

# POLICY ANALYSIS BRIEF

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## A New Multilateralism for Atrocities Prevention A Global Fund and Development Agenda Advancing the Rule of Law

### Key Points

- International human rights and humanitarian institutions that combat and prevent atrocities are under unprecedented strain with the weight of a handful of concurrent, severe global crises.
- The second pillar of the responsibility to protect, which focuses on prevention, is too often occluded by focus on the third pillar, which calls for humanitarian intervention through military force when atrocities have already taken place; this acts to complicate debates about prevention and effective response to atrocities.
- The prevention of atrocities should prioritize rule of law capacity building and include a doubly reinforcing cross-sector institutional and normative approach.
- Establishing a new grantmaking mechanism to support rule of law capacity-building efforts globally, a “Global Trust,” would act as a preventive mechanism against atrocities and a preemptive one for areas at risk for atrocities.
- Efforts to launch a global grantmaking mechanism in support of the rule of law need not start from scratch but can combine demonstrated institutional and structural best practices from existing institutions, including the UN Democracy Fund and the Global Fund to Fight AIDS, Tuberculosis, and Malaria.
- The rule of law is simultaneously an enabler for and outcome of sustainable development, economic empowerment, and the realization of human rights; consequently it is a necessary ingredient for the prevention of atrocities.
- The process to develop a post-2015 development framework to replace the Millennium Development Goals offers a crosscutting opportunity to link the prevention of atrocities with sustainable development and streamline a global partnership architecture supportive of the rule of law and access to justice.
- Efforts to prevent atrocities should engender a focus on early action from the bottom up with a focus on civil society and the expansion of the rule of law and access to justice.



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A UN report estimated that 4 billion people worldwide resided outside the umbrella of rule of law protections at the beginning of the 21st century.<sup>1</sup> Today a humming conveyor belt of global crises and derivative atrocities exemplify the impact of not only continued gaps in the rule of law globally, but also the inevitable costs in terms of lives lost and outrageous affronts to human dignity. Worse, efforts by the Islamic State in Iraq and Syria terrorist group to establish court systems and administrative bureaucracy present a singular perversion of the rule of law as a concept. For thousands across Iraq and Syria, the new normal is effectively law by rule.

While an expansive international architecture of human rights and humanitarian mechanisms has worked to advance international norms, legal frameworks, and other assistance to address atrocities, this network faces increasingly critical resource and structural limitations. For instance, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein suggested in October 2014 that his office's operations were stretched to the "breaking point."<sup>2</sup> In December 2014, the World Food Program was forced to temporarily cut off rations to approximately 1.7 million Syrian refugees because of a funding gap of \$64 million.<sup>3</sup> At the beginning of 2015, the UN Office for the Coordination of Humanitarian Affairs was responding to four level 3 humanitarian crises—that agency's most serious designation. The array of global crises prompted the United Nations to launch a record humanitarian aid appeal in late 2014.<sup>4</sup>

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The risk of international donor fatigue is likely to rise as the number of humanitarian emergencies proliferates and as the international community grapples with other factors ranging from pandemics to the impact of climate change. The unraveling of the domestic security situation in Libya, including a daring attack on the country's parliament in May 2014, exemplifies the potential for unintended costs of even "successful" humanitarian interventions, both authorized under international law and considered legitimate to relevant regional stakeholders. Worse, efforts to advance accountability measures in the UN Security Council to address the civil war in Syria, which has claimed nearly 200,000 lives and resulted in 3 million refugees, have been repeatedly rebuffed. Some have even speculated about an eclipse of the Responsibility to Protect (R2P) principle.<sup>5</sup>

On the other hand, the brazen capture of hundreds of girls in Nigeria, pervasive state-sponsored discrimination against the Rohingya Muslims in Myanmar, and a recent wave of punitive laws against lesbian, gay, bisexual, and transgender (LGBT) individuals in Africa and Central Asia exemplify the potential for human rights abuses and even atrocities across the international landscape. Currently, over 90 percent of UN peacekeepers in 16 peacekeeping missions, which constitute the second-largest deployed military force in the world, are operating under a "protection of civilians" mandate.<sup>6</sup> Prior to 1999, this type of classification did not exist.

