

Universal goals for national action

– Governance and rule of law
as the foundation for human development

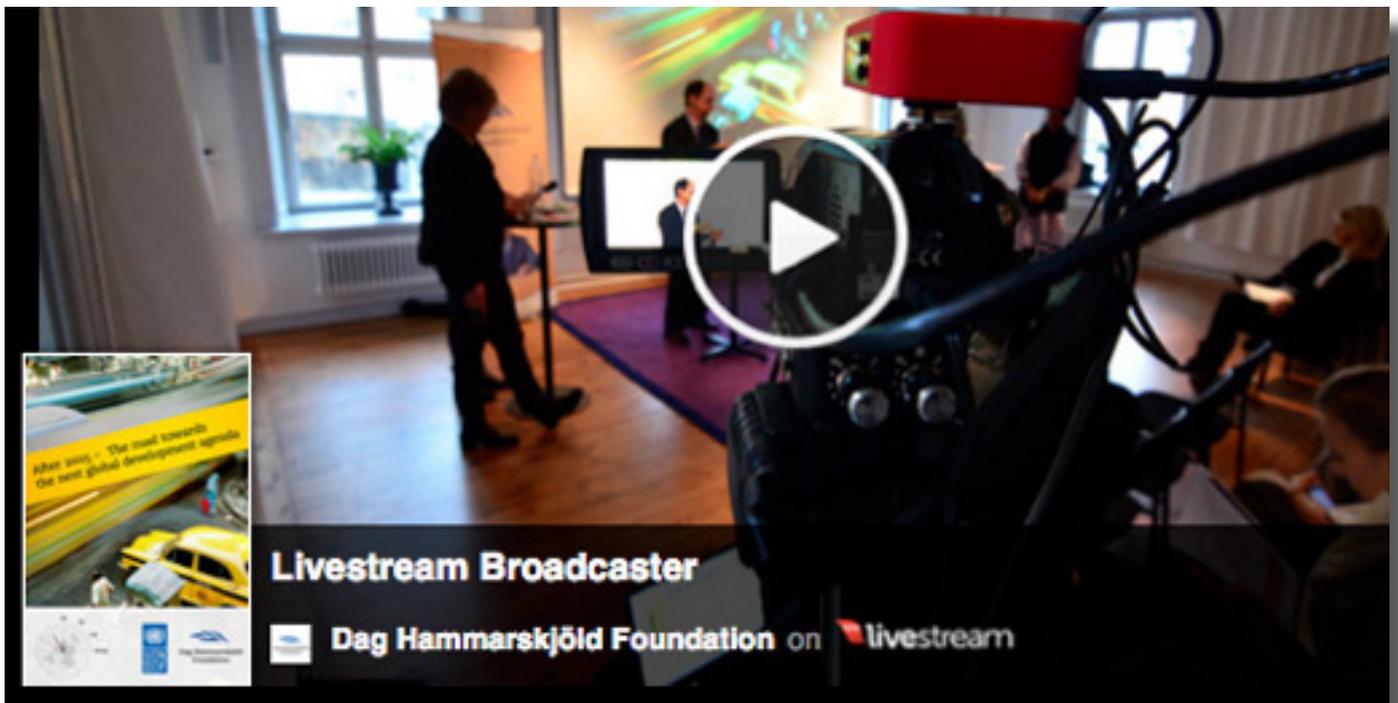


The big picture

There is a strong correlation between the rule of law and the level of development in a society. Transparency, accountability and the rule of law are essential to empowerment and sustainable growth. However, building state institutions that exercise good governance, as well as ensuring basic human rights and equal access to justice for all citizens, remains a challenge, especially in conflict and post-conflict settings. Will the world's leaders be ready to agree on universal standards and targets that might limit their political scope and threaten national sovereignty?

The High-Level Panel report on Post-2015 emphasised the importance of democratic governance, accountable and responsive institutions and public engagement in ensuring sustainable human development. It called for a fundamental shift: peace and good governance should be at the core of the development agenda, not 'optional extras'.

Will focusing on governance hamper or support the short-term striving for growth and development? What are the potential risks of a global 'blueprint' on good governance and rule of law? Can efforts to strengthen governance and rights-based values be considered interference in internal affairs?



The seminar was held 13 Augusti 2014.

Truth, justice and post-2015

Pablo de Greiff

Pablo de Greiff admits his job title is a mouthful – UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence. But he reminds us that these issues are the pillars of transitional justice, which he defines as a set of measures implemented to redress grave human rights violations in the past.

