

RULE OF LAW, GOOD GOVERNANCE, AND SUSTAINABLE DEVELOPMENT

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SUMMARY

This paper reviews the relationship between the rule of law, good governance, and sustainable development, as those terms are used by the relevant development organizations; describes the efforts made by various organizations to promote the rule of law and good governance; and addresses the need to strengthen compliance and enforcement for sustainable development.

1 INTRODUCTION

It is widely recognized that good governance is essential to sustainable development. Well-functioning legal institutions and governments bound by the rule of law are, in turn, vital to good governance. Weak legal and judicial systems – where laws are not enforced and non-compliance and corruption are the norm – undermine respect for the rule of law, engender environmental degradation, and undermine progress towards sustainable development.

Practitioners in the development field have increasingly turned their attention to reforms to improve legal and judicial institutions and promote the rule of law and good governance. For example, various United Nations agencies such as the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP), as well as the World Bank and other regional development banks, are directing increasing

resources to reform legal and judicial institutions.

To date, however, most of these efforts have concentrated on developing new laws and creating new institutions, rather than building capacity for ensuring compliance with existing rules. Yet without compliance, laws and regulations are meaningless – or worse, they undermine respect for the rule of law – and cannot promote sustainable development. As a result, many developing countries and countries with economies in transition still suffer from weak legal and judicial systems, lack investment, and have poor development prospects, sustainable or otherwise. Thus, donor-driven reform efforts need to ensure that their rule of law efforts include sufficient training and capacity building to establish the institutional foundation for compliance and enforcement, through both instrumental and normative efforts.

The first section of this paper reviews the relationship between the rule of law, good governance, and sustainable

development, as those terms are used by the relevant development organizations. It then briefly describes the efforts made by various organizations to promote the rule of law and good governance. Finally, the paper addresses the need to strengthen compliance and enforcement for sustainable development.

2 RULE OF LAW, GOOD GOVERNANCE, AND SUSTAINABLE DEVELOPMENT

There is a political consensus that the rule of law and good governance are a necessary foundation for efforts to achieve sustainable development. But these broad concepts carry many meanings and there are many strategies for promoting them. This section provides some brief definitions to illustrate how the concepts are used in the international financial institutions and other donor and capacity-building agencies. It then explores the relationship among the rule of law, good governance, and sustainable development.

2.1 Definitions of “Rule of Law” and “Good Governance”

Rule of law: Many institutions identify a fair, impartial, and accessible justice system and a representative government as key elements of the rule of law.¹ In this paper, the term “rule of law” is used to mean independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all of its people.

Good governance: Good governance is generally characterized by accessibility, accountability, predictability and transparency.² This paper treats “good governance” as having openness, participation, accountability, and transparency as key elements.

2.2 Relationship Among the Rule of Law, Good Governance, and Sustainable Development

While many factors play an important role in development, good governance

is now recognized as playing an essential role in the advancement of sustainable development. Good governance promotes accountability, transparency, efficiency, and rule of law in public institutions at all levels. In addition, it allows for sound and efficient management of human, natural, economic, and financial resources for equitable and sustainable development. Moreover, under good governance, there are clear decision-making procedures at the level of public authorities, civil society participation in decision-making processes, and the ability to enforce rights and obligations through legal mechanisms.

These aspects of good governance do not in themselves ensure that society is run well nor do they guarantee sustainable development. However, their absence severely limits that possibility and can, at worst, impede it. Without proper-functioning institutions of governance based on the rule of law that promote social stability and legal certainty, there cannot be investment and assumption of risk that form the basis of market economy development, let alone sustainable development. Indeed, the strength of the rule of law is the best predictor of a country’s economic success. Furthermore, deficiency in the rule of law encourages high rates of corruption, with further devastating consequences on the confidence of economic actors. This lack of investment, in turn, slows economic growth and consequently deprives the governments of resources to invest in education, social safety nets, and sound environmental management, all of which are critical for sustainable development.

Introduction of good governance and rule of law, however, cannot be done overnight. The process is often a gradual one, involving changes to long-standing practices, entrenched interests, cultural habits, and social and even religious norms. A significant step was taken in this endeavor in 1998 when countries adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“The Aarhus Convention”).³ The Convention recognizes that sustainable develop-

ment can only be achieved through the involvement of all stakeholders and seeks to promote greater transparency and accountability among government bodies by guarantying three pillars for the public: 1) the rights of citizen access to information; 2) citizen participation in decision-making, and 3) citizen access to justice in environmental matters. In other words, the Convention guarantees freedom of access to information on the environment, gives citizens a right to participate in environmental decision-making, and provides for recourse to judicial and administrative remedies when these rights are denied by state authorities.