Together, these developments underscore an urgent need for the rule of law and capable governance institutions as both a bulwark against atrocities and a life preserver to an overstrained global human rights and humanitarian system, including the beleaguered R2P principle.<sup>7</sup> Key to this vision is uniting a genuine cross-sector coalition of governments, nongovernmental organizations (NGOs), businesses, and philanthropists that can tangibly help prevent atrocities as well as mold a new, action-oriented consensus on the rule of law and R2P that can work to bring about systematic change.

Particularly, the drive for an energized global effort to prevent atrocities should not only elevate the construction of durable rule of law institutions as preventive tools against atrocities but also key drivers for reconciliation in the aftermath of

atrocities. This effort should involve action at two mutually reinforcing levels: a new multistakeholder architecture focused on rule of law capacity building and a corresponding global normative commitment to underpin this effort.

Establishing a new international institution focused on the rule of law need not start from scratch but can integrate the comparative benefits of existing institutions with somewhat different mandates. Two institutions that exemplify best practices in this regard, the UN Democracy Fund (UNDEF) and the Global Fund to Fight Aids, Tuberculosis, and Malaria (Global Fund) offer critical lessons concerning what works and how to bridge stale political versus economic rights debates. Lessons learned from both institutions should be scaled and integrated in a new hybrid international grantmaking organization focused on rule of law capacity building. Namely, a cross-sector, grantmaking institution primarily targeted at NGOs, a Global Trust for Rule of Law (Global Trust).<sup>8</sup>

Undergirding this partnership should be a normative effort to jump-start rule of law capacity building. An ambitious effort is already under way at the United Nations to formulate an agenda that will replace the Millennium Development Goals (MDGs), set to officially expire in 2015, with potential sustainable development goals. While imperfect, the Millennium Declaration agreed to by world leaders from 189 countries in 2000 helped unite the international community behind a common vision for development focused on eight goals, the MDGs.<sup>9</sup> The drive for a new development agenda to define the next 15 years has set the stage for a powerful moment that can integrate key issue areas left out of the original MDGs, including the rule of law.

Coupled with a functioning Global Trust, the international community can use the post-2015 development agenda as a normative catalyst to energize and streamline efforts focusing on the rule of law. This opens a considerable opportunity for a cross-sector coalition—including governments, the private sector, civil society, academia, grassroots leaders, and other experts—to expand the scope of rule of law assistance in an international partnership effort that could impact billions and reanimate a crucial leg of the R2P principle.

## The Rule of Law, Justice, and Atrocities

Former UN Secretary-General Kofi Annan cited the rule of law as the “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.”<sup>10</sup> In short, the rule of law exists when there are not only courthouses and magistrates present but also equitable access to justice and awareness about basic rights and justice-wielding

institutions among all groups in the population. Effective rule of law thereby requires access to justice irrespective of an individual’s background.

Although all are complicated in their own right, each of the current level 3 emergencies (as designated by the UN Office for the Coordination of Humanitarian Affairs and currently synonymous with atrocities)—being Iraq, Syria, Central African Republic (CAR), and South Sudan—can be traced to critical gaps in the institutions guaranteeing equality before the law as well as access to justice by vulnerable populations. From the lack of prioritization in protecting Iraq’s Sunni minority by the administration of former Iraqi President Nouri al-Maliki<sup>11</sup> to a power struggle at the highest levels of leadership in CAR, it is evident that the rule of law is a keystone ingredient in lessening the likelihood of atrocities. Many also forget that the byzantine, geopolitical morass that is now the conflict in Syria began in 2011 as local protests by those feeling excluded from the political levers of power in Damascus.

However, such crises have not occurred in a normative and legal vacuum in terms of human rights. The global human rights regime has evolved and expanded significantly since the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948. This includes more than a dozen legally binding human rights treaties and protocols, more than 50 UN-mandated independent special procedures, and a global, intergovernmental, human rights body in Geneva, now taking the form of the UN Human Rights Council.