The Millennium Development Goals (MDGs) were successful on a number of fronts, de Greiff concedes. They led to huge redistribution of resources in favour of the targeted areas, provided leverage both at the international level to pressure local governments to meet the targets and at the national level for civil society organisations to pressure their own governments to achieve those targets. Yet, the MDGs also largely excluded governance, justice and human rights considerations, all of which are ‘absolutely fundamental ... in the post-2015 development agenda,’ de Greiff stresses.

He reminds us that Tunisia was once the ‘darling of the international community’ in terms of rapid achievement of the MDGs. Yet, just weeks after the publication of the last report praising Tunisia, Tunisian citizens took to the streets, demonstrating for significant change. ‘This lesson – which underscores the relationship between justice and development – should carry over into the discussion on

the post-2015 agenda,’ he says. At the moment, he notes, there are fundamental gaps in the formulation of the agenda and the articulation of the targets.

De Greiff makes several observations about the links between justice, human rights and development. Poverty imposes some development costs that are articulated around two arguments. First, poverty limits people’s aspirations and goals. Second, it undermines social coordination (of social capital and civic trust). Exactly the same phenomena come about through massive and systematic human rights violations. Equally obvious is that in such societies people’s trust, in one another other and in the state’s institutions, is completely undermined.

In illustrating this point, de Greiff refers to his work at the country level. Families are reluctant to trust security forces whom they deem responsible for the abuses suffered by children, siblings, parents and spouses.’ The possibility of security forces carrying out the function for which they were created is undermined by this ‘perfectly justifiable distrust that comes in the wake of violations’. Security forces, he argues, ‘will have an easier time performing their functions if there is a means of redress’.

In de Greiff’s view, achieving a just society requires fundamental re-thinking. ‘The links between justice, security and development are very deep, thick and multi-directional, therefore the sort of sequencing that is often prevalent says we must achieve security first and only then can we expect some degree of development. In this sequence, justice is postponed as if it was some sort of luxury – this actually doesn’t work.’ Justice-related considerations, he says, need to be incorporated from the outset.

SOUND BITES - PABLO DE GREIFF

- Justice and rights are fundamentally important for the sake of development.
- The sort of sequencing that is still prevalent says we achieve security first, then development, and only then comes justice, as if it was some sort of luxury. This doesn't work.
- The human rights community has been insufficiently attentive to the links between justice, security and development.
- Access to a legal identity is an important catalyst in guaranteeing rights.
- We can have a list of targets that are fully satisfied and, nevertheless, guarantee nothing in terms of the satisfaction of citizens' expectations.
- Security forces will have an easier time performing their functions if there is a means of redress.

After arguing the significance of the potential impact of introducing governance, justice and rights-related considerations into the post-2015 agenda, de Greiff turns his attention to the human rights community, which, he says, has been insufficiently attentive to the links between justice, security and development. 'Either they take a hands-off position (human rights defenders don't want to get their hands dirty in the nitty-gritty of development), or they take a 'maximalist' position (if we're going to talk about justice we're going to have to add 168 indicators into the debate and the post-2015 process can't bear that sort of weight.' Ultimately, de Greiff contends, we will have to be selective. There are no perfect indicators; at best, there are proxies.

Possible indicators include reductions in impunity, along with reduced reliance on confessions as the sole way of resolving legal cases. 'There's no greater incentive to torture than confessions.' Reducing the reliance on confessions will have useful spillover effects, spurring improvements in, for example, forensics, and defense strategies.

'The strategy has to be multi-pronged,' says de Greiff, 'and will require action at the national level in terms of institutional reforms.' Active civil society participation is equally important, as is the role of international organisations. 'We need to come to the point where we recognise that the costs of disagreements become obvious to everyone.' In the case of Tunisia, for example: 'We can have a list of targets that are fully satisfied and, neverthe-

less, guarantee nothing in terms of the satisfaction of citizens' expectations. We need to be clear [about] what is at stake if good governance, justice and rights are left out of the agenda,' he says.

Pablo de Greiff is the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence since 2012. Previously Director of Research at the International Center for Transitional Justice in New York, he has published extensively on transitions to democracy, democratic theory and the relationship between morality, politics and law. He has provided advice to governments, non-governmental organisations – particularly victims' organisations – truth commissions and multilateral institutions on transitional justice, gender issues and the linkages between justice, security and development.

Changing the trajectory of development

Amitabh Behar

To see the world's injustices in Amitabh Behar's motherland, India, you only need to drive from the airport to downtown Mumbai. When you pass a 14-storey building owned by a billionaire, followed quickly by a slum housing 1 million people, you have a stark reminder of the 'obscene inequalities' that still prevail. This, Behar says, is why many refer to the Millennium Development Goals as the 'Minimum' Development Goals'.

