**‘Rule of law’ indicators in the SDGs**

Indicators for targets under [Sustainable Development Goal 16](https://sustainabledevelopment.un.org/sdg16) will be [finalised later this month](http://unstats.un.org/sdgs) following the [informal briefing](http://unstats.un.org/sdgs/files/ga-briefing-28-Jan-2016/PGA-Briefing--Status-of-IAEG-SDGs-work-on-global-SDG-indicators-28-Jan-2016.pdf) in New York at the end of January. It is worth taking a moment to consider what these indicators mean for the broader concept of the ‘rule of law’, its definition and promotion.

The SDGs contain targets which are to be measured by indicators. Goal 16 calls for government, the private sector and civil society 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’. Within this goal there are 10 targets, including 16.3 which aims to ‘promote the rule of law at the national and international levels and ensure equal access to justice for all’.

So far so good. But which ‘rule of law’ are we talking about? Indicators will set the bar for evaluation and comparison and they will inevitably frame the direction of projects and [funding](http://uk.reuters.com/article/development-goals-finance-idUKL5N11V3PB20150926). As always, there is a danger that the measurement indicators will overshadow the goal. Two proposed indicators are currently assigned to Target 16.3 for final approval this month:

[**Proposed Indicator 1**](http://unstats.un.org/sdgs/iaeg-sdgs/open-consultation-3/): Unsentenced detainees as percentage of overall prison population.

[**Proposed Indicator 2**](http://unstats.un.org/sdgs/iaeg-sdgs/open-consultation-3/): Percentage of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms (also called crime reporting rate)

Proposed indicator 1 is currently ‘green’ indicating tentative agreement. Proposed indicator 2 is ‘grey’ and may be modified before the framework is finalised although this appears unlikely. These indicators reflect an interpretation and prioritisation of elements within the rule of law and access to justice concepts that evolved (or perhaps, devolved) over many months of consultation and negotiation which in turn was based on work undertaken by the [Virtual Network.](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Virtual%20Network%20on%20Goal%2016%20indicators%20-%20Indicators%20we%20want%20Report.pdf)

Various connotations of the ‘rule of law’ carry the promise of political emancipation as well as the risk of facilitating a regulatory framework that entrenches already powerful actors. It is a legal and philosophical battleground and measurement systems inevitably take sides: ‘law’ is not a safe and neutral engagement.

[Alternative indicators](http://unstats.un.org/sdgs/iaeg-sdgs/open-consultation-3/) proposed for 16.3 include assessing the physical distance to affordable and effective legal services, accessibility of dispute settlement mechanisms, user-orientated opinions regarding ‘fairness’ of justice processes and availability of counsel for criminal defendants, the financial threshold at which legal aid is provided, access to legal information and use of the [World Justice Project’s Rule of Law Index](http://worldjusticeproject.org/rule-of-law-index). Several NGOs insisted that the indicators for 16.3 should encompass in some way the ratification and implementation of human rights treaties such as ICCPR, ICESCR, CEDAW and CERD as a demonstration of coherence between sustainable development and human rights.

The clearest critique in the [latest consultation](http://unstats.un.org/sdgs/iaeg-sdgs/open-consultation-3/) came from the Commonwealth Secretariat:

“The rule of law can be characterised through three key elements – legal frameworks, institutional capacity, and legal empowerment. Each of these intersects with the economic, social and environmental dimensions of sustainable development. It is extremely challenging for just two global indicators to capture these elements and dimensions…the rule of law and access to justice concerns areas such as investment, commercial, corporate, land and family law.”

There has been significant support for an [alternative indicator](http://blogs.worldbank.org/governance/sdgs-indicators-rule-law-need-respect-targets-agreed-september) attempting to measure a wide range of situations by assessing the ‘proportion of those who have experienced a dispute in the past 12 months and who have accessed a fair formal, informal, alternative or traditional dispute mechanism who feel the process was just’.

Near universal agreement regarding the target has clashed with near universal disagreement and some ambivalence regarding the indicators. At this level of specificity common ground is scarce, reflecting the broader debate regarding the rule of law.

The draft indicators lean towards supporting of a ‘thin’ formalist notion of the rule of law, devoid of individual rights or concepts of social justice. Frequently, dialogue around criminal justice systems presume the state as an unproblematic vehicle of sovereignty and law. Prioritising the criminal legal system supports codification of prevailing practice and power structures along similar lines to blind prioritisation of contract and property rights within legal reform programmes. The focus is on maintenance of the status quo and security rather than public discourse and participation. The origins, focus and direction of the criminal system are not questioned and the central authority is inherently upheld and supported.

The political, conceptual and empirical work required cannot be aggregated at a global level. As a contributing means to development, the rule of law must focus on local empowerment for participatory political decision making. Following directly from this, measurement and indicator structures must be flexible and localised. The intended [regional and local indicator frameworks](http://unstats.un.org/sdgs/files/ga-briefing-28-Jan-2016/PGA-Briefing--Status-of-IAEG-SDGs-work-on-global-SDG-indicators-28-Jan-2016.pdf), where they materialise, may be able to assist this purpose.

Of course these complaints are offset to some extent by other aspects of the broader SDG indicator framework, which should be assessed as a whole. But it is worth taking a moment to consider what is being put forward here as ‘rule of law’ by an organisation with the normative weight of the United Nations. Poorly directed indicators could result in ambivalent progress at best and perverse reporting incentives at worst. Beyond that, the indicator framework set to be in place for 15 years will influence the fundamental conceptualisation of ‘rule of law’. What has been left out should be noted.