The International Criminal Court and ad hoc tribunals, including the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, have also acted as means to ensure accountability for atrocities. Several regional intergovernmental human rights mechanisms are also operational, including the African Union Commission on People and Humans’ Rights, and a fledgling human rights institution within the Organization of Islamic Cooperation.

In the 2005 World Summit Outcome Document, world leaders unanimously came together in support of R2P.<sup>12</sup> Although nonbinding, the statement was a key acknowledgment that states have a responsibility to protect their populations from atrocities, including genocide, war crimes, ethnic cleansing, and crimes against humanity. At its core, R2P is based on three pillars: preventive actions of a government, international assistance, and intervention by the international community when a state has failed to protect its population from atrocities.<sup>13</sup> Many, however, erroneously interpret R2P as only the last of the three.

Civil society also plays an expansive and vital role in spreading awareness on human rights and concretizing norms. This role includes sharing best practices and advancing efforts

toward accountability and reconciliation when violations and atrocities occur. Civil society organizations also serve as linchpin early warning mechanisms for the prevention of atrocities. The Women of Liberia Mass Action for Peace, for example, brought international focus to the potential for a recurrence of violence in Liberia, helping to counter a relapse of the country's devastating, multiyear civil war. Similarly, Sexual Minorities Uganda also helped galvanize international attention on the potential for incitement of violence against the LGBT population in the country (as well as advocates for LGBT rights in Uganda), precipitating the naming and shaming of Uganda's leadership and some countries suspending aid to Kampala.

The fact that 80 percent of UN member states have ratified four or more legally binding core human treaties stands as a powerful symbol regarding the universality of human rights.<sup>14</sup> A UNICEF study of 62 countries that had ratified the Convention on the Rights of the Child (CRC), for example, found that the majority had added provisions of the treaty to their domestic jurisprudence. The study also discovered that almost a third had added CRC provisions at the constitutional level.<sup>15</sup> Additionally, the UN Human Rights Council's Universal Periodic Review mechanism has maintained a 100 percent participation rate from UN members since its inception in 2006.<sup>16</sup>

On the other hand, the rub lies in how many of the CRC-related laws or Universal Periodic Review recommendations to nations are implemented. As noted by UN Deputy Secretary-General Jan Eliasson, "The rule of law is fundamental to maintaining a lasting peace . . . and it makes rights enforceable in practice."<sup>17</sup>

Indeed, without effective institutions to implement the rule of law within countries nor the presence of a governance culture to guarantee equal access to rights and justice, even legally binding treaties—let alone norms and customs—will have little impact in terms of preventing atrocities. The cause of atrocities at their core is the absence of the rule of law in terms of institutions that are accountable and where vulnerable groups have entry points allowing for realizing rights. According to the UN *Framework of Analysis for Atrocity Crimes* released in December 2014, "Prevention is an ongoing process that requires sustained efforts to build the resilience of societies to atrocity crimes by ensuring that the rule of law is respected and that all human rights are protected."<sup>18</sup>

Domestically, violations of fundamental rights are all too often met with impunity, acting to increase the likelihood of atrocities. This serves as a critical reminder that the rule of law does not constitute the crafting of institutions and legal documents alone, but access to justice and entry points for accountability in the justice system that are available for all from the bottom up—including vulnerable populations and minority groups.

The Islamic State in Iraq and Syria may have attempted to establish basic governance institutions within its self-proclaimed caliphate, but targeting religious minorities such as the Yazidis does not at all square with the presence of veritable rule of law. Similarly, the proliferation of legislation imposing harsh penalties for "aggravated homosexuality" or gay rights advocacy fall far short of ensuring the applicability of justice for all.<sup>19</sup> Justice systems that do not protect the rights of all sectors of the population thereby contribute to the weakening of the rule of law.