While many laud the UN's participatory approach in consulting civil society on the post-2015 agenda, members of civil society wonder if their inputs have been heeded. Rumours that the High Level Panel (HLP) report was completed even before civil society made their inputs led some to ask if these were 'consultations or insultations'. Behar remains cautiously optimistic. Reports from both the High Level Panel and the Secretary-General, in talking about 'leaving no one behind' and a 'life of dignity for all', have raised the bar from the MDGs. But he believes that the new agenda's focus on extreme poverty is problematic and there needs to be a closer analysis of the interlinkages between poverty and justice. 'We need to have a more comprehensive vision... A dramatic shift is essential if we're looking at changing poverty.'

Behar is clear that we need to look at the structural causes of poverty and not its manifestations. He identifies five basic principles, with a focus on human rights and justice, that should underpin the post-2015 agenda: an examination of social exclusions, a broader approach to gender justice (widening the discourse from the public sphere to the private domain), an acknowledgement of environmental justice (not just climate change) and – linked to this last point – a need to 'change the trajectory of development'. He quotes Mahatma Gandhi, who

famously said that the world has ‘enough for everyone’s need, but not enough for everyone’s greed.’

Behar also addresses the concept of ‘decent work’. He reminds us that while the international community’s focus is on ensuring ‘decent work’ for all, there can often be a conflict of interest. The majority of workers in the South rely on land, water or forests for their livelihoods, and such public goods, which provide livelihoods for many, are being threatened by the trend of increased privatisation – especially in the South.

Lastly, he argues that the notion of ‘good governance’, which emphasises economic efficiency over social efficiency, needs broadening. ‘Often we’ve looked at the shrinking size of the State as a marker of good governance, which is problematic,’ he says. ‘I’ve not seen enough definitions that look at social justice efficiency as the marker of governance. Governance for justice should be the objective.’

At the level of international governance it is critical to work on issues such as corruption, rule of law and impunity, Behar says. We also need to take a closer look at the architecture of international governance. ‘We let the G8 or G20 decide everything and that’s not democratic. If we’re going to look at government accountability then we need to change that.’ Next, he points to the multiple

levels of justice within international trade, finance and aid architecture. And finally he turns to the idea of corporate accountability. As the UN increasingly turns to the private sector to finance development, we need to examine more closely the kind of tax breaks corporations get and, crucially, the environmental damage that corporations cause. ‘It’s important to have public-private partnership but it needs to be around a core set of ethical, non-negotiable principles,’ he says.

What is needed is a much higher frame of justice. The root cause of the Arab Spring, he reminds us, was a lack of government accountability. ‘If we don’t address those injustices, we’re looking at an increasing narrative of anger across the world. We need to be mindful of that.’

***Amitabh Behar** is the former Co-Chair of Beyond 2015 and Executive Committee member of Global Call to Action Against Poverty. Currently he is Executive Director of the National Foundation for India (NFI) and National Convener of the Social Watch Coalition of India. He works on advocacy, networking and coalition-building.*

SOUND BITES - AMITABH BEHAR

- - My plea to global leadership is to raise the bar from extreme poverty to justice. A dramatic shift is essential.
- - We need to be looking at the structural causes of poverty and not [its] manifestations.
- - It’s not just about climate change but also about environmental justice.
- - Under the MDGs, the focus of gender was too much in the public space. We need to talk about gender in the private domain – reproductive rights etc.
- - We’ve looked at the shrinking size of the State as a marker of good governance but I’ve not seen enough definitions that look at social justice efficiency as the marker of governance.
- - It’s important to have public-private partnership but it needs to be around a core set of ethical, non-negotiable principles.

Targeting both the supply side and the demand side of the rule of law equation

Maarten Barends

Progress over the last 13 years has been uneven, says Maarten Barends, and the MDGs have failed to address the disparities among developing nations. Nor have they integrated a rights-based approach or properly addressed governance and rule of law issues. ‘The MDGs have proven to be a powerful tool to mobilise the national community around clear and measurable goals.... But, to the average person in Sudan, Congo and Palestine (where I have spent much of my career) – the MDGs mean very little.’

Drawing on his experience in the West Bank and the Gaza Strip, Barends adds a practical perspective to the discussion around the post-2015 agenda. He describes the hardships resulting from the Israeli occupation and ever-intensifying settlement activity, which constrains the ability of the Palestinian Authority to exercise control over its territory, maintain critical infrastructure and provide quality services.

