

Overview of Advocacy: Justice in the Post-2015 Framework

Background paper for OSF Charette on Post-2015 Shared Framework

February 19-21, 2014

Introduction: Advocacy Strategy and Aims

The Open Society Foundations' overall goal to date has been to secure a more meaningful, prominent, and enduring place for justice, governance, and the rule of law in the post-2015 development framework. The Justice Initiative has led international OSF advocacy to date, in close partnership with national and regional foundations and network partners. Advocacy to secure a place for justice in the post-2015 framework is pursued concurrently at two levels: (1) International and UN-based advocacy; and (2) local and grassroots advocacy.

One of the challenges of this advocacy is that "justice," "governance," "rule of law", "legal empowerment," and related terms have multiple meanings but are often used interchangeably. A further difficulty is that these terms have varied valences in the international advocacy context, leading sometimes to the use of a more acceptable or inclusive word (governance) to describe a more controversial concept (human rights). While absolute precision in defining the specific issues for which the Open Society Foundations advocates in post-2015 may be neither possible nor desirable, the shared framework may assist in clarifying our own internal understanding of these terms and our sense of which fundamental principles are not negotiable.

1. International Advocacy: The post-2015 framework will be adopted by resolution of UN General Assembly, and most of the consultative and deliberative processes are carried out by elements of the United Nations System. Consequently, the United Nations – taken to include member states and secretariat entities – principally acting in New York, is a primary advocacy target for this project. The Justice Initiative's UN advocacy strategy aims to influence the processes and decision-makers that are or will become central to the post-2015 architecture to create and support a political environment in which justice and governance themes are recognised and supported in the post-2015 discussions and processes. The international component of the Justice Initiative's advocacy strategy also includes deploying high-level allies and advocates who, through their national contacts or positions within national, regional or professional contexts, are able to champion our advocacy messages in fora and to audiences which might otherwise be beyond our reach. One question about international advocacy to be resolved at the charette is whether the Justice Initiative, in its role as the continued lead, is advocating for the priorities of all of OSF's programs, or will continue to focus on justice, rule of law, legal empowerment, and relatedly, governance.

2. Grassroots Advocacy: Concurrently with our international advocacy work, we aim to support and mobilize nationally based organisations active in the field of justice to undertake their own advocacy activities targeting national decision-makers. This strategy aims to incorporate a larger global network of allied national organisations calling for change. In particular, it is important that the international and national advocacy activities are well coordinated to ensure that contextually appropriate but common messages are taken up by diverse groups (international civil society and

nationally-based groups) and delivered to both the representatives in New York and the governments in national capitals.

What do we mean by ‘justice’?

At the third meeting of the Secretary-General’s High Level Panel in March 2013, George Soros gave a keynote speech in closed session in which he suggested that a justice goal could include targets on land ownership, legal identity, access to justice services, and information. The High Level Panel’s report in June 2013 reflected the themes outlined by George Soros at that meeting, especially in Goals 10 and 11 of the report. For these events, OSJI produced a [series of factsheets](#) making the case for how and why justice should be included in the post-2015 framework.

Our vision for justice in the post-2015 framework sought to build upon the momentum of the HLP report, particularly those targets mentioned under Goals 10 and 11. However, the HLP report did not provide clear and succinct delineation of how the targets envisioned under their goals would achieve the aims set out in the narrative. The Justice Initiative embarked on an iterative process in consultation with partners and members of the [Global Legal Empowerment Network](#) to identify the underlying principles which must be included if justice is to be reflected in the post-2015 framework. The result of this process is the [Statement of Principles: An Appeal to the Member States of the United Nations](#) for the Justice 2015 campaign, which sets out the parameters of what is meant by the rule of law and five core areas which are encompassed by the notion of justice. These five areas are: (1) Access to information; (2) Secure legal identity; (3) Rights to land and property; (4) Participation; and (5) Access to legal services.

OSF advocacy activities to date

Over the last year, the Open Society Justice Initiative, George Soros, Chris Stone, TIFA foundation, and many other members of the OSF network have cultivated close relationships with members of the High Level Panel, their advisors, members of the Open Working Group, regional bodies, and other parts of the United Nations Task Team on Post-2015. In the first half of 2013 our advocacy targeted the Secretary-General’s High Level Panel. In addition to building relations with the HLP secretariat and the panellists themselves, the Justice initiative hosted a roundtable discussion at the Bali meeting at which practitioners of legal empowerment presented directly members of the HLP and George Soros gave a keynote address.