Finally, no government, whether from the Global North or South, can claim to have achieved perfect rule of law. Therefore, it should be a universal priority. In the United States, for example, a study found only 36 percent of Americans could identify the government's three branches.<sup>20</sup> Nonprosecution of law enforcement officers using deadly violence against African Americans in Missouri and New York in 2014 is, in the view of many, evidence of ongoing rule of law-related shortcomings in the United States.

## Global Trust for Rule of Law

International efforts to prevent atrocities stand to gain strength and momentum with an agile, multistakeholder, rule of law grantmaking institution. This new partnership, a Global Trust for Rule of Law (Global Trust), would scale up the comparative advantages of existing intergovernmental institutions, civil society groups, the private sector, and major philanthropic institutions to fund rule of law capacity-building efforts worldwide.

At its heart, a Global Trust offers an incomparable resource-mobilization authority in support of rule of law capacity building while also increasing space for civil society ownership of projects. It would enlarge norm building from the bottom up, expand opportunities for ground-level impact, and allow for the cross-fertilization of best practices and innovation with key rule of law pathfinders.

Overall, the benefits of a Global Trust include systematic change in terms of the rule of law as well as R2P. For the former, this could not only translate into civil society-driven reform in countries identifying problems before they reach the tipping point of full-blown atrocities but also the advancement of reconciliation opportunities in the aftermath of atrocities. For R2P, it could mean bridging debates about the effectiveness and future of the principle that have all too often deemphasized international preventive efforts—the second pillar of R2P—while overemphasizing humanitarian intervention in cases where a state has failed to protect its population from atrocities—the third pillar.

A new international institution focused on the rule of law need not attempt to reinvent the wheel. Rather it can integrate lessons learned from well-functioning existing institutions: UNDEF and the Global Fund.

Established in 2005, UNDEF has exhibited strong performance in advancing democratic governance by providing grants to civil society and governments across six focus areas. The umbrella of “rule of law and human rights” constitutes one of those areas.<sup>21</sup> Overall, the experience of UNDEF provides significant evidence that even relatively small grants funded by voluntary contributions from UN member states can have a substantial global impact. According to its website, UNDEF has launched upwards of 500 projects in more than 100 countries, with civil society receiving the majority of support.<sup>22</sup> Grants from UNDEF under the “rule of law and human rights” basket have also encompassed efforts in countries including China, the Democratic Republic of the Congo, Egypt, Iraq, Kyrgyzstan, and the Russian Federation.

The UNDEF example also shows the potential procedural advantages of funding mechanisms focused on voluntary contributions. Receiving about \$9 million in contributions from UN member states in 2014, UNDEF stands as a helpful example in terms of efforts to advance rule of law best practices as well as commitment by civil society groups to carry the mantle for projects relevant to the rule of law.<sup>23</sup>

The second, much larger institution that should inspire efforts to build a new Global Trust is the Global Fund. Founded in 2002 as a funding mechanism to fight AIDs, tuberculosis, and malaria, the Global Fund has disbursed over \$20 billion, with programs in 140 countries affecting hundreds of millions of lives. The Global Fund governing board includes representation from governments (donors and grantees), the private sector, NGOs, the United Nations, the World Bank, and target communities.<sup>24</sup>

The Global Fund stands as a powerful case study of the potential impact of cross-sector partnerships inclusive of the private sector and prominent philanthropic institutions. Moreover, its governing approach, which emphasizes the principles of “country ownership, performance-based funding, and partnership,” is equally suited to a new institutional architecture envisioned to focus on the rule of law.

The Global Trust would complement, not replace, existing mechanisms focused on rule of law capacity building. This includes the work of dozens of other UN entities operating in more than 100 countries, World Bank efforts, and development aid emanating from governments.<sup>25</sup> And a Global Trust could help with coordination of strategies and resources in existing multilateral efforts. For instance, a report from New York University’s Center on International Cooperation concluded, among other findings, that the United Nations’ array of rule of law programs faced coordination challenges and veritable metrics to assess impact.<sup>26</sup>

In fact, the establishment of a Global Trust offers the opportunity to shine the spotlight on these instruments as the rule of law increasingly comes into focus as a tool to expand access to justice and prevent atrocities from the ground up. Moreover, the expert analyses from these institutions would be vital in helping to set a working agenda for the Global Trust and in contributing to a repository of lessons learned in terms of rule of law capacity building. Cues can be taken from the microcosm of the Programme Consultative Group in which seven UN agencies give advice to UNDEF on priority and nonduplicative grantmaking.

