Review Mechanism, the UN Convention against Corruption (UNCAC), the Universal Periodic Review Mechanism of the Human Rights Council, and many others. These agreements have generated and continue to generate robust and useful data on measures of governance and the rule of law across a variety of sub-fields.

Their contributions have been supplemented by burgeoning numbers of INGO and NGO-developed governance and rule of law indicators – such as the World Bank's Worldwide Governance Indicators, the Rule of Law Index, the Mo Ibrahim Index of African Governance, Transparency International's Corruption Perception Index, International Crime Victim Surveys, the Open Budget Index, Voice of the People, the Public Expenditure Tracking Survey, Freedom House rankings, and many more. These indicators and data sources can and should feed into the measurement framework for a governance and rule of law goal.

In measuring governance and the rule of law, one grapples simultaneously with a scarcity of regularly-collected, internationally comparable data in certain sub-areas (such as equity); and a considerable body of indicators and data in others (such as corruption). The post-2015 agenda will have to triangulate these sources in the most effective manner, while incentivising the creation of new data for underdeveloped indicators. It will also have to ensure that proposed indicators comprehensively measure the structures, processes and outcomes of better governance, without precipitating perverse incentives (such as encouraging superficial changes designed to achieve certain measurable changes without effecting meaningful reform) or being subject to ideological or methodological critiques which undermine the goal's legitimacy and coherence. Lastly, the framework for measurement should



prioritise and incentivise building the capacities of national statistical bodies, particularly in developing countries.

A4ID notes that UN agencies and a number of civil society groups have prepared proposals of illustrative indicators for a possible goal on governance and the rule of law. We set out a representative list of such indicators in the appendix to this letter. This is not intended to present a comprehensive collection, nor will these elements on their own guarantee better governance or the rule of law. However, we would expect to see the presence of some or all such indicators, to a greater or lesser extent, in societies which do exhibit those desirable qualities, and as a result, feel strongly that they should be encouraged in parallel with the goals set out above.

Next Steps

Good governance and the rule of law are not only valuable ends in themselves, but act as a firm foundation within societies to support all other SDGs. Moreover, such aims need not be vague, unquantifiable statements of high principles: rather, combined with some of the metrics and indicators above, societies and the international community can effectively track progress in this area. For the reasons given above, we urge you to seek to ensure that an SDG which specifically aims to ensure high standards of governance and adherence to the rule of law, such as the proposed Goal 16 and Sub-goals 16.1 and 16.3 set out above, is included when the new SDGs are adopted next year.

Yours faithfully,

Yasmin Batliwala JP
Chief Executive, A4ID



APPENDIX

REPRESENTATIVE INDICATORS: GOOD GOVERNANCE AND THE RULE OF LAW

Although none of the following indicators is enough on its own to guarantee good governance or adherence to the rule of law, they are each among the *types* of steps states can take to promote these characteristics in their societies.

In connection with the proposed SDG 16 and associated Sub-goals set out above, it may make sense to focus on the items below in section 2, "Justice and the Rule of Law", as well as certain key anti-corruption or openness and transparency indicators. However, depending on the nature and nuances of the goal ultimately adopted, it may be necessary to emphasise particular indicators from the list below, or introduce different indicators, or shift focus to other indicators as the society's progress towards the goal develops and matures.

1 Addressing Corruption and Curbing Illicit Financial Flows

Implementation of anti-corruption legislation
Existence of laws requiring financial disclosures and reporting of conflicts of interest
Existence of national anti-corruption body
Number of people who report paying a bribe in the past year
Number of prosecutions for corruption offences, particularly of public officeholders
Proportion of public who believe they can receive timely services without paying a bribe

2 Justice and the Rule of Law

Percentage of men, women and businesses with recognized proof of their rights to land and other assets
Universal access to complaint mechanisms (e.g. ombudsman)
Percentage of enforced legal decisions
Rate of suspension or arbitrary application of the rule of law and violations of human rights
Distance population must travel to reach basic legal service providers
Average time to resolve disputes
Percentage of the population who express confidence in police and justice institutions



Percentage of people reporting confidence in accessing effective legal aid services

Perceived independence of and confidence in the judiciary

Proportion of businesses expressing confidence in enforceability of contracts in national courts
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3 Openness and Transparency – Public Access to Information

Existence of a right to information ("RTI") law that establishes (1) citizens' access to information, including laws, budgets, and expenditures, (2) defines a time limit for responding to RTI requests, and (3) establishes a mechanism for appeal in the event of denial

Existence of a National Open Data policy
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Publicly available government budget data

Public participation and commitment to open government
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Public advertising of all government procurement
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Number of journalists who report having been sanctioned in the course of their work by state authorities
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4 Effective, Responsive and Accountable Institutions

Existence of legislation on corporate reporting that requires companies to report on social and environmental impacts

Existence of national and local oversight bodies
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Equitable public spending

Rate of government 'bill paying'

Successful implementation of regulations
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Reduction in the gap between proposed and executed budgets
--

Use of e-governance at national and local levels
--

Percentage of population satisfied with government performance (possibly by sector/area)
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5 Participation in Decision-Making

Number of civil society organizations that have officially participated in the process of developing and approving the state budget



Participation of civil society in monitoring essential services, including healthcare, water and education
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Voter turn-out percentage in national and local elections

Percentage of seats held by women in parliaments or national assemblies

Proportion of households who believe they have a fair say in decisions about local land and natural resources