At the 2013 UN General Assembly, Mr. Soros convened the [International Advisory Council](#) (IAC) of the [Global Legal Empowerment Initiative](#) to discuss strategies to engage the intergovernmental process, and hosted a high-level reception to promote justice in the post-2015 goals which was attended by Heads of State and senior representatives. In December 2013, OSJI hosted an official side event to the sixth session of the Open Working Group, in conjunction with the UK, Benin and UNDP, which directly addressed the OWG for the first time. At this side event, OSJI and Namati jointly launched a paper arguing for the feasibility of [measuring justice](#) through a Post-2015 framework through baskets of selected indicators.

At the eighth meeting of the OWG in February 2014, George Soros hosted a private dinner attended by representatives of key member states, with remarks presented by representatives from the USA and Indonesia. In the same week, OSJI and Namati jointly launched the Statement of Principles

which was referred to by former President of Ireland Mary Robinson in her keynote address to the Open Working Group. The eighth OWG session, and the private dinner, marked the first occasion for states to respond directly to the issues of justice and governance, and provided insight into the issues and challenges which remain to be addressed.

Evolution of Attitudes towards Justice in the Post-2015 Process to Date

The High Level Panel report took an important first step in recognizing justice and governance as cornerstones of effective and inclusive development. The panel recommended two stand-alone goals to address issues of “good governance and effective institutions” (goal 10) and “stable and peaceful societies” (goal 11). Goal 10 focused on issues of access to information, anti-corruption and civic participation. Goal 11 included targets on accessible justice institutions, reducing violent deaths and ensuring capable and accountable justice and security services. The HLP recommendations also acknowledged the importance of considering how governance-related targets, such as financial transparency and grievance redress, could be mainstreamed across other goals/sectors such as health and education.

As discussions have shifted to the Open Working Group on Sustainable Development and UN agencies and member states, the substance of a potential governance goal has evolved to include suggested targets around (1) reducing bribery and corruption; (2) increasing political participation; (3) ensuring freedom of organization and expression; (4) the right to information, particularly around public budgets and; (5) enhancing state capacity/transparency around natural resource governance. There have also been discussions about the potential inclusion of targets around illicit financial flows, contract transparency and public oversight of service delivery. Discussions around the inclusion of justice themes in a post-2015 framework have evolved towards integrating justice into a broader governance or peace goal through the inclusion of targets on (1) right to information, (2) legal identity, (3) land rights, (4) public participation, (5) access to justice institutions and effective criminal justice processes, and (6) reduction of violence, among others.

It should be noted that the High Level Panel report, while lauded by many member states and sectors of civil society, was not unequivocally embraced. It is not clear whether the goals articulated in the HLP report will survive either the OWG report or the inter-governmental process. Therefore, while the use of “goals 10 and 11” as identifying terminology for OSF may be helpful, this parlance may not be as effective from an advocacy perspective.

Where is the process going from here?

Open Working Group

The OWG co-chairs (Hungary and Kenya) have announced dates for five further meetings between March and July 2014, at which negotiations on the OWG report will take place. On 14 February, the co-chairs published a stocktaking report on the eight thematic consultative sessions held to date, and a zero draft is expected on 21 February. The zero draft will outline priority areas to focus on for the negotiating phase of the OWG. The co-chairs have expressed a desire that there will be very little negotiation around the narrative (preamble) of their report, preferring instead to focus on goals and targets, relying largely on the Rio+20 outcome document for narrative. The 31 March to 4 April OWG session will allow for members to respond to the zero draft proposed by the co-chairs. Following the

final OWG meeting in July, the OWG will draft the report to be presented to the General Assembly in September.

President of the General Assembly Events

The President of the General Assembly (PGA, currently held by Antigua and Barbuda) has announced a series of events between February and June on thematic areas of post-2015 development, including a session on [human rights and the rule of law](#) on 17-18 June. These sessions will be open to all member states to participate in plenary and panel discussions at Ministerial level. It is not clear how important or influential these sessions will be to the intergovernmental process, described below.

September 2014: 69th General Assembly Opening Session

The Opening Session of the 69th General Assembly will take place from 16 September to 29 September 2014 in New York, where the Secretary-General will present a synthesis report on post-2015 inputs to date: the OWG report; the HLP report; the report of the Intergovernmental Committee of Experts on Sustainable Development Financing; the UN Sustainable Development Solutions Network report; the UN Global Compact report; and the My World citizens' survey. This will mark the formal beginning of the intergovernmental negotiation process.

What arguments are raised against including justice and governance?