With a governing board including prominent philanthropists as well as relevant government, UN, International Criminal Court, multilateral bank, civil society, and private sector officials, the Global Trust would make grants to civil society and governments in order to support the rule of law, albeit with a substantial focus on the former sector. The Global Trust would be

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uniquely positioned to minimize politicization linked to budget-making processes in national governments and prominent intergovernmental organizations.

Many countries, including those traditionally skeptical of democratic governance and human rights, may be more willing to accept funding by a hybrid institutional architecture rather than a grantmaking mechanism led solely by NGOs. Within the Global Trust, no governing board representative would have a veto, and no single donor could give more than 10 percent to its grantmaking budget.<sup>27</sup> Independent, expert auditors would also assess the grantmaking operations of the Global Trust to ensure efforts to advance the rule of law do not fall prey to corruption or inadequate transparency, whether internally or externally. Borrowing practices from UNDEF, funds would also be distributed in stages so as to ensure that proper monitoring and evaluating benchmarks are achieved. A geographically balanced expert group would evaluate grant applications and report to the Global Trust governing board.

Given the current international aid climate and potential onset of donor fatigue, some may suggest the international community does not have the fiscal stomach for a new international partnership mechanism. These concerns are unconvincing for an enterprise specifically focused on the advancement of the rule of law through an international cross-sector partnership. First, a Global Trust would be a unique opportunity to leverage existing pathfinder groupings like the UN Group of Friends of the Rule of Law to provide seed money for an institution exclusively focused on rule of law capacity building.<sup>28</sup> Second, despite partisanship on Capitol Hill, Congress recently provided \$260 million in assistance, including justice and security capacity-building support, to nations in Central America at the center of the immigration crisis.<sup>29</sup> Third, the structure of the Global Trust would be able to successfully leverage multiple funding streams, including donations from governments, prominent philanthropic institutions, and the private sector.

A Global Trust should also enjoy generous financial backing from the private sector, given the rule of law as an enabler for investment, capital flows, and ultimately revenue. No competitive, multinational business wants to set up shop in a place ripe for atrocities or where the presumption is the risk of humanitarian emergency. Moreover, as the series of crises unfolding in the Middle East have shown, turmoil can easily spill over borders, wreaking havoc on public sector institutions, civil society, and other institutions that underpin regulatory environments where businesses operate. "A government that supports the rule of law and transparent contracts and that does not act capriciously toward local and international investors can be the cornerstone for a vibrant enterprise sector," concludes the 2014 World Bank development report.<sup>30</sup>

Similarly, there is a clear national interest for countries to support efforts to expand the rule of law, let alone combat atrocities. Corruption can be devastating both for tax revenue and the expense of public resources on other development priorities, whether environmental conservation or the development of essential infrastructure.<sup>31</sup> Similarly, in an era of social media, even apparently localized events can quickly generate intense international naming and shaming.

A Global Trust could provide seed money for a wide spectrum of projects under the banner of the rule of law and the prevention of atrocities. These include programs and innovations raising awareness about human rights protections and justice statutes, professional exchange programs, lawyer trainings, scaling legal and administrative innovation and best practices, rights-focused journalist trainings, legal literacy efforts, and expanding programs to facilitate transparency and accountability in public sector decision-making and budget processes.

Civil society organizations such as the Bachpan Bachao Andolan group, International Justice Mission, International Center for Advocates Against Discrimination, and the American Bar Association Rule of Law Initiative are potential recipients for support from the Global Trust. Similarly, national human rights institutions could be eligible for funding from the Global Trust provided they meet the standards under the 1991 Paris Principles.