Moreover, in 2000, 191 United Nations member States pledged to fulfill a set of key goals (the Millennium Development Goals) for poverty reduction and sustainable development by the year 2015. In the Millennium Declaration, the member States agreed to “spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.”⁴

In addition to these international agreements by heads of the States, donor agencies are making significant efforts to promote the rule of law and good governance throughout the world. The following section briefly describes these efforts.

3 EFFORTS TO PROMOTE THE RULE OF LAW AND GOOD GOVERNANCE

Recognizing the importance of rule of law and good governance, many donor agencies are actively supporting legal and judicial reforms, including judicial training, development of new laws and legal institutions, and capacity-building. For example, UNEP has convened several symposia for judges to facilitate judiciary communication, sharing of legal information, and harmonization of different approaches to the implementation of global and regional instruments.⁵ One such symposium was the Global Judges Symposium on Sustainable Development and the Role of Law that

UNEP organized with the International Network for Environmental Compliance and Enforcement (INECE) as a key partner in 2002. At the Symposium, the participants adopted the Johannesburg Principles on the Role of Law and Sustainable Development, in which they affirmed, among other things, “that an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law” and that “there is an urgent need to strengthen the capacity of judges, prosecutors, legislators and persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law.”⁶

UNDP also has helped promote good governance by focusing on the following six areas:⁷

- 1) parliamentary development;
- 2) assistance with electoral systems and processes;
- 3) improvement of access to justice and human rights;
- 4) promotion of access to information;
- 5) support for decentralization and local governance; and
- 6) reform of public administration and civil service.

Financial institutions and other organizations have also made significant efforts to advance good governance and the rule of law. The World Bank, for example, has several legal and judicial development projects supporting law reform, court modernization, training of judges and court personnel, and legal education.⁸ In addition, institutions such as the Organisation for Economic Co-operation and Development (OECD) have worked to improve and reinforce the legal, judicial, and law enforcement systems.⁹ For instance, on February 6-7, 2005, OECD and UNDP, along with the Arab League, the World Bank, the European Union, and a number of organizations working in the region, including those from the private sector and civil society, launched a major program to promote good governance for development

in the Arab region.¹⁰ Called the “Good Governance for Development in the Arab Countries”, the program is designed to address the following six themes:

- 1) civil service and integrity;
- 2) the role of the judiciary and enforcement of judgments;
- 3) e-government, administrative simplification, and regulatory reform;
- 4) the role of civil society and media in reform of the public sector;
- 5) the governance of public finance; and
- 6) the public services delivery and private-public partnership.¹¹

4 IMPORTANCE OF COMPLIANCE AND ENFORCEMENT FOR SUSTAINABLE DEVELOPMENT

Despite a growing body of environmental law both at the national and international levels, environmental quality has been declining in many countries. Furthermore, even after more than ten years and hundreds of millions of dollars in aid, many judicial and legal systems in the world are still functioning poorly. One reason for these trends is the inadequate investment in enforcement and compliance efforts.

The need to strengthen enforcement and compliance has been widely recognized. For example, the participants of the Rio Earth Summit in 1992 recognized this necessity in Chapter 8.21 of AGENDA 21, which established an international mandate to build compliance and enforcement capacity as an essential element of environmental management.¹² Agenda 21 also empowered UNEP and other organizations to more actively support compliance and enforcement activities, including capacity building.

Moreover, UNEP Executive Director Toepfer has recently highlighted the importance of enforcement and compliance:

We all have a duty to do whatever we can to restore respect for the rule of law, which is the foundation for a fair

and sustainable society...Sustainable development cannot be achieved unless laws governing society, the economy, and our relationship with the Earth – both international and domestic – are put into practice and connect with our deepest values. Law must be enforced and complied with by all of society, and all of society must share this obligation.¹³

Various institutions’ efforts, including those mentioned above, are helping advance rule of law and good governance. However, it is insufficient to point out a legal obligation and to invest in institutional reforms if the culture of law abidingness has not replaced the culture of corruption. In other words, if the countries receiving the aid do not work to make the internal changes and do not actually implement the legal and judicial reforms, their legal and judicial systems will continue to struggle to improve, their economic development will continue to falter, and there will be no progress towards sustainable development.