Objections or concerns regarding the inclusion of justice and governance essentially fall into four main categories:

- 1. Not linked to development / not a high priority.** One objection holds that there is 'no proven, empirical link' between improvements in the rule of law, justice and governance and poverty reduction. Russia expressed this view at the OWG hearings. A less extreme but similar view holds that justice and governance are desirable aims but are not priorities compared with more closely-linked development objectives such as economic growth, investment, infrastructure, education and health. Several African countries have voiced this view, which has been reflected in the African Union's deliberations on the post-2015 framework. A related critique is that the post-2015 agenda should be confined to sustainable development goals (SDGs), which emerged out of the Agenda 21 and Rio+20 process, and that the post-2015 framework should be based exclusively on Rio (which referenced governance but not justice and rule of law in a comprehensive fashion).
- 2. Not measurable / more suited to narrative / just enabling factors.** Many countries have consistently raised concerns that justice, governance and the rule of law are not measurable quantities and therefore not suitable to a goals/targets/indicators framework. This argument typically posits that justice and governance are enabling conditions of development, and need to be referenced as such in the accompanying narrative which overlies the goals framework. This was the approach taken in the Millennium Declaration and in the Rio+20 Outcome Document.

3. **Not universal / must apply to the international system.** A third area of concern from states is that the targets suggested for governance and justice are aimed at and applicable only to developing nations. Ambassador Samantha Power of the USA has spoken eloquently of her belief that any such targets must be equally applied in developed nations. If justice and governance are not applicable to all states, then the notion of universality is undermined across the entire post-2015 framework. A related view expressed by many countries at the OWG hearings holds that improvements in justice and governance need to be applied to the global governance architecture and international financial mechanisms. Some countries, such as Brazil, pointed to the Snowden spying revelations as evidence of the need for governance and justice to apply internationally and to all countries. Other countries choose to interpret justice and governance exclusively in terms of its international application, and ignore entirely the possibility of domestic targets.
4. **Must be consistent with state sovereignty / must not create conditionality.** Several country statements to the Open Working Group qualified support for justice, governance and the rule of law in terms of consistency with 'UN Charter principles'. This response typically indicates a suspicion that justice and governance are vehicles for external interference in state affairs and would constitute a breach of state sovereignty and a challenge to the government's authority. A related view is that the inclusion of justice and governance targets would create an additional opportunity for donor countries to impose conditions attached to overseas development assistance.

Specific Challenges and Tactics

The fast moving and complex nature of the post-2015 process presents some specific challenges to our advocacy:

1. **The intergovernmental process.** The modalities of the intergovernmental negotiations after September 2014 are not clear. As the final framework will most likely be adopted by consensus of the General Assembly, the President of the General Assembly will shape the negotiating framework between states. Denmark and Papua New Guinea have recently been appointed to consult on this process, but no decisions on how the negotiations will be structured, chaired or concluded have yet been announced.
2. **The groupings of states.** The General Assembly is divided into geographic groupings of member states and it can be expected that there will be some degree of solidarity between states of those groupings. However many other formal and informal groups exist, such as the G77, the non-aligned movement, the g7+, the Small Islands Developing States, the Landlocked and Less Developed Countries, and the Commonwealth of Nations. The significance of relations within and between these groups, the degree of overlap with other groups and their relative and bargaining power are not clear. Moreover, the OWG's arrangements provide for 70 member states to participate via 35 seats, meaning that several seats consist of two, three or more states speaking collectively. This has produced some unexpected results such as the troika of Pakistan, India and Sri Lanka submitting a less negative statement on the rule of law than might be expected, whereas the Indonesia's shared statement with China and Kazakhstan rejected the notion of a rule of law goal.

3. **The locus of decision-making.** There is a wide disparity of approaches to UN negotiations between different member states. Some states have a considerable degree of participation and autonomy for their missions in New York, while others rely entirely on direction from capitals. Among some country missions, the personal interest of the Permanent Representative as well as the mission's capacity to organise, have been key determinants of their engagement so far. Many states, until comparatively recently, have shown minimal interest in the post-2015 process to date, although this has changed over the course of the OWG hearings as reflected in the opening of participation in the OWG events to all member states. Furthermore, among those countries whose positions on post-2015 are being determined from capital, a serious challenge lies in assessing where decision-making takes place across multiple ministries and executive departments.
4. **The scope and expectations of the framework.** There is a very wide divergence of expectation of what can be achieved through this process. Many states see the post-2015 framework as essentially a chance to double down on progress made under the MDGs, with little or no possibility of including extra dimensions. Yet the range of ideas and initiatives proposed for the post-2015 framework, by states and civil society, demonstrates that there is considerable expectation that the new framework is a chance to address many global challenges from climate change to conflict to global trade and the international financial system. Managing these competing visions for the post-2015 framework in a way which is aspirational and realistic is a major challenge.
5. **Over-reliance on one strand of the process.** To be successful, the post-2015 framework needs legitimacy derived from a wide spectrum of authoritative recommendations, mandates, agreements and normative instruments. Many member states and parts of civil society continue to cite the authority of either the Rio+20 outcome document or the High Level Panel report as underpinning and legitimizing their positions, advocating that the final framework should ultimately be traceable to the tenets of those documents. The High Level Panel, for example, was formed under a mandate from the Secretary-General as was not an intergovernmental process or endorsed by the General Assembly, leading many states to reject its legitimacy and object to its conclusions. Moreover member states are party to a wide array of international agreements as well as soft law normative declarations or statements which individually support many of the proposed targets of the post-2015 framework. Reliance on narrow supporting documents should be exposed and the pre-existing commitments of states must be taken into account and used persuasively in our advocacy.
6. **The measurability challenge.** Governance and justice are complex fields with contested causality across diverse thematic components. Unpacking these diverse and sometimes abstract themes for incorporation into a development framework will require further experimentation at a national level over the coming year and likely dictate a degree of variability in the framework at the level of indicators or even targets.