While on-the-ground rule of law capacity building should be the first priority, grants from the Global Trust could also facilitate the related participation of civil society in the UN human rights system. This could encompass engagement with the Universal Periodic Review mechanism, Human Rights Council sessions in Geneva, expanded communications with UN special procedures, and organizing execution of stocktaking events at key intergovernmental institutions—including regional institutions—to facilitate collaboration with other NGOs and advocates.

As a result, populations would have a better knowledge of rights commitments of their governments as well as be able to directly engage in a human rights system designed to bring about those protections. Testimony from former political prisoners and other survivors of the regime in North Korea undergirding the work of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea set a powerful precedent in this regard.<sup>32</sup> When the voices of civil society are able to directly fall on the ears of member states, it becomes harder to dismiss allegations of rights violations or atrocities outright.

A proportion of the Global Trust's budget could also be designated for the empowerment of vulnerable and minority groups. This could include cultural, ethnic, or religious bridge-building programs, the establishment of NGO early warning networks, or efforts geared toward postconflict

reconciliation. Youth for Peace, a Cambodian NGO launched in 1999, is an example of the latter.

At its core, a Global Trust offers an opportunity to revitalize efforts to advance the rule of law and equal access to justice, on a global level. It is in this sense that the word “trust” is more than a synonym for “partnership fund,” as it hints at the very aim of building governance in which all citizens could place their trust. It would also work to break the confusion that oversimplifies R2P as solely a function of the UN Security Council authorizing humanitarian intervention; in other words ensuring the second pillar of R2P is rebalanced in importance to the still-necessary third.

## Post-2015 Development Agenda

An ambitious effort is currently under way at the United Nations to formulate an agenda that will replace the MDGs, set to expire in 2015. While not legally binding on countries, the MDGs created a development plan of action for the world to work from and have an incomparable role in setting the stage for millions to escape poverty globally. The MDGs also helped elevate particular issues—whether poverty reduction, the empowerment of women and girls, or combatting AIDs and malaria—in the consciousness of the international community. As administrator for the UN Development Programme Helen Clark suggests, “The experience with the MDGs suggests that global priority setting, backed by action, does generate results.”<sup>33</sup>

However, despite myriad benefits of the international community coalescing around a single development agenda, including economic empowerment, the MDGs were not without shortcomings.<sup>34</sup> First, many have cited the MDGs process as lacking inclusivity and a robust consultative mechanism to bring in the voices of different sectors, including civil society. Second, very few would assert the MDGs were rooted in human rights and sought to establish systemic reform in terms of the rule of law and access to justice—despite the fact that impunity, violated property and land rights, violence, and inequality before the law markedly undercut the possibility of economic development. Third, the MDGs lacked universality, focusing primarily on developing nations.

The process to develop a new list of sustainable development goals (SDGs) for 2015–2030 has attempted to address the perceived shortcomings of the MDGs. This complex effort has engendered consultations well beyond Turtle Bay. The process has also tried to maximize cross-sector participation in the formation of the post-2015 agenda. Similar to the inclusive, cross-sector framework of the proposed Global Trust, the post-2015 agenda process has sought to integrate the voices of not just UN member state representatives but also civil society, the private sector, academia, and other actors.<sup>35</sup> Another principle associated with the effort to develop SDGs is universality, or ensuring the new goals are not focused solely on a few regions.<sup>36</sup>

The approach emphasizing inclusivity has yielded surprisingly clear results about what direction the next development agenda should take. Specifically, the online MyWorld2015 global survey of more than 7 million people around the world has listed an “honest and responsive” government as a top priority post-2015 among 17 potential responses.<sup>37</sup> This underscores two implicit understandings. First, there is a widespread recognition concerning the maintenance of the rule of law, access to justice, and capable governing institutions as crucial enablers for other development priorities. Second, there is an acknowledgment that the rule of law as a concept is not merely a Western construct but is shared across cultural, social, and economic lines.