The impact of Israel’s military action, and the blockade, over the past 15 years cannot be overestimated, says Barends. For example, 17% of Palestinians in the West Bank and 34% in Gaza are currently ‘food-insecure’; 35% of Gaza’s farmland and 85% of its fishing waters are inaccessible due to restrictions; 40% of the population is unemployed and 80% receive aid.

The milestone General Assembly vote to accord non-member state status to Palestine has yet to be translated into visible improvements in the lives of ordinary people. The ability of the people on the ground to access justice and security services becomes all the more important and goes to the core of ensuring the right of law, Barends says. ‘Efforts to strengthen the social contract between the State and its people are essential to forging greater resilience of Palestinian communities amid this complex political, legal and economic landscape.’

To this end, UNDP manages a comprehensive programme aimed at underpinning the Palestinian Authority’s efforts to strengthen the rule of law, which, says Barends, ‘is at the heart of the Palestinian statehood agenda’, and to improve access to justice at the local level. Considerable progress has been made, but significant gaps remain. The extent to which the Palestinian justice sector can deliver depends not only on the capacity of individual institutions, but on the extent to which they work together. Thus, sustained efforts to foster coordination and cooperation between all links in the justice chain are crucial.

On the demand side of the rule of law equation, UNDP ensures that its civil society partners are able to offer a full complement of services that a client might need to access and achieve justice. It has set up an effective referral system, which allows for specialisation based on the comparative advantages of each of its civil society partners. Additionally, UNDP creates spaces where civil society can voice its expectations, inform institutional reform processes, and influence the development of laws.

Aimed at building the technical capacities required for administering justice in an impartial, fair and transparent manner, the programme concentrates on legislative drafting, legal reform, administration of justice, and public information and outreach.

At the grassroots, the programme focuses on providing legal aid, raising human rights awareness, monitoring the justice system and promoting human rights advocacy. Since 2010, UNDP has set up a network of legal aid providers, delivered a comprehensive legal aid educational programme, established legal aid clinics and has provided legal aid services to more than 50,000 individuals.

In view of the pervasive discriminatory norms and attitudes, UNDP focuses mainly on improving women’s access to legal justice -- especially on issues related to personal status, such as marriage, divorce, custody of children, alimony and inheritance.

SOUND BITES - MAARTEN BARENDs

- To the average person in Sudan, Congo, Palestine, the MDGs mean very little.
- Amid bleak and challenging circumstances, the ability of people to access justice and security services becomes all the more important and goes right to the core of ensuring the right of law.
- Rule of law and good governance is about serving vulnerable and marginalised communities and ensuring that they have the knowledge and means to access and achieve justice.
- The post-2015 agenda needs to be people-centred, and the international community must ensure a strong sense of national and local ownership, also as a means of attaining sustainability.
- Human rights cut across all regions and religions – uniting us all.

Many of these cases go to the heart of the MDGs – eradicating extreme poverty and hunger as well as promoting gender equality and empowering women. ‘This is why rule of law matters and why the post-2015 development agenda must integrate a rights-based approach to address good governance and the rule of law,’ Barends says. ‘It is, ultimately, about serving vulnerable and marginalised communities and ensuring that they have the knowledge and means to access and indeed achieve justice. Rather than a tool to protect the powerful, restrict the opportunities of the powerless and maintain the status quo, the law must be a key tool for inclusion, choice and justice.’

At the same time, we cannot expect immediate results or a quick fix – especially in conflict and post-conflict settings, which require an incremental approach, he believes. A ‘one size fits all’ approach will not work, either. For example, unusually for a conflict-affected nation, Palestine’s basic constitution largely adheres to international human rights standards – not a comparable environment with Eastern Congo and Darfur. ‘The post-2015 development

agenda needs to be flexible and adaptable at national and perhaps even the local level...to be people-centred, and the international community must ensure a strong sense of national and local ownership, also as a means of attaining sustainability.’

While Barends concedes that others may disagree with external ‘meddling’ in national affairs, his conviction is ‘that human rights cut across all regions and religions – uniting us all. Human rights belong to people simply because they are human, even when the laws of their countries don’t recognise these rights or when these rights are violated.’

Maarten Barends has been Chief Technical Specialist/Programme Manager of UNDP’s Rule of Law and Access to Justice Programme in the West Bank and Gaza since 2011. Previously he worked for UNDP in the Democratic Republic of Congo and Sudan. Before joining UNDP, he worked at the Dutch embassies in Islamabad and Khartoum as well as at Leiden University as part of a major research project on shari’a law.



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This publication is part of a series which summarises some of the key points presented during the seminar series.