Therefore, the donor agencies need to focus more on those reforms aimed at the deeper goal of increasing governments’ compliance with the laws. This requires tools that empower citizens to participate in governance, including access to justice, with opportunities to pressure the judicial and legal systems. It is increasingly recognized that the fundamental changes that are needed for rule of law and sustainable development require the support and commitment of the key people within the system, and this core group needs to be given enabling assistance to help build the essential internal political will these reforms require. Donor assistance is critical, but so is the will to reform, which must be fostered from within.

The international community is already beginning to move in this direction. For example, as noted, the Aarhus Convention guarantees the rights of access to information, public participation in decision-making, and access to justice in environmental matters. These rights empower citi-

zens to ensure that environmental laws are properly enforced and complied with. On the capacity building front, institutions such as UNEP, the Global Environmental Facility, and the United Nations Economic Council for Europe (UNECE) have produced guidelines to facilitate implementation and compliance with certain multilateral environmental agreements (MEAs).¹⁴ The UNEP Guidelines, for instance, highlight several compliance assistance strategies, including sharing experiences, evaluating the effectiveness of technology transfer, and drafting model legislation.

In addition, public agencies and researchers have begun collecting empirical data to analyze the effectiveness of different policies and strategies in inducing compliance with various environmental regulations. For instance Oran Young, Helmut Breitmeier, Michael Zürn, and others have created the International Regimes Database to empirically analyze 23 MEAs.¹⁵ However, the empirical literature on environmental enforcement is still fairly sparse, due to the difficulty of obtaining reliable empirical information about the compliance of particular regulated entities. There is a great need for more well-functioning, reliable, and comprehensive data gathering systems. NGOs and various international networks, including INECE, can play an important role in gathering and validating information for such systems.

With better coordination and increased support, all of these efforts – those addressing the rule of law and good governance issues, environmental compliance assistance, and empirical data collection and analysis – will help expedite progress towards sustainable development.

5 CONCLUSION

There is a consensus that the rule of law and good governance are the foundation for achieving sustainable development goals. Various institutions have taken initiatives in promoting the rule of law and good governance throughout the world and have made considerable progress over the

years. However, despite these efforts and the growing number of environmental laws and regulations, environmental quality and public health continue to deteriorate due in significant part to lack of implementation, enforcement, and compliance with existing laws. A strengthened focus on compliance and enforcement efforts could overcome these problems and would be a critical investment for advancing sustainable development.

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ECONOMIC ASPECTS OF ENVIRONMENTAL COMPLIANCE ASSURANCE

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SUMMARY

Discussions about strengthening enforcement systems in the context of designing policies that stimulate economic growth have become a subject of particular interest in the national and international context. These discussions have shown the need to develop and promote a more systematic assessment of the incentive structures facing firms and the need to provide governments with approaches that can generate, and optimize the use of, public and private expenditure on compliance and its assurance. A Conference on Economic Aspects of Environmental Compliance Assurance, organized on 2-3 December 2004 in Paris within the framework of the Organisation for Economic Co-operation and Development (OECD) Global Forum on Sustainable Development, took these discussions further by facilitating a dialogue and exchange of experience and good practices between OECD countries and non-members from transition and developing economies. This paper presents the summary of the discussion held during the Conference.¹

1 INTRODUCTION

Environmental enforcement, or compliance assurance, programs involve a broad array of actions that governmental agencies, alone or in co-operation with other stakeholders to correct or halt behavior of the regulated community that fails to comply with environmental requirements. But even though these programs are comprehensive the compliance rates are still unsatisfactory as detecting and prosecuting non-compliance is complex, time and resource consuming.

Low compliance rates often stem from inadequate incentives provided by governmental regulations. On the other

hand, underlying theoretical assumption is also that perfect (i.e. 100 %) enforcement is not always efficient. The underlying reason for the flawed enforcement programs is often a lack of in-depth analysis of the entire spectrum of economic reasons that influences the decision of the firm to comply, or not, with environmental requirements. This includes, for example, the relations between levels of penalties and compliance monitoring activities (inspections), the selection of an appropriate penalty for non-compliance, the need for a differentiated approach depending on the type of the regulated community, relations between compliance rates and tax breaks and special financing, the size and structure of