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In July 2014, a more-than-year-long intergovernmental process through the UN Open Working Group on Sustainable Development Goals (OWG), composed of 70 UN member states, agreed on a basket of goals and targets. In total, the OWG submitted 17 proposed goals with 169 targets to the 193-member UN General Assembly for review. This includes Goal 16, which calls for the international community to, “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”<sup>38</sup>

Debate about whether to include Goal 16 in the basket of proposed goals and what form it should take was unequivocally the most contentious aspect of the OWG. Some UN member states expressed concern that adding governance, and more particularly the rule of law, to the mix of sustainable development priorities could needlessly complicate the post-2015 agenda. Beyond the innate political hostility of autocratic or intolerant governments to these provisions, in the view of many states, the rule of law, at best, fell outside the scope of efforts to establish a new sustainable development agenda; at worst it represented an effort by the West to dilute the universality of the new development agenda.

Other member states countered that an SDG focused on governance was critical to the success of other proposed SDGs and contributed to a truly universal agenda. The rule of law, it was suggested, was crucial to molding institutions capable of addressing extreme poverty, a central focus of the post-2015 process, as well as actualizing rights.

Ultimately, Goal 16 was forwarded to the UN General Assembly by acclamation of the members of the OWG. Within the goal, one proposed target somewhat ambiguously calls for member states to “promote the rule of law at the national and international levels, and ensure equal access to justice for all.” Other proposed targets reference the need to counter violence against children and illicit arm flows, and enact nondiscriminatory laws and policies—all relevant and mutually reinforcing for efforts to prevent atrocities.

Shortly thereafter, a geographically representative working group of experts, the Intergovernmental Committee of Experts on Sustainable Development Financing, reached a similar conclusion about the significance of integrating the rule of law within the post-2015 development process. Specifically, it cited the role of the rule of law in establishing more favorable investment environments.<sup>39</sup>

In December 2014, UN Secretary-General Ban Ki-moon released a much anticipated synthesis report on the post-2015 development process, *The Road to Dignity by 2030*. The report acknowledged the efforts of the OWG and discussed the urgency of effectively communicating the proposed SDGs. Particularly, the report identified “six essential” elements to “reinforce and frame” the post-2015

development agenda: “partnership,” “planet,” “people,” “dignity,” “prosperity,” and “justice.”<sup>40</sup>

While the OWG outcome document, sustainable development financing experts’ report, and secretary-general’s synthesis report do not mark the conclusion of the process to develop a post-2015 development agenda, they are important symbols regarding the evolution of the international conversations about not only development but sustainable development.

The inclusion of a focus on the rule of law and justice in the post-2015 process cannot be understated. Given that the rule of law is both a precursor and outcome of development, a global consensus on the need for it has the capacity to accelerate resources for development, highlight best practices, and bolster accountability in terms of implementation. An agreement to include the rule of law and access to justice within the post-2015 development process at the goal, target, and indicator levels combined with an effort to establish a nimble, multistakeholder Global Trust would provide important preventative means to address the potential for atrocities now and in the future. Combined with the focus on “peaceful and inclusive societies,” the proposed sustainable development priorities promise to revitalize focus on justice in development for the next 15 years. At stake are potentially trillions of dollars emanating from myriad funding streams, including official development assistance, private sector investment, and national budgetary planning.<sup>41</sup>

In September 2015, UN member states will be tasked with agreeing on a post-2015 development framework. Some nations have suggested that a preliminary technical review of the OWG output should be undertaken at the target level so as to enhance the implementation of the SDGs.<sup>42</sup> Others have suggested that the OWG product represents the best achievable outcome given the gargantuan spectrum of stakeholders involved in the post-2015 process and worry that attempts to prune the outcome could unravel the “delicate political compromise” of OWG goals and targets.<sup>43</sup>

Combined with the institutional, political, and moral authority of the secretary-general, the voice of civil society and the private sector should continue to play a substantive role in the negotiations, with an eye toward the robust integration of the rule of law and access to justice in the post-2015 development agenda—and how it gets implemented. Overall, the proposed sustainable development priorities offer a strategic opening to revitalize focus on justice in development for the next 15 years, if member states decide to seize it.

## Recommendations

The United States should convene an international donors conference in coordination with a geographically representative coalition of rule of law champions, including relevant civil society groups, leading transnational

businesses, leaders from the United Nations, and prominent philanthropists with the goal of establishing a Global Trust for Rule of Law. The trust would combine the grantmaking modalities of the UN Democracy Fund and the demonstrated structural effectiveness of the Global Fund. Its primary mission would be to advance rule of law capacity building and best-practice sharing at the grassroots level, primarily targeted to civil society. Prevention of atrocities should be integrated as a key focus area of the Global Trust's grant portfolio. (As long as it facilitates a truly collaborative consensus of multistakeholder players, the United States should proactively play a role as catalyst—as aloofness would decrease a helpful leadership role without lessening inevitable charges that the trust serves US and G-7 interests.)

Member states of the United Nations undertaking negotiations in September 2015 to formulate a post-2015 development framework to replace the MDGs should prioritize retaining the rule of law and access to justice, and particularly Goal 16, as key elements of proposed sustainable development goals. In addition, robust and measureable indicators—key to tracking implementation—should be crafted through an inclusive, expert-level, multistakeholder process. A focus should include ensuring the protection of vulnerable populations from discrimination, inequality, and other factors that contribute to atrocities. A vital component of this effort should also emphasize data disaggregation by race, age, ethnicity, gender, disability, and other variables by which people are marginalized from equal justice and their rights violated.

## Back From the Brink

The application of rule of law assistance through a new multistakeholder Global Trust interlaced with the normative catalyst for the post-2015 development agenda offers a striking opportunity to unify the international community to prevent atrocities and reinvigorate R2P. With these achievements, many of the root causes of atrocities can be mitigated, lessening the chances of another Syria.

Institutionally, UNDEF and the Global Fund offer a blueprint for the next step. It is incumbent upon governments, UN officials, the private sector, and key philanthropic institutions to follow the path forward to build a Global Trust. Such a partnership would strengthen the global human rights and humanitarian architecture as a bulwark against atrocities, both ex ante and post facto.

Normatively, the post-2015 negotiation process offers an opportunity for a cross-sector coalition that elevates the rule of law as a crucial component for sustainable development. Civil society, financing experts, and others have articulated an urgency for the rule of law, and now conversations within the United Nations should move to meet this demand by prioritizing justice in the implementation of universal sustainable development goals.

Such a combined effort to advance the rule of law on paper to its realization in practice can offer markedly improved means for atrocities prevention. That way, thankfully fewer times will controversial questions of whether the international community should launch either humanitarian intervention or post facto accountability through International Criminal Court prosecutions ever need to be asked. An ounce of canny rule of law prevention is worth a pound of multilateral action after it is already too late for millions displaced, maimed, sexually violated, or killed.

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*Normatively, the post-2015 negotiation process offers an opportunity for a cross-sector coalition that elevates the rule of law as a crucial component for sustainable development.*

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## Appendix

### Open Working Group proposal for Sustainable Development Goals<sup>44</sup>

#### Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

- 16.1 significantly reduce all forms of violence and related death rates everywhere
- 16.2 end abuse, exploitation, trafficking and all forms of violence and torture against children
- 16.3 promote the rule of law at the national and international levels, and ensure equal access to justice for all
- 16.4 by 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime
- 16.5 substantially reduce corruption and bribery in all its forms
- 16.6 develop effective, accountable and transparent institutions at all levels
- 16.7 ensure responsive, inclusive, participatory and representative decision-making at all levels
- 16.8 broaden and strengthen the participation of developing countries in the institutions of global governance
- 16.9 by 2030 provide legal identity for all including birth registration
- 16.10 ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
- 16.a strengthen relevant national institutions, including through international cooperation, for building capacities at all levels, in particular in developing countries, for preventing violence and combating terrorism and crime
- 16.b promote and enforce non-discriminatory laws and policies for sustainable development

## Endnotes

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