Annex 1: Glossary of Additional Post-2015 Processes

The High Level Political Forum (HLPF): This body was established under the Rio+20 Outcome Document to provide political leadership and regular progress reviews on achieving sustainable development. It will consist of a two day meeting at the Heads of Government level convened every four years, and an annual session at the ministerial level. The Forum replaces the Commission on Sustainable Development, established under the Rio Conference of 1992. The first full meeting will be held between 30 June and 9 July (ministerial level 7-9 July).

The Intergovernmental Committee of Experts on Sustainable Development Financing (CSDF): This committee of [30 experts](#), co-chaired by Finland and Nigeria, was established under the Rio+20 outcome document. It is tasked with assessing financing needs and considering the effectiveness, consistency and synergies of existing development instruments and frameworks. The committee will produce a report proposing options on an effective sustainable development financing strategy to facilitate the mobilization of resources and their effective use in achieving sustainable development objectives. The committee will hold four further meetings in 2014, before submitting its report by September 2014. Meetings are generally closed, although the committee has held interactive multi-stakeholder sessions in the margins. A steering committee organizes the input and participation of non-state actors. More information on the modalities of work can be [found here](#).

The UN Global Compact: An initiative formed in 2000 to encourage the private sector to adopt sustainable business practices and socially responsible development. It provides a discussion forum for business, government, NGOs and labor groups. Following the success of the Rio+20 Corporate Sustainability Forum in June 2012, the UN Secretary-General asked the UN Global Compact to contribute directly to the recommendations that he will submit to Member States in his synthesis report. In June 2013 the Global Compact published its report on the post-2015 development agenda, [available here](#).

The UN Sustainable Development Solutions Network (SDSN): Created to mobilize scientific and technical expertise from academia, civil society, and the private sector in support of sustainable-development problem solving. The Network is structured around 12 Thematic Groups of global experts that work to identify common solutions and highlight best practices. Their report to the Secretary-General on the post-2015 framework can be [found here](#).

My World Survey: The online component of the global consultation on post-2015 which was carried out throughout 2013 by the UN (with support from the Overseas Development Institute in London). The survey has attracted 1.1 million citizen responses. More information on this can be found [here](#).

Annex 2: Overview of Country Positions on Justice and Governance¹

While few countries agree on targets for peace and security, arguing that this better addressed via other means, there is (with some exceptions) a degree of consensus on rule of law and good governance appearing in some form in the post-2015 framework. However, there is no clear consensus on how justice and governance should be incorporated. The tables below present an estimation of member states' views concerning justice and governance in the post-2015 framework.

Governance

Supportive	Persuadable/undecided	Only an enabler	Against
Indonesia	Rwanda	South Africa	Syria
Timor Leste	South Korea	Nigeria	Egypt
USA	Moldova	Bangladesh	Kazakhstan
EU members	Nepal	Tanzania	China
Jordan	Uganda	India	Vietnam
Palau	Singapore	Brazil	Iran
Japan	Montenegro	Nicaragua	
Pakistan	Peru	Tanzania	
Turkey	Colombia	Governance	
Canada	Benin		
Israel	Chile		
Mexico			
Jamaica			
Liechtenstein			

Justice

Supportive	Persuadable/undecided	Only an enabler	Against
Benin	Guatemala	South Africa	Russia
Indonesia	Moldova	Egypt	Syria
Timor Leste	Bangladesh	Brazil	Kazakhstan
USA	Nepal	Tanzania	China
EU members	Peru	Bangladesh	Iran
Jordan	Colombia	South Korea	
Palau	Uganda	Bolivia	
Pakistan	Hungary	Ecuador	
Turkey	Ghana		
Mexico	Tunisia		
Nepal	Senegal		
Japan	Ukraine		
Liechtenstein			

¹ Data reflects best interpretations of positions as of